(2008) 07 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

SHAILJA J HEGDE APPELLANT

Vs

SMARAN BUILDERS RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Citation : 2008 3 CPJ 303 : 2008 3 CPR 256

Hon'ble Judges : Rajyalakshmi Rao , P.D.Shenoy J.

Final Decision : Revision Petition allowed

Judgement

1. -AGGRIEVED by the order of the State Consumer Disputes Redressal Commission of Andhra Pradesh dated 21. 4. 2006 in Appeal No. 959 of 2005 Unit Trust of India has filed this revision petition.

2. IT is the say of the complainant that he made seven investments with the Unit Trust of India (OP) in MIP 1997 scheme on 11. 5. 1997 according to which the OP has to refund Rs. 90,269 against Rs. 45,000 invested in each of the investment. Due to floods in August 2000 at Hyderabad all the records in the complainant''s house were lost which was informed to the UTI Investors Services Ltd. (OP 2) on 19. 2. 2003 and requested them to refund the maturity value but OP 2 refunded the amount only in six cases but not in the 7th case. The OP contended that the amount has already been paid on 28. 4. 97. Therefore, the complainant approached the District Forum which directed the OPs to pay Rs. 90,269 towards the maturity value of the 7th investment along with Rs. 30,000 as compensation and Rs. 2,000 as costs. The State Commission after hearing the parties concurred with the order of the District Forum dismissing the appeal filed by the OPs. Learned Counsel for the revision petitioner drew our attention to page 52 of the paper book wherein the complainant had made an application on 11. 3. 97 for investment of Rs. 45,000 under capital growth option vide the investment certificate No. M 9213016729 under GMIS 92 maturity and to refund the balance amount of Rs. 62,600. He brought to our notice that UTI in fact refunded the whole amount of Rs. 1,07,600 for which he attracted our attention to pages 59 and 63 of the paper book, wherein the UTI had refunded on 1. 4. 97

through cheques Rs. 25,000, Rs. 25,000, Rs. 25,000, Rs. 25,000 and Rs. 7,600 making a total of Rs. 1,07,600 as Rs. 45,000 was not reinvested. There is no proof of having reinvested Rs. 45,000 with them hence, they are not liable to pay any amount.

Complainant has not disputed the receipt of the above amounts through cheques mentioned above. However, learned Counsel for the respondent/complainant submitted that as per the Agent''s Commission Statement (page 64) the UTI has worked out commission payable on Rs. 45,000 Hence, the commission was paid to the agent by the UTI for the 7th investment. The UTI is liable to refund the maturity value of this amount to the complainant/respondent. To controvert this statement UTI has produced application forms for six investments signed by the complainant/respondent (pages 53 to 58) and also a statement of total business as per their records (page 66).

3. THE learned Counsel for the petitioner submitted that as soon as an investor requests for reinvestment the agent prepares the commission statement but the commission will be paid only if the investment actually takes place. In this case the total amount has been refunded to the complainant. Further, assuming for a moment that all the records of investments have been washed away in the floods, records would be available with the Bank of having encashed the cheque of the complainant. The complainant could not produce any record from the bank indicating that he had issued a cheque in favour of OPs and that has been encashed by them. In view of the above, we come to the conclusion that the lower Fora have committed an error in arriving with the conclusion that the complainant had in fact made the 7th investment without basing its decision on the complete records of the case. Therefore, the orders of the lower Fora are set aside and the revision petition is allowed. There shall be no order as costs. Revision Petition allowed.