

Services Ltd. and Another Vs. Dhanwanti

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : May-15-2001

Judge : Lokeshwar Prasad, President; Ms. Rumnita Mittal Member & Mr. S.P. Saberwal, Member

Appeal No. : Appeal Nos. 1888 to 1947 of 2000

Appellant : Services Ltd. and Another

Respondent : Dhanwanti

Advocate for Pet/Ap. : Mr. P.K. Mehta

Judgement :

S.P. Saberwal, Member:

1. By this common order, we shall dispose of the above mentioned 60 appeals as points of facts and law involved in all these cases are identical.

2. These appeals are directed against the order dated 6.1.2000, passed by South District Forum (District Forum-II) in Complaint Case No. 928/1999 - entitled Dhanwanti v. Trans Continental Leasing and Financial Services and Trans Continental Leasing and Properties (P) Limited, and 59 other complaint cases as detailed in the impugned order. The appellants were directed to refund back the amount deposited by the respondents (both in case of fixed deposit cases as well

as Agro Unit cases) with interest at the agreed rate of 15% per annum from the date of deposit till the date of maturity in respect of FDRs and from the date of payment to appellants by respondents till one year from that date in case of Agro Units and further interest @ 18% per annum from the cut off dates as mentioned in the impugned order till the date of payment. Appellants were also directed to pay a sum of Rs. 500/- as cost of proceedings to each respondent. It was further directed that in cases where any part-payment had been made by the appellants in accordance with the impugned order. In case No. 2638/1999, deposit was made by Shri Hem Chander, father of respondent Shri Naresh Kumar. Shri Hem Chander was reported to have expired on 11.3.1998. It was directed that amount due in that case would be paid to legal heirs of the deceased Shri Hem Chander, namely Shri Ramesh Kumar, Shri Suresh Kumar and Shri Naresh Kumar (sons of deceased Shri Hem Chander) and Smt. Savitri Devi, daughter of deceased in accordance with the succession certificate issued by the Court of Mr. L.N. Mittal, learned Additional Judge, Rohtak in Succession Act Case No. 29 of 1998 decided on 7.11.1998. It was further directed that the impugned order be complied with within 2 months from the date of receipt of copy thereof.

3. The facts, relevant for the purpose of disposal of these appeals, in brief, are that appellants had invited cash deposits from the members of the public in two of their Schemes. One was under the name of Trans Continental Leasing and Financial Services Limited, whereunder the Company offered to accept deposits for a fixed term period and pay it back on the due date with interest @ 15% per annum from the date of deposit till the date of maturity. The second Scheme was their Agro Unit Scheme under the name and style of Trans Continental Leasing and Properties (P) Limited, whereunder members of the public were invited to invest against Agro-based units to be located in Tehsil Tauru, District Gurgaon adjoining the Resort Country Club with the Buy Back option as mentioned at the back of their application form. Respondents had deposited various amounts as detailed in their complaints against proper receipts issued by the appellants under both the Schemes. In the fixed deposit Scheme cases, the amount under fixed deposit had not been returned back along with interest after the date of maturity of the fixed deposit. In the Agro Unit Scheme, neither the Agro Units had been transferred in the names of the respondents nor the amount so deposited by them had been

returned back along with interest. Accordingly, respondents filed complaints for the refund of their amounts with interest, compensation and costs. The amount in deposit, the date of deposit/investment and the rate of interest were not disputed by the appellants and, therefore, the same was not detailed in the impugned order. However, it was on record of certain files that in some cases, part payment had been made to the respondents.

In their written statements in case of fixed deposit cases, it was urged by the appellants that respondents were not Consumers within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986 (hereinafter briefly referred to as 'the Act'). It was averred that depositors had invested their amount with a view to purchase a farm house/cottage in Gurgaon and that the Agro Units were tradable. It was further pleaded that it was specified in the terms and conditions of the Unit Scheme that the appellants were only keeping stock of land and constructing the cottages as a backup asset against all the units sold to the individual customers and that the Unit Certificates were not to be converted into cash. It was pleaded that the transactions in these cases were not like that of a fixed deposit as the units holders were entitled to the proportionate share of land/cottage only. Some post-dated cheques were issued in these cases regarding which the appellants stated that it was only as the collateral security and were not to be encashed. It was urged that the appellants were ready to perform their part of the contract. Financial stringencies of the day and guidelines issued by the Reserve Bank of India were also pleaded to be the reasons for not making the payment in the Fixed Deposit cases. Appellants were directed to file reply in Case Nos. 1475/1999, 485/1999, 1773/1999, 1786/1999, 2619/1999 and 4884/1999. Appellants were also directed to file affidavits by way of evidence in all the complaint cases on 6.1.2000. On 6.1.2000, no one appeared for the appellants and they were proceeded ex-parte vide order dated 6.1.2000 and the impugned order was passed on the same date i.e. 6.1.2000 granting relief to the respondents as detailed above.

4. Feeling aggrieved, appellants have preferred appeal against the impugned order passed in 60 cases.

5. We have heard the arguments advanced by Mr. P.K. Mehta, learned Counsel for the appellants and Mr. N.S. Jain, A/Rep. of some of the respondents, Shri Phool Singh Chowdhary, Shri Rajesh Jaitley, Shri Suraj Singh, Shri Naresh Kumar, Shri Manish Jain and Shri Dharam Singh Chander respondents who appeared in person. We have also perused the written submissions filed by appellant No. 1 and appellant No. 2 and have perused the material placed on record.

6. The main grouse of appellants is that the impugned order has been passed by the learned District Forum ex-parte without taking the evidence of the appellants on record. It is stated that the matters were listed on 6.1.2000 for filing of affidavits by way of evidence of the appellants, which were 60 in number. It is further stated that only 20 days time was given by the District Forum to file 60 affidavits. It is further stated that the said evidence by way of affidavits could be prepared and finalised by Counsel for the appellants only on 5.1.2000 due to pre-occupation in other urgent and important matters. That on 6.1.2000 Counsel for the appellants was busy in District Courts as well as in the Honble High Court of Delhi as matters for 3rd, 4th, 5th and 6th January, 2000 were listed together on 6.1.2000 in the High Court of Delhi and the matters for 5th and 6th January, 2000 were listed in the District Court of Delhi. The Counsel for the appellants handed over the affidavits to an officer of the Company who was well-conversant with the facts and circumstances of the case and was asked to go and file the evidence by way of affidavits before the District Forum on 6.1.2000 but the said officer, after attestation of the said affidavits, could manage to reach the Honble District Forum at 1.20 p.m. as his two-wheeler had broken down on the way near I.I.T. crossing. That said officer, namely Shri Sunil Jain, after reaching District Forum at 1.20 p.m., enquired from the Reader of the Honble District Forum and upon enquiry he was informed by the Registry of the District Forum that the appellants had been proceeded ex-parte. It is stated that the said officer, thereafter, met the President and apprised him of the circumstances relating to the delay caused in reaching the Forum and filing of aforesaid affidavits and requested for adjournment and permission to file the aforesaid affidavits but the President, after seeing the papers, did not pay any attention to the genuineness of the request made by the said officer. The said officer informed the Counsel for the appellant on the same

day i.e. 6.1.2000 at 3.00 p.m. the fact that the appellants had been proceeded ex-parte and the matters were now reserved for orders on 7.1.2000. Immediately, an application was moved for inspection of the Court file to ascertain the reason for being proceeded ex-parte. However, the Reader refused to allow the inspection of the said files as the said files were in the room of the President and the matters were reserved for the orders/judgments.

7. As already stated, the main grouse of the learned Counsel for the appellants is that order had been passed by District Forum-II ex-parte on 6.1.2000 without taking the evidence of the appellants on record which was ready to be produced at 1.20 p.m. on 6.1.2000.

8. Redressal Agencies created under the Act are not bound by the principles as laid down in the Code of Civil Procedure, 1908 except that certain provisions as specifically mentioned in Section 13(4) of the Act have been made applicable. However, as a quasi-judicial Tribunal it is bound to follow the principles of natural justice which envisage that no one should be condemned unheard. It is stated in the grounds of appeal that representative of the appellants had reached the Forum at 1.20 p.m. on 6.1.2000 to adduce evidence by way of affidavits. That 60 affidavits had already been prepared by their Counsel for filing on 6.1.2000 and the said officer after getting the same attested, had reached the Forum at 1.20 p.m. and had come to know that the appellants had been proceeded ex-parte and the matters had been reserved for orders. In the facts and circumstances of the case and for ends of justice, we feel that evidence should have been taken on record and after considering the same and after hearing the learned Counsel for the respondent, order should have been passed. Since the order has been passed ex-parte without taking evidence of the appellant on record, the same cannot be said to be in conformity with the principles of natural justice. Accordingly, the impugned order cannot be sustained and is liable to be set aside. However, there is clear negligence on the part of the appellants as their representative had reached late at 1.20 p.m. on 6.1.2000 when the case had already been heard. Undoubtedly, respondents shall suffer harassment and inconvenience due to the conduct of the appellant. Therefore, in the interest of justice, the impugned order is liable to be set aside but on conditional cost of Rs. 500/- awarded to each

respondent.

9. In view of the aforesaid findings, the appeals are allowed and the impugned order dated 6.1.2000 passed in Complaint Case No. 928/1999 - Dhanwanti v. Trans Continental Leasing and Financial Services and Trans Continental Leasing and Properties (P) Ltd., and in 59 other cases as detailed in the impugned order is set aside on conditional cost of Rs. 500/- awarded to each respondent and the matter is remanded back to the District Forum, who may after taking the evidence by way of affidavits on record and after hearing the appellants and the respondents may decide the matter afresh on merits. The learned District Forum is further directed to decide the cases as expeditiously as possible.

Parties are directed to appear before South District Forum on 30.7.2001 at 11 a.m. sharp.

Appeals allowed.

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