

(2002) 12 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

VISHAKHA

APPELLANT

Vs

I.P.FINANCIERS REGD.MOTOR AND GENERAL FINANCIERS

RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Citation : 2002 0 NCDRC 20 : 2003 1 CPJ 265

Hon'ble Judges : D.P.WADHWA , B.K.TAIMNI , J.K.MEHRA J.

Advocate : MANOJ SAXENA , RAJESH CHADHA

Judgement

1. THESE two Revision Petitions have been filed by Smt. Vishakha and Sri Sulabh Saxena who were the complainants before the District Forum where their complaint was allowed holding the respondents/opposite parties deficient in service. On an appeal filed by the respondent, it was allowed setting aside the order of the District Forum. Hence, this petition by the complainants.

2. BRIEF facts of the case are that the complainants had deposited Rs. 10,000/- in all under two FDRs (R.P. No. 465/2000) and Rs. 15,000/- in all under two FDRs (R.P. No. 473/2000) with the respondents which was admittedly a partnership firm. On the date of maturity of FDRs when the complainants wanted to collect the due amount, it was not paid. It is in these circumstances that two separate complaints were filed by the complainants before the District Forum where they were allowed. On two separate appeals filed by the respondent No. 5 alone, the State Commission allowed the appeal and dismissed the complaint against respondent No. 5 only. The revision petition seeks to have the order passed by the State Commission set aside on the ground that the respondent No. 5 continued to be a partner of the firm till it was published in Official Gazette in November, 1992. This is a statutory requirement as per Section 72 of the Partnership Act. As a result of this the respondent No. 5 was a partner under the law, hence, cannot escape her liability to pay the due amounts to the complainants. The case of the respondent No. 5 is that due procedure as per law was followed to retire respondent No. 5 effective 1.4.1992. State Commission's order is correct in this regard and does not call for any interference.

3. NOTICES were issued to all the respondents which came back with the postal remarks respondent was found to be "closed", respondent No. 2 and respondent No. 3 had "left". Reply was filed only by respondent No. 5. Except for respondent No. 5 all other were proceeded ex parte. Respondent No. 5 was absent and on call learned Counsel for the respondent No. 5 appeared later and written submissions made by him were taken on record.

4. WE have seen the material on record and heard the arguments. After perusal of material on record we are left in no doubt that the complainant indeed had deposited the said amounts for which FDRs were issued showing the amounts deposited, rate of interest it was to carry, dates of deposit and dates of maturity. Before the District Forum, Complaint was defended by Respondent Nos. 4 and 5 only. The District Forum directed the opposite party to pay the deposited amounts with interest @ 20% till the date of payment, alongwith compensation of Rs. 150/- and cost of Rs. 150/- in each case. Appeals were filed before the State Commission only by respondent No. 5, Smt. Satyendra Kaur. The only point for decision before us is the status of the respondent No. 5 at the time of issue of FDRs. Section 72 of the Partnership Act lays down the requirement of law of giving public notice for retirement from partnership. It speaks of a notice to the Registrar of Firm under Section 63 of the Act. Publication in Official Gazette and at least one vernacular newspaper circulating in the District. Admitted position is that a notice was given to the Registrar of Firm as also it was published in a local newspaper. In our view, the State Commission failed to appreciate that what was produced before the District Forum was a copy of the newspaper cutting on which it did not rely. Even before the State Commission original of the newspaper was not produced and more impatiently the retirement was not published in the Official Gazette in the absence of which in our view State Commission erred in arriving at the conclusion that substantial compliance of Section 72 has been made. The requirement of the law is its publication in Official Gazette and its non-compliance by no stretch of imagination can be termed as substantial compliance. We do not share this interpretation of law. In view of non-compliance of the provisions of law as laid down in Section 72 of the Partnership Act, we are not in a position to sustain the order of the State Commission, hence set aside. This revision petition is allowed and the order of the District Forum is restored. Cost of litigation is fixed at Rs. 2,000/- in each case payable to the petitioners/complainants by the respondents.