(2007) 01 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

SHAKUNTALA SHANKARRAO PATIL — APPELLANT

Vs

MAHENDRA RAVINDRA YADAV — RESPONDENT

Date of Decision : 05-01-2007

Acts Referred:

Citation : 2008 2 CPJ 385

Hon'ble Judges : B.B.Vagyani , S.P.Lale J.

Final Decision : Appeal allowed

Judgement

1. -THIS appeal filed by org. O. P. No. 12 in Consumer Complaint Nos. 276, 277, 150 and 220/2004 is directed against the order dated 18. 4. 2007 passed by District Consumer Forum, Kolahpur in Execution Application Nos. 205, 208, 239 and 260/2006 whereby the Forum below issued non-bailable warrants against the Directors of Vahandharak Nagri Sahakari Patsanstha (hereinafter referred to as "credit Society") including present appellant.

2. WE heard Mr. Rajiv Chavan, Advocate @ Mrs. Anita Marathe, Advocate for the appellant. None is present for the respondents. The learned Advocate Mr. Rajiv Chavan vehemently submitted that the appellant is the old lady of 83 years and therefore action under Section 27 of Consumer Protection Act, 1986 would be improper. He further argued that the appellant was a non-active Director of the Credit Society and therefore coercive action under Section 27 of Consumer Protection Act, 1986 is improper. He also brought to our notice that the appellant had taken loan from the Credit Society of which she was Director to the extent of Rs. 3,910 and the same has been repaid by her and therefore coercive action under Section 27 of Consumer Protection Act, 1986 should be dropped.

Some of the depositors including org. complainants deposited certain amounts in the Fixed Deposit. They did not get their deposit money back and, therefore, different consumer complaints were filed against the Credit Society and its Directors including the Administrator and Members of Administrative Body. All the complaints more particularly Complaint Nos. 276, 277, 150 and 220/2004 were allowed by the Forum below and the Directors including present appellant were directed to refund the deposit money with interest. The present appellant did not file appeal against the said award. Because of non-compliance of original award, the decree holders filed Execution Applications. The judgment debtors did not comply the directions of the District Consumer Forum and therefore the District Consumer Forum issued non-bailable warrants against the Directors including present appellant.

3. THE position of law is well-settled. The National Commission in the case of R. Subramanian v. Stichcraft India Limited, III (2006) CPJ 373 (NC), held that the order which has attained finality could not be examined in execution proceedings filed by the decree-holders. It is further held by the National Commission that it is open to the State Commission to proceed either under Section 25 or 27 of Consumer Protection Act, 1986 or simultaneously if payment of award is not forthcoming. In view of well-settled legal position, we are not inclined to examine the correctness of the original award passed by the District Consumer Forum. The nature of proceeding under Section 27 of Consumer Protection Act, 1986 is examined by the Allahabad High Court in the case of Ghaziabad Development Authority v. Union of India and Another, 2003 CTJ 863, in (Allahabad High Court) (CP). The Allahabad High Court has observed that the punishment contemplated under Section 27 of Consumer Protection Act, 1986 for non-compliance of the order passed by the District Consumer Forum, State Commission or National Commission is really in the nature of proceedings for civil contempt compelling obedience of the order passed by the Consumer Forum. It is further observed by the Allahabad High Court that only procedure required to follow is to make compliance with the principles of natural justice. It is said that the Consumer Fora can themselves impose sentence of imprisonment or fine and they may not refer a complaint to a regular Criminal Court for the purpose. It is true that the proceeding under Section 27 of Consumer Protection Act, 1986 is not a criminal proceeding in respect of offences under Indian Penal Code or some other Statute. While exercising powers under Section 27 of Consumer Protection Act, 1986 only requirement is that principles of natural justice should be complied with.

4. IN the appeal memo, it is clearly mentioned that the District Consumer Forum erred in passing an order issuing a non-bailable warrant against appellant, who is 83 years old woman. The District Consumer Forum while issuing non-bailable warrant should have taken into consideration the age of the appellant. The District Consumer Forum should be slow in case of coercive action contemplated under Section 27 of Consumer Protection Act, 1986, when the party against whom the execution proceeding is filed, is pretty old. Number of alternatives are provided under Section 27 of Consumer Protection Act, 1986. Forum can award imprisonment in appropriate cases. The Consumer Forums in the alternative can impose a fine, which shall not be less than Rs. 2,000, but which may extend to Rs. 10,000 instead of sending old lady of 83 years to jail. One may think of imposing fine only having regard to the paying capacity of the judgment debtor. It is material to note that the decree-holders can proceed under Section 25 of Consumer Protection Act, 1986 for the purpose of recovery of the amount

awarded by the District Consumer Forum. The Forum below cannot ignore that the basic nature of the proceeding initiated under Section 27 of Consumer Protection Act, 1986. The District Consumer Forum, therefore, in appropriate cases can direct the decree holders to file execution proceedings under Section 25 of Consumer Protection Act, 1986. Moreover, District Consumer Forum can proceed and take action under Section 27 of Consumer Protection Act, 1986 against other erring Directors, who have not repaid the amount of award and outstanding loan of the Credit Society. The appellant has placed on record the Audit Report of A. R. Mulla dated 3. 3. 2004, which is addressed to District Deputy Registrar, Co-operative Societies, Kolhapur. In the said report, the names of the Directors are given, who had taken loan from the Credit Society. The present appellant is at Serial No. 6. She had taken loan to the extent of Rs. 10,000. She was in arrears to the extent of Rs. 3,910 as on 31. 3. 2002. The learned Advocate Mr. Rajiv Chavan makes a statement at the Bar that the appellant has repaid the outstanding loan amount and at present, nothing is payable by the appellant to the Credit Society by way of repayment of loan. Taking into consideration the old age of appellant coupled with satisfaction of entire loan amount, we are inclined to pass the following order: Order 1. Appeal is allowed. The impugned order passed by the District Consumer Forum in Execution Application Nos. 205, 208, 239 and 260/2006 is quashed and set aside as against the present appellant. 2. The amount already deposited by the appellant in response to conditional stay order passed by this Commission be adjusted as against the award under Execution by way of partial satisfaction. 3. No order as to costs. 4. Misc. Appl. No. 956/2007, which is for stay stands disposed of. 5. Copies of the order be furnished to the parties.

Appeal allowed.

