K.C. Devan Vs. P.A. Vincent

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC Thiruvananthapuram

Decided On : Mar-31-2014

Judge : The Honourable Mrs. a. Radha, Member, the Honourable Mr. K. Chandradas Nadar, Judicial Member &Amp; the Honourable Mrs. Santhamma Thomas, Member

Appeal No. : First Appeal No. 253 of 2013 (Arisen out of Order Dated 15/01/2013 in Case No. 347/2009 of District Trissur)

Appellant : K.C. Devan

Respondent : P.A. Vincent

Judgement :

A. Radha : Member

Appellant is the 2nd opposite party in C.C.No.347/09 on the file of CDRF, Thrissur. The Forum Below partly allowed the complaint and directed the respondent to pay as per P2 receipt with interest @ 12% interest along with cost of Rs.1,000/-. This order is under challenge before this Commission.

2. The brief facts of the case are that the complainant deposited Rs.1,50,000/- and Rs.1,00,000/- on 05/04/2011 and on 07/07/2006 respectively with the 1st opposite party. It was assured 14% interest per annum. The complainant approached the 1st opposite party to return the fixed deposit amount and inturn the 1st opposite

party prolonged and has not disbursed the amount so far. In the month of March and April 2009 the complainant personally requested the 2nd opposite party at the 1st opposite party firm to disburse the fixed deposit which was not carried out by the opposite party. The complaint is filed to disburse the amount of Rs.3,20,625/- on the fixed deposit of Rs.1,50,000/- and Rs.1,46,000/- on the fixed deposit of Rs.1,00,000/- at the promised interest rate of 14% per annum. The complainant claimed Rs.5,00,000/- from the opposite party.

3. In the version filed by the 2nd opposite party it is stated that the Managing Director of the 1st opposite party firm, Mr.M.R. Asokan died in an accident on 18/10/2007 and his wife and son also annihilated by that accident. The only legal heir of the firm Managing Director of the firm is the grand son of Mr. Asokan. The complaint is bad for non-jointer of necessary party. The legal heir of the 1st opposite party was not impleaded in the complaint. The 2nd opposite party has no knowledge of the transaction taken place between the 1st opposite party and the complainant. The 2nd opposite party was the Manager and Partner of the Firm at the time when the Managing Director was alive. It is contended in the version that during that period the deposit amount was received by the Managing Partner even in the absence of the Manager and issued the fixed deposit receipt. Hence the 2nd opposite party is not bound to make the disbursement of fixed deposit made by the complainant and interest for the same. It is stated that the fixed deposit register and balance sheet maintained by the 2nd opposite party at the 1st opposite party firm. No such alleged amount of fixed deposit is seen deposited by the complainant on the alleged dates. The 1st opposite party firm closed down on 31/03/2008 and a letter was forwarded to the Sales-tax Assistant Commissioner. The fixed deposits already signed by the 2nd opposite party was misused by Managing Director of the firm for his personal use and no liability can be fastened upon the 2nd opposite party. The legal heir is the grandson of the Managing Director of 1st opposite party firm who is a minor and has not impleadedmother of the legal heir so far. The 2nd opposite party is not liable to pay any deposited amount or the claim made by the complainant.

4. The evidence consisted of the proof affidavit filed by the 2nd opposite party and the oral testimony of RW1. The documents were marked as P1 and P2 and R1 to

R4 on the part of the complainant and opposite parties respectively.

5. The submission made by the appellant 2nd opposite party is that he was the Manager of the 1st opposite party firm and a partner at the time when the 1st opposite party firm was under the Managing Director, one Mr. Asokan. It is argued that the Managing Partner, his wife and son were succumbed to death in an accident and the legal heir of the 1st opposite party is the grandson who is a minor was not impleaded his mother as guardian by the complainant. Hence the complaint is bad for non-jointer of necessary party. It is admitted that while the 2nd opposite party was the Manager of the 1st opposite party firm the signed fixed deposit receipts were issued by the Managing Director in the absence of the 2nd opposite party. It is also submitted that the 1st opposite party firm was closed on 31/03/2008 and issued letter to the Sales-tax Assistant Commissioner as the firm is not in existence. The Manager of the firm is not liable for the act of the Managing Partner of the 1st opposite party. The appellant was not conducting any business and he was only an employee of the 1st opposite party till the death of the Managing Director of 1st opposite party. The other contention raised by the appellant is that as per the records available with the 2nd opposite party the fixed deposit receipts, register does not mention the deposits made by the complainant. The complainant produced Exbts. P1 and P2 receipts. The P1 receipt is for Rs.1,50,000/- which was deposited on 05/04/2001. The respondent raised the claim only in May 2009 and the complaint is barred by limitation. The complainant ought to have filed the complaint within 2 years. Exbt. P2 was issued on 07/07/2006 and the amount had to be returned after 36 months as alleged by the complainant. The amount was not returned with interest as promised by the 1st opposite party and the complaint is filed. The fixed deposit register and the balance sheet of the firm does not contain the issuance of fixed deposit receipt to the complainant nor the refund made to the respondent.

6. The receipts of the fixed deposit was issued by the Managing Director whereas the details of fixed deposits are not shown in the fixed deposit register or balance sheet. The appellant produced Exbts.R3 and R4 in order to prove that the 1st opposite party firm was closed w.e.f. 31/03/2008. The Managing Director, Mr. M.R. Asokan signed the deposit receipt and misused for his own personal purpose.

Hence the appellant/2nd opposite party is liable to disburse the fixed deposit with interest to the complainant. The appellant produced Exbt.R1 and R2 for the years 2005 and 2006 to substantiate his contentions. No oral evidence was adduced by the complainant to substantiate his pleadings in the complaint. It is argued that the 2nd respondent is one of the partners out of the 9 partners of the firm and admitted that the appellant/2nd opposite party was working as Manager of the 1st opposite party partnership firm. It is also submitted that the Managing Director of 1st opposite party firm died on 16/10/2007 and his only legal heir was his grandson who is a minor to be impleaded in the party array through the guardian, his mother, was not done in this case. The appellant/2nd opposite party is not liable to indemnify the 1st opposite party for the acts and deeds of the 1st opposite party. Though there had 9 partners, they were not made parties to the proceedings. It is also submitted that after the death of the Managing Partner the appellant is not an employee of the 1st opposite party firm and it was already closed in 2008. The respondent is not a consumer under the Consumer Protection Act. There is no cause of action to file consumer complaint against the 2nd opposite party and the Forum Below on a misconceiving of the facts found deficiency in service on the part of the 2nd opposite party. The appellant is not liable for payment of any claim made by the complainant in his personal capacity. The appellant has not received any amount from the complainant and the appellant is not legally bound to indemnify or repay any amount to the respondent. It is argued that the complaint is filed as an abuse of the process law and the order of the forum below is only to set-aside and exonerate the appellant from the payment of the amount ordered by the Forum Below.

7. Though notice was served on the respondent the respondent remained absent and hence the appellants counsel was heard in detail and we perused the records. The complaint is filed for return of the fixed deposit amount of Rs.1,50,000/- Rs.1,00,000/- deposited on 05/04/2001 and 07/07/2006 respectively which was agreed to pay interest @ 14% per annum evidenced by Exbt.P1 and P2. The complainant approached the appellant/2nd opposite party to disburse the fixed deposit in March/April 2009. The main contention raised by the appellant/2nd opposite party is that he was only a Partner of the 1st opposite party firm when the Managing Director was alive. The firm was closed on 31/03/2008 evidenced by

Exbt.R3 and R4. It is also an admitted fact that the 2nd opposite party was a partner with the 1st opposite party firm until the death of the Managing Director. Neither the parties produced the partnership deed. However, the admission of the 2nd opposite party that he was a partner is very relevant in this case. It is also stated in the version that the Managing Partner used to issue fixed deposit receipts without the knowledge of the Manager. This act of the Managing Director is certainly paves way to contradict the balance sheet and fixed deposit register produced by the appellant in evidence. On one side the Managing Partner issues fixed deposit receipts without the knowledge of the Manager and at the same time the Manager is producing the documents without the notice of the receipts is fatal to the opposite parties. On going through the documents Exbt.R2 is found to be a concocted document and it cannot be relied at all. So also Exbt.R1 which does not contain the details of the fixed deposit made by the complainant also shows that the opposite party is defrauding the depositors. It is stated in the version of the 2nd opposite party that the 1st opposite partys Managing Director is no more and the legal heir was not made a party and the complaint is bad for non-jointer of necessary party. However, the admission made by the 2nd opposite party that he was a partner until the death of the Managing Director in 2007 the fixed deposit accepted by the 1st opposite party without the knowledge of the appellant/2nd opposite party make it obligatory and liable for the payment of the fixed deposit received during that period while the appellant was a partner. It is pertinent to point out that the appellant has not produced the partnership deed before the forum below nor he has produced the release of his partnership from the firm. Hence the appellant cannot shred out his liability/payment to be made to the complainant. Moreover the letter issued to the Sales-tax Commissioner dated 25/03/2008 is signed by the appellant/2nd opposite party Sri. K.C. Devan as the designate of the opposite party firm. From this we have to infer that Sri. K.C. Devan was continuing as partner of the opposite party firm even in March 2008. It was the boundan duty of the 2nd opposite party to produce the partnership deed and resignation from the partnership in evidence. From the above discussions we are of the view that the 2 nd opposite party is liable to oblige the complainant to pay the amount as per P2 receipt with interest. Since the amount as per P1 is time barred the complainant is entitled to get the amount as per Exbt.P2 receipt only.

In the result, appeal is dismissed and we uphold the order passed by the forum below with modification against the interest part. The appellant is directed to pay interest agreed upon @ 14% from 07/07/2006 to 07/07/2009, thereafter @ 9% interest to the P2 receipt amount till realization. The order is to comply within 30 days on receipt of the copy of the order.

The office is directed to send a copy of this order to the Forum below along with LCR.