(2004) 11 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

UNION OF INDIA — APPELLANT

Vs

VISHAV NATH VERMA (HUF) — RESPONDENT

Date of Decision : 03-11-2004

Acts Referred:

Citation : 2004 0 NCDRC 4 : 2005 0 ACJ 132 : 2005 1 CPC 568 : 2005 1 CPJ 88

Hon'ble Judges : S.N.KAPOOR , B.K.TAIMNI J.

Final Decision : petition is dismissed

Judgement

1. HEARD learned Counsel for the petitioners. The grievance of the petitioners is that Kisan Vikas Patras could not have been issued to the complainant Vishwanath Verma-Karta (HUF). The complainant-Vishwanath has Karta of HUF purchased Kisan Vikas Patras of amounting Rs. 1,73,000/- vide application dated 29.10.1997 vide Registration No. 20472. Kisan Vikas Patras of value Rs. 46,700/- were issued. They matured for payment and the payment was not made. The complaint was filed.

2. THERE may be some force in the submission of the learned Counsel for the petitioners that HUF could not have taken Kisan Vikas Patra. Two questions arise for our consideration (i) "What shall be the effect of acceptance of the amount and keeping in deposit ? and (ii) Whether the petitioners acting through its employees could take advantage of its own wrong"?

3. AS regards the first point, if the employees have accepted the amount and issued Kisan Vikas Patra technically speaking in terms of the rules pointed out, there would not be a contract but it would resemble a contract covered by the provisions of second part of Section 73 of the Contract Act. It would be mentioned that the deposit was riot gratuitous. It may be further mentioned that Section 72 of the Contract Act further provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. It would be worthwhile to quote the second part of the consequences in such like matters: ''Compensation for failure to discharge obligation resembling those created by contractï¿½When an obligation resembling those

created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract. Explanationï¿½In estmating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

4. IF any stretch of imagination, it is not a contract at least, retaining amount issuing Kisan Vikas Patra would amount to a tort. In such circumstances, the complainant would be entitled to return the principle amount under Section 72 of the Contract Act and as regards the interest, the explanation to second part of 1 Section 73 would cover it. Supposing for the sake of argument, it is assumed that Section 73 also does not apply, could there be a wrong without a remedy. We cannot imagine any such situation and in such a matter, loss has to be estimated and should be estimated in terms of the explanation to the second part of Section 73. In this case, the District Forum has passed an order directing the petitioners to pay an amount of Rs. 3,46,000/- which became due at the time of maturity along with the interest @ 9% per annum till the payment of this amount, within one month. This order was confirmed by the State Commission in Appeal No. 525 of 2004. For the aforesaid reasons, we do not feel that there is any substantial reason for us to interfere with the impugned order in exercise of power under Clause (b) of Section 21 of Consumer Protection Act. Accordingly, the revision petition is dismissed.