
(2012) 01 CAL CK 0025
In the Calcutta High Court
Case No : C.O. No. 2071 of 2011

The Manager, HDFC Bank Ltd.

APPELLANT

Vs

Sk. Sahedul Haque

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Constitution of India, 1950 — Article 227
Consumer Protection Act, 1986 — Section 21

Citation : (2012) 1 CALLT 285 : (2012) 4 CHN 472

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Mainak Bose, Mr. P.K. Srivastava, Mr. Arif Ali and Ms. P. Goswami, for the Appellant; U.C. Jha and Mrs. M. Sharma, for the Respondent

Judgement

Prasenjit Mandal, J.—This application is at the instance of the appellant and is directed against the order dated March 30, 2011 passed by the Hon"ble State Consumer Disputes Redressal Commission, West Bengal in S.C. Case No.FA/444/10.

2. The complainant/opposite party herein filed a complaint being CDF/Unit-II/CC No.111 of 2007 before the learned Kolkata District Forum, Unit II praying for compensation of Rs.4 lakhs only in place of the heritage gold ornaments, to replace the ornaments in respect of the rest amount of Rs.23,700/- and other reliefs. Accordingly, the District Forum allowed the complaint case directing the petitioner to pay compensation of Rs.1 lakh only in place of the heritage gold ornament together with a further direction to replace the gold ornaments in respect of the rest amount of Rs.23,700/- within a period of one month from the date of communication of the order. Being aggrieved, the opposite party/appellant preferred an appeal before the State Consumer Disputes Redressal Commission, West Bengal (henceforth shall be called as "State Commission") and then the State Commission directed the appellant/petitioner herein to replace the equivalent quantum of gold in addition to the payment of

compensation of Rs.1 lakh only to the complainant for causing loss of the heritage gold ornaments for ever and harassment to the complainant since 2006 and also litigation costs. Being aggrieved by such order, this application has been preferred by the appellant.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned counsel for the parties and on perusal of the materials on record, I find that the complainant/opposite party herein took a gold loan from the petitioner to the tune of Rs.38,700/- only on condition of payment of interest by the complainant on the valuation made by the said bank. On availing of the said loan by the complainant, he paid interest to the bank as agreed on. But the petitioner sent a notice to the complainant intimating that the dues had been adjusted against the gold and that a pay order of Rs.4,828/- had been sent as balance amount after adjustment. Even, after the notice, the complainant was asked to deposit a sum of Rs.15,000/- against the principal amount advanced by way of loan on false pretext of stopping the sale of the heritage gold ornaments.

5. Therefore, the position remained that even after the sale of the gold ornaments, the petitioner recovered a sum of Rs.15,000/- from the complainant towards adjustment of the principal amount advanced by way of loan on the pretext that the sale of the gold ornaments would be stopped. The petitioner did not contest the complaint case before the District Forum and as such, the District Forum allowed the complaint case ex parte granting the reliefs already stated. Thereafter, an appeal was preferred by the petitioner and the same was disposed of with the observations noted earlier by the Hon''ble State Commission.

6. Mr. Mainak Bose appearing for the petitioner has contended that the Hon''ble State Commission has passed the impugned order without jurisdiction. The complainant did not prefer any cross-appeal or objection against the order passed by the District Forum. The bank/petitioner herein filed the aforesaid appeal and the same was disposed of by the Hon''ble State Commission in the manner stated earlier. The position of the petitioner-bank became more than worse than that passed at the time of disposal of the complaint case ex parte. Thus, the Hon''ble State Commission has passed the impugned order without jurisdiction.

7. In support of his contention, Mr. Bose has referred to the decision of Banarsi and Others Vs. Ram Phal, and thus, he has submitted that in absence of cross-appeal or cross-objection in an appeal preferred by the defendant against the grant of the latter relief, held, the Appellate Court cannot grant the former relief in favour of the respondent/plaintiff in exercise of the power under Rule 33 of Order 41 of the C.P.C. and thus, he has also referred to the ratio of the decision that in absence of such cross-appeal or objection, the modification of decree and grant of relief by the Appellate Court would be without jurisdiction. Under such circumstances, this Court has power to entertain such an application and the

impugned judgment and order should be set aside by this Hon''ble Court.

8. On the contrary, Ms. M. Sharma appearing on behalf of the opposite party has referred to the unreported decision of the C.O. No.3202 of 2010 and its review being R.V.W. No.165 of 2010 passed by this Bench and another unreported decision passed in C.O. No.223 of 2009 delivered by another Hon''ble Single Bench (Hon''ble Mr. Justice Joytirmay Bhattacharya) to the effect that such an application before this Hon''ble Court should not be entertained.

9. She has next referred to the decision of *Sadhana Lodh v. National Insurance Company LTD.* reported in (2003) 3 Supreme 189 particularly the paragraph no.7 and thus, she submits that this Court has no jurisdiction to entertain an application of this nature. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or Tribunal purports to have passed the order or to correct errors of law in the decision. Thus, she submits that the application is not maintainable before this Court.

10. Ms. Sharma has next referred to the decision of *Fatima Bibi Ushmal Patel v. Manguben Pranbhai Thakkar and Ors.* and thus, she submits that in exercising jurisdiction under Article 227 of the Constitution, the concurrent findings of fact by the Courts below should not be interfered with unless there was an error of law apparent on the case.

11. Ms. Sharma has also referred to the decision of *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, and thus, she submits that when an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of the power by the High Court under Article 227 of the Constitution.

12. Upon perusal of the materials on record and the above decisions, I find that the decision of *Banarsi & ors.* (supra) referred to by Mr. Bose relates to a regular appeal arising out of a suit for specific performance of contract and the Hon''ble Apex Court analysed the power under Order 41 Rule 33 of the C.P.C. to be exercised by the Appellate Court in dealing with an appeal.

13. In the instant case, a complaint was filed before the District Forum. That complaint case culminated into an award against the petitioner. Thereafter, an appeal was preferred by the petitioner before the Hon''ble State Commission which passed the impugned order. Thus, I find that the State Commission has exercised the jurisdiction of the Appellate Forum in dealing with the aforesaid appeal. If the petitioner has any grievance against the order of the Hon''ble State

Commission in an appeal, there is a provision for preferring a revision before the Hon''ble National Commission. For convenience, the relevant provision of the Consumer Protection Act, 1986, is quoted below:

21. Jurisdiction of the National Commission.- Subject to the other provisions of this Act, the National Commission shall have jurisdiction-

(a) to entertain-

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds [rupees one crore]; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

14. Thus, from the aforesaid Section 21(b) of the said Act, it is clear that the National Commission has the jurisdiction to call for the records from the State Commission and to set aside the order containing any perverse finding. Thus, I find that an alternative efficacious remedy is available to the petitioner by filing an appropriate application before the National Commission for redressal of his grievance and it can well raise the grounds which have been agitated before this Hon''ble Court.

15. Under such circumstances, in my earlier decision in C.O. No.3202 of 2010 referred to earlier, it was held that an application before this Hon''ble Court against the order of the Appellate Forum should not be entertained. When an application for review against the order in C.O. No.3202 of 2010 was preferred that review application too, was rejected in R.V.W. No.165 of 2010. Another Hon''ble Single Bench in deciding the C.O. No.223 of 2009 has also held the similar view. In the case of Shalini Shyam Shetty (supra), the Hon''ble Apex Court has held that in cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power (under Article 227 by the High Court). So, according to this decision, this application under Article 227 of the Constitution should not be entertained.

16. The decision of Fatmabibi Usma Patel & ors. (supra) touches the merits of the case and as such, I am of the view that this decision should not be discussed. As regards the decision of Sadhana Lodh (supra) I am also of the view that this decision touches the merits of the application which have not be dealt with in this revision.

17. In the case of Shalini Shyam Shetty (supra), it is also held that the High Court in exercise of its jurisdiction of superintendence can interfere in order only

to keep the tribunals and courts subordinate to it, within the bounds of their authority. It is also held that in exercising power of superintendence under Article 227 of the Constitution it shall not act as a court of appeal over the orders of a Court or Tribunal subordinate to it. Relying on the decision of Waryam Singh and Another Vs. Amarnath and Another,), it is also observed that the power of superintendence conferred under Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts/tribunals within the bounds of their authority and not for correcting mere errors. Therefore, I am of the view that this decision will be also applicable in the instant case. I am of the view that this Hon"ble Court should not go into the merits of the judgment of the Appellate Authority and that it would be fit and proper for the petitioner to approach the National Commission u/s 21(b) of the Consumer Protection Act, 1986 to ventilate its grievance.

18. In that view of the matter, I am of the opinion that the application should not be entertained and the remedy of the petitioner lies by filing an appropriate application before the National Commission u/s 21(b) of the Consumer Protection Act, 1986 in accordance with law. The reliefs sought for in the application cannot be granted in favour of the petitioner under the above circumstances.

19. This application is disposed of with the observations indicated above.

20. It is also recorded that I have not gone into the merits of the appeal.

21. Considering the circumstances, there will be no order as to costs.

22. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.