(1999) 10 AP CK 0049

In the Andhra Pradesh High Court

Case No : CRP No. 4613 of 1994

Warangal District Co-operative Central Bank Limited — APPELLANT

Vs

District Consumers Forum, Warangal and another — RESPONDENT

Date of Decision : 11-10-1999

Acts Referred:

Constitution of India, 1950 — Article 227
Consumer Protection Act, 1986 — Section 11

Citation : AIR 2000 AP 281 : (2000) 1 ALD 273 : (2000) 2 ALT 391 : (2000) 101 CompCas 24

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Mr. L. Narasimha Reddy, for the Appellant; Mr. Ravi Sankar Jandhyala, for the Respondent

Judgement

G. Bikshapathy, J. 1. The petitioner viz., Warangal Co-operative Central Bank Limited a Co-operative Bank constituted under the provisions of the Andhra Pradesh Co-operative Societies Act, 1964, has filed this revision petition under Article 227 of the Constitution of India against the orders passed by the District Consumer Forum, Warangal in CD No.798 of 1993 dated 25-10-1994.

2. The facts leading to the filing of the revision petition are that the 2nd respondent is a member of the petitioner-bank. He obtained a loan from the bank and since he failed to repay the same, recovery proceedings were initiated against him. During the pendency of the recovery proceedings, the 2nd respondent has repaid the loan amount and thereafter the movable property i.e., electric motor which was seized from the 2nd respondent during the recovery proceedings was returned to him. The 2nd respondent, however, filed a complaint petition before the District Consumer Forum, Warangal, under the provisions of the Consumers Protection Act, 1986 alleging that there was delay in releasing the seized electric motor by the petitioner-bank which resulted in loss to the tune of Rs.1,21,000/- and the same be awarded as damages.

3. Before the Forum, a question arose as to the maintainability of the petition filed by the 2nd respondent. The petitioner-Bank has taken the plea that in view of the provisions of Section 76 of the Andhra Pradesh Co-operative Societies Act (for short ''the Act'') the petition filed by the 2nd respondent before the Forum is not maintainable as the 2nd respondent has failed to exhaust the remedies under the Act. The Consumer Forum held that since the dispute relates to damages for deficiency of service, the same was not covered by the provisions of the Act and accordingly held that it had jurisdiction to decide the complaint filed by the 2nd respondent. Aggrieved by the said order, the present revision petition has been filed by the Co-operative Central Bank.

4. The learned Counsel for the petitioner Sri Narasimha Reddy submits that u/s 121 of the Act the jurisdiction of the civil Court to entertain an suit against any order passed, decision or action taken by an arbitrator, a liquidator, the Registrar or an officer or person authorised or empowered by him etc., is specifically barred. He further submits that u/s 70 of the Act recovery proceedings were initiated against the 2nd respondent by the competent authority and consequent on the loan amount having been repaid by the 2nd respondent, the electric motor which was seized from him was returned to him, therefore, if the 2nd respondent is aggrieved of the order passed u/s 70 of the Act it is opened to him to file an appeal u/s 76 of the Act and since the 2nd respondent has not exhausted such remedy and has opted to approach the Consumer Forum claiming damages, the same is not maintainable. Mr. Narasimha Reddy further contends that even if there is any dispute between the member and the society, such dispute is only required to be referred to the Registrar for decision as required u/s 61 of the Act and the member has no right to seek the protection under the Consumer Protection Act. He also submits that when a special forum is created under the Co-operative Societies Act and since the provisions of the Act have overriding effect over any other enactment including the provisions contained under the Consumer Protection Act, 1986, the claim of the 2nd respondent seeking damages before the Consumer Forum is not maintainable and the learned District Consumer Forum erred in holding that the provisions of Section 76 of the Act need not be complied with and the petition is maintainable.

5. On the other hand, the learned Counsel appearing for the 2nd respondent submits that the 2nd respondent has suffered damages on account of the delay in release of the electric motor and therefore he fulfils the definition of "consumer" under the Consumer Protection Act and thus he is entitled to recover the loss sustained by him from the bank for the deficiency of service or for other reasons.

6. I have perused the order of the Consumer Forum and also considered the respective contentions of the parties. Section 121 of the Act which bars jurisdiction of the civil Court to entertain any suit against the orders passed by the authorities under the Act reads as follows:

"121. Bar of jurisdiction of Court :--

(1) No order passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer or person authorised or empowered by him, the Tribunal or the Government or any Officer subordinate to them, shall be liable to be called in question in any Court.

(2) While a society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with, or instituted against, the liquidator as such or against the society or any member thereof on any matter touching the affairs of society except by leave of the Registrar and subject to such terms and conditions as he may impose:

Provided that where the order of winding up is cancelled, the provisions of this sub-section shall cease to apply in relation to the society and any member thereof, but shall continue to apply to the person who acted as liquidator."

7. From the above it is clear that no order passed or decision or action taken by any authority as provided under the Act including that of the Tribunal or the Government or any Officer subordinate to them shall be called in question in any Court. Therefore, the jurisdiction of the civil Court or any other Forum to entertain any dispute arising out of any order passed or decision or action taken by any competent authority under the Act including that of the Tribunal or the Government is specifically barred by sub-section (1) of Section 121 of the Act. Therefore, the action of the Consumer Forum in entertaining the complaint petition filed by the 2nd respondent is without jurisdiction and the petition is not maintainable before the Forum.

8. Even otherwise also, the Consumer Forum has no jurisdiction to entertain the complaint petition for the following reasons:

There is no dispute that u/s 70 of the Act, the authorities are competent to initiate recovery proceedings against a member of a society who defaulted in prepaying the loan amount. Against any order passed under this section, the aggrieved party is entitled to file an appeal u/s 76 of the Act. Admittedly, in the instant case, recovery proceedings were initiated against the 2nd respondent and during the pendency of the said proceedings, the 2nd respondent has repaid the loan amount and thereafter the seized electric motor was released to, him by an order of the Bank. If the 2nd respondent feels that there was delay in releasing the motor and the same resulted in loss to him, he ought to have approached the appellate authority as provided u/s 76 of the Act for appropriate relief. However, the 2nd respondent has approached the Consumer Forum without exhausting such appeal remedy. Therefore, even on thus ground also, I am of the view that the Consumer Forum has no jurisdiction to entertain the petition filed by the 2nd respondent claiming damages.

9. We may now refer to Section 61 of the Act which deals with ''settlement of disputes'' mentioned in Chapter VIII of the Act. Section 61 which starts with a non-obstinate clause reads as follows:

"61. Dispute which may be referred to the , Registrar :--(1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

(c) between the society or its committee, any past committee, any officer, agent or employee, or any past officer, past agent, or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased employee of the society;"

10. From the above, it is clear that if any dispute arises between the society and the member of the society, the same has to be necessarily referred to the Registrar for decision and settlement and in view of the bar contained u/s 121 of the Act it has to be held that the Consumer Forum has no jurisdiction to entertain the complaint petition filed by the 2nd respondent claiming damages. The reason given by the Consumer Forum that such a dispute is not covered by the Co-operative Societies Act is obviously misconceived as the learned Forum did not refer to the provisions u/s 61 contained in Chapter VIII of the Act under which it is obligatory on the part of the society to refer any dispute which has arisen between the society and its member to the Registrar for decision. Here it may also be noticed that u/s 62 of the Act, the Registrar, on receipt of reference of a dispute u/s 61, is empowered either to decide the dispute himself or he can transfer it for disposal to any person who has been invested by the Government with power in that behalf or he may refer it to an arbitrator for disposal. Therefore, under Sections 61 and 62 of the Act, the Registrar is fully empowered to deal with any dispute arisen between the society and its member. Further, Section 61 of the Act starts with a non-obstante clause and, therefore, it has an overriding effect over any other law for the time being in force including that of the provisions contained under the Consumer Protection Act. If the provisions contained under Sections 121, 76 and 61 of the Act are read together, the inevitable conclusion is that in the matter of any dispute between the society and its member, the Act is self-explanatory and the dispute is necessarily to be resolved as per the provisions of the Act and before the appropriate Forums as specified under the Act and not otherwise. The remedies available under the Act have unnecessarily to be exhausted before approaching any other Forum. In this view of the matter, I am convinced that the District Consumer Forum, Warangal has no jurisdiction to entertain the petition filed by the 2nd respondent claiming damages and the impugned order passed by it is wholly illegal and without jurisdiction and liable to be set aside.

12. The learned Counsel for the petitioner submits that even otherwise also u/s 128 of the Act, the acts of the authorities done in good faith are protected and as such no suit or claim for damages or any prosecution is maintainable. I am not inclined to go into this aspect at this stage as the same is premature and it is open for the petitioner to agitate the same at the appropriate time as and when occasion arises.

13. For the reasons aforesaid, the civil revision petition is allowed and the order of the District Consumer Forum, Warangal dated 25-10-1994 is set aside. There shall, however, be no order as to costs.

