

**A. Vasantha Vs. Managing Director, Sudha Finance and Another**

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**Court :** Andhra Pradesh State Consumer Disputes Redressal Commission  
SCDRC Hyderabad

**Decided On :** Jul-30-2009

**Judge :** The Honâ€™ble Mr.Justice D.Appa, Rao, President. Smt.M. Shreesha,  
Member & Sri K. Satyanand, Member.

**Appeal No. :** FA.No.865 of 2008 against P.P.No.16 of 2005 in C.D.No.281 of  
2002, District Forum, Karimnagar

**Appellant :** A. Vasantha

**Respondent :** Managing Director, Sudha Finance and Another

**Advocate for Pet/Ap. :** Counsel for the Appellant: Mr.M. Ramagopal Reddy.  
Counsel for the Respondent: Mr.K.L.B. Kumar.

**Judgement :**

ORAL ORDER: (Per Sri K. Satyanand, Hon'ble Member .)

This is an appeal filed by the complainant/Petitioner in P.P. assailing the order of the District Forum in P.P.No.16/2005 in C.D.No.281/2002.

The facts of the case briefly stated are as follows:

The District Forum passed an order in C.D.No.281/2002 dated 25-4-2004 directing the respondent No.1 (opposite party No.2 is made a party to the appeal even while

stating that he was not a necessary party) to pay to the complainant an amount of Rs.11,000/- with interest at the rate of 9% p.a. from 20-5-2002 as also an amount of Rs.500/- towards costs within a period of one month from the date of receipt of its order.

As the respondent did not comply with the said order by making payment to the penalty petitioner, she filed the P.P. The said petition was dismissed by the District Forum as against respondent No.2. It, however adjudicated the liability of respondent No.1 i.e. opposite party No.1 in the C.D. Opposite party No.1/respondent, therefore resisted the prosecution by filing a counter. It is one V.Siva Prasad, who came to be shown in the place of Managing Director as it originally appeared in the C.D., that filed the counter and responded to the charge of disobedience of the order of the District Forum. In the said counter, the said V.Siva Prasad strenuously contended that his name never appeared in the C.D. though the said order in the C.D. came to be passed against the Managing Director of Sudha Finance. He, however, did not contradict that he was the Chairman and Managing Director of the said finance company. His only objection was that he was never shown by name as Managing Director in the C.D. He pleaded ignorance about the complaint and stated that he was not in any way concerned with Sudha Finance and that he was not liable to pay any amount to the complainant. Though the second respondent also filed a counter, it is no more relevant for the purpose of adjudication of this appeal as in the appeal grounds, the complainant discarded R2 branding him as not a necessary party.

On a consideration of the contentions urged by both parties i.e. the complainant/penalty petitioner on one hand and the opposite party No.1/respondent No.1 on the other, the District Forum dismissed the P.P. stating that it was not competent for the complainant to proceed against the said Siva Prasad in as much as his name did not figure in the cause title of the C.D. Proceedings.

Aggrieved by the said order, the complainant/penalty petitioner filed the present appeal contending inter alia that the view of the District Forum was erroneous, in addition stating that the disobedience has to be attributed to the person at the

helm of affairs. It seems she also faulted the District Forum for not permitting her to amend the cause title in the order presumably with an intention to incorporate the name of the respondent No.1 in the C.D. as well.

Heard.

The District Forum dismissed the penalty petition solely on the ground that the name of the respondent No.1 did not appear in the cause title of the C.D. However, it is not in dispute that the Managing Director as such of Sudha Finance is made a party in the consumer dispute. Virtually the order was passed against the said Sudha Finance. As it comes to initiating the penalty action under Section 27 for disobedience of the order of the District Forum, it is only opposite party No.1 that remained accountable. So naturally the complainant made opposite party No.1 as the respondent in Section 27 proceedings. Section 27 proceedings are criminal in nature and very likely to end up, in appropriate cases, in imposing punishment of imprisonment besides fine. It is incumbent upon the complainant as also the Forum itself to identify a person that would be lawfully held accountable for receiving the punishment. In the present case, the offence is alleged against a Private Limited Company. In other words, it is a juristic person that is sought to be punished in these criminal proceedings. In the absence of any natural person owning the responsibility for the infraction alleged, there is no way out to punish the juristic person. In other words, a juristic person can be punished by proxy. It is a well settled proposition of law that when a prosecution has to be launched against a company and at the end of the proceedings, if the company were to be punished, a person whose overt or covert acts that constitute the offence has to be substituted to receive the punishment on behalf of the company. It is generally the Managing Director or Chairman of the company that is always exposed to the misdeeds of the company. In other words, if a company were to be punished, it is only the Managing Director or Chairman generally that would be directed against for punishment. It is very clear that the complainant failed to spell out the name of the Managing Director. Nevertheless the Managing Director was arrayed as entity representing the company in the penalty petition. The complainant went a step further and identified the person who fills the bill of Managing Director. Even according to the respondent who contested the P.P. he was the Chairman or

Managing Director of the opposite party No.1 company. It is crystal clear from his own words as found in the counter wherein he stated in para 2 to the following effect:

It is submitted that in the above C.D.No.281/2002, the said Vasam Siva Prasad is not shown as Chairman or Managing Director in the complaint or in the affidavit or in the judgment passed by the Honble Forum.

No where had he whispered in the counter that he was not the Managing Director of Sudha Finance. In such a case, it has to be seen how far he is entitled to rely upon an omission of the complainant to name him in the cause title of the C.D. At the risk of repetition, it has to be reiterated that the Sudha Finance was duly sued in the complaint through its Managing Director. That the present respondent No.1 Siva Prasad was the Managing Director is also not in controversy. When such is the case, the law that is peculiar to the concept of tearing the corporate veil is squarely attracted to sort out the riddle. In this regard, it is pertinent to point out that there is a judgement of the National Consumer Disputes Redressal Commission, New Delhi wherein it is clarified in para 6 in the following words.

It was also feebly urged that the Directors were not personally liable to pay the decretal amount and, therefore, no complaint could be filed under Section 27 of the Act against the Appellants personally. The State Commission rightly came to the conclusion that action can be taken against the Appellants under Section 27 of the Act and observed that a command to a Corporation is in fact a command to those who are officially responsible for the conduct of the affairs of the Company. If after being apprised of the order directed to the Corporation, they prevent compliance or fail to take appropriate action, within their power for the performance of duty of obeying those orders, they and the Corporate Body, are both guilty of failure in the compliance of the orders. The Corporate veil has rightly been lifted and the Managing Director and the Director who have failed to comply with the basic orders of the State Commission, besides being personally liable under some decrees to discharge the obligations of the payment of decretal amount, have been rightly convicted and sentenced. We uphold the conclusion and the sentence awarded by the State Commission in the impugned order.

The above ruling sets at rest the present controversy showing the view taken by the District Forum that the complainant cannot proceed against the person is not tenable. As a sequel the appeal has to be allowed setting aside the order of the District Forum. However, as the order did not adjudicate upon the other aspects in the enquiry relating to the penalty proceedings, this is a fit case where the matter has to be remanded to the District Forum for fresh enquiry, including on the aspect of lifting the corporate veil, if it is necessitated by any change in law or discovery of a more authentic pronouncement and keeping in mind the mandate contained in Section 27 of the Consumer Protection Act, 1986 which expressly refers to the provisions of Criminal Procedure Code. No order as to costs.

Accordingly the appeal is allowed setting aside the order of the District Forum. However, as the order did not adjudicate upon the other aspects in the enquiry relating to the penalty proceedings, this is a fit case where the matter has to be remanded to the District Forum for fresh enquiry, including on the aspect of lifting the corporate veil, if it is necessitated by any change in law or discovery of a more authentic pronouncement and keeping in mind the mandate contained in Section 27 of the Consumer Protection Act, 1986 which expressly refers to the provisions of Criminal Procedure Code. No order as to costs.

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