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Court : Union Territory Consumer Disputes Redressal Commission SCDRC UT Chandigarh

Decided On : Mar-31-2014

Judge : Sham Sunder (Retd.), President, the Honourable Mr. Dev Raj, Member & the Honourable Mrs. Padma Pandey, Member

Appeal No. : First Appeal No. 108 of 2014

Appellant : Ashok Kumar

Respondent : Union Territory and Another

Judgement :

Sham Sunder (Retd.), President:

1. This appeal, under Section 27A of the Consumer Protection Act, 1986 (hereinafter called as the Act only), is directed against the order dated 12.07.2010, rendered by the District Consumer Disputes Redressal Forum-I, U.T., Chandigarh (hereinafter to be called as the District Forum only) vide which, Criminal Petition No.05 of 2010, in the Consumer Complaint, bearing No.669 of 2008, was allowed, and Ashok Kumar, appellant/Opposite Party No.3, as also Capt. Kanwar Sat Pal Singh, Opposite Party No.5, were sentenced to undergo simple imprisonment, for a period of two years, and to pay a fine of Rs.10,000/- each. It was also directed that, in default of payment of fine, by Ashok Kumar, appellant/Opposite Party No.3, as also Capt. Kanwar Sat Pal Singh, Opposite Party No.5, they shall further

undergo simple imprisonment, for a period of six months.

2. The complainant (now respondent No.2), filed the Consumer Complaint, bearing No.669 of 2008, on the averments, that based on the representations, made by the Opposite Parties, for the allotment of a flat at Baddi, comprising 2 bedrooms, one hall, kitchen and bathrooms, he paid an initial amount of Rs.1.00 lakh, vide cheque dated 26.10.2005. Further, a sum of Rs.5.50 lacs, was deposited by the complainant, vide cheque dated 24.12.2005, towards balance payment of 50% of the price of flat. It came to the notice of the complainant that no housing project had been allotted or approved, in favour of the Opposite Parties. The complainant then approached the Opposite Parties, a number of times, for the refund of the amount, aforesaid, but to no avail. After great persuasion, the Opposite Parties, agreed to refund the earnest money, with interest and issued a cheque dated 17.01.2007, in the sum of Rs.50,000/-, but when the same was presented before the Bank concerned, the same was dishonoured, twice, on account of insufficient funds. Thereafter, another cheque dated 31.03.2007, in the sum of Rs.6.50 lacs, was issued, in favour of the complainant, but the same was also dishonoured, by the concerned Bank, on account of insufficient funds. The complainant then sent a legal notice, to the Opposite Parties, to refund the amount, alongwith interest, but to no avail. It was further stated that the aforesaid acts of the Opposite Parties, amounted to deficiency, in rendering service, as also indulgence into unfair trade practice. When the grievance of the complainant, was not redressed, left with no alternative, a complaint under Section 12 of the Consumer Protection Act, 1986 (hereinafter to be called as the Act only), was filed, directing the Opposite Parties, claiming various reliefs.

3. The Opposite Parties were served, through publication, in the newspaper, but despite that, none put in appearance, on their behalf, as a result whereof, they were proceeded against exparte.

4. However, after hearing the arguments of the Counsel for the complainant, and, on going through the record, the Consumer Complaint, bearing No.669 of 2008, was allowed, and the following operative order dated 01.01.2009, was passed by the District Forum, against the Opposite Parties:-

œIn view of above discussion, we are of the opinion that the present complaint must succeed. The same is accordingly, allowed. The OPs are directed to refund to the complainant a sum of Rs.6.50 lacs along with interest @ 9% per annum on the aforesaid amount from the date of the respective deposits till realization, alongwith a compensation of Rs.10,000/- for mental agony and harassment suffered by him at the hands of OPs and for adopting an unfair trade practice by the OPs.

The order shall be complied with by the OPs within 30 days from the receipt of the copy of the order, failing which they will be liable to pay the amount along with penal interest @ 12% per annum from the date of filing of the complaint i.e. 12.6.2008, till realization. The OPs shall also pay costs of litigation, which is quantified at Rs.500/-.

5. Since, the order dated 01.01.2009, passed by the District Forum, in Consumer Complaint, bearing No.669 of 2008, was not complied with, by the Opposite Parties, Criminal Petition No.05 of 2010, under Section 27 of the Act, for enforcement of the same, was filed by the Decree Holder/complainant, with a prayer that suitable punishment be awarded to them (Opposite Parties).

6. Show cause notice under Section 27 of the Act, was issued to Ashok Kumar, appellant/Judgment Debtor No.1/Opposite Party No.3, but he refused to accept the service thereof, and, accordingly, he was proceeded against exparte.

7. Thereafter, the order referred to in the opening paragraph of the instant order was passed by the District Forum.

8. Ultimately, Ashok Kumar, appellant/Judgment Debtor No.1/Opposite Party No.3, was arrested and sent to Burel Jail, Chandigarh, on 20.02.2014.

9. Feeling aggrieved, the instant appeal, under Section 27A of the Act, was filed by Ashok Kumar, appellant/Judgment Debtor No.1/Opposite Party No.3.

10. We have heard the Counsel for the appellant, Sh. Pankaj Gupta, Advocate, General Power of Attorney of respondent No.2/complainant, alongwith Sh. Neeraj Sobti, Advocate for respondent No.2/complainant, and have gone through the

record of the case, carefully.

11. The Counsel for the appellant, submitted that the appellant, never came to know of the order dated 12.07.2010, nor certified copy thereof, was supplied to him. He further submitted that, ultimately, when he was arrested, he was supplied copy of the order dated 12.07.2010, in pursuance of the order dated 20.02.2014, passed by the District Forum. He further submitted that now the appellant and respondent No.2/complainant have arrived at a compromise-Annexure A-1. He further submitted that, according to the compromise, demand draft bearing No.281799 dated 19.03.2014, payable at State Bank of Patiala, Chandigarh, in the sum of Rs.4 lacs, towards full and final settlement of the claim, qua the appellant (Ashok Kumar), has been handed over to Sh. Pankaj Gupta, Advocate, General Power of Attorney of respondent No.2/complainant. He further submitted that, after the compromise, between the appellant and respondent No.2/complainant, no dispute subsists between them. He further submitted that since the amount, aforesaid, in full and final settlement of the claim, has been paid by the appellant, no useful purpose shall be served, by keeping him, in jail, any longer. He further submitted that the appeal be accepted, qua the appellant, and the impugned order be set aside, qua him.

12. On the other hand, the Counsel for respondent No.2/complainant, submitted that demand draft bearing No.281799 dated 19.03.2014, payable at State Bank of Patiala, Chandigarh, in the sum of Rs.4 lacs, towards full and final settlement of the claim, has been received by respondent No.2/complainant, through Sh. Pankaj Gupta, Advocate his General Power of Attorney, and he (respondent No.2/complainant), has no objection, in case, the appeal is accepted, qua the appellant, and the impugned order is set aside, qua him.

13. After hearing the Counsel for the appellant, Sh. Pankaj Gupta, Advocate, General Power of Attorney of respondent No.2/complainant, alongwith Sh. Neeraj Sobti, Advocate for respondent No.2/complainant, and on going through the record of the case, we are of the considered opinion, that the appeal is liable to be accepted, for the reasons, to be recorded hereinafter. The statement of Sh. Tribhawan Singla, Advocate for the appellant, was recorded as under:-

œI hand over the demand draft bearing No.281799 dated 19.3.2014 payable at State Bank of Patiala, Chandigarh in the sum of Rs.4.00 lacs towards full and final settlement of the claim qua applicant/appellant (Ashok Kumar) to Sh. Pankaj Gupta,(Advocate) General Power of Attorney of respondent No.2/complainant.

Since compromise has been arrived at between the parties which is at Annexure A-1, the application for condonation of delay may be allowed and the appeal be accepted?.

14. Similarly, the statement of Sh. Pankaj Gupta, General Power of Attorney of respondent No.2/complainant alongwith Sh. Neeraj Sobti, Advocate for respondent No.2/complainant, was also recorded, as under:-

œI have received demand draft bearing No.281799 dated 19.3.2014 payable at State Bank of Patiala, Chandigarh in the sum of Rs.4.00 lacs towards full and final settlement of the claim qua applicant/appellant (Ashok Kumar) today. I have no objection in case the application for condonation of delay is disposed of and the appeal is accepted qua the applicant/appellant?.

15. In view of the statements, referred to above, and the compromise Annexure A-1, it is proved to the satisfaction of this Commission, that the appellant and respondent No.2/complainant, have arrived at an amicable settlement. In this view of the matter, the order impugned, deserves to be set aside.

16. Even otherwise, the main object of the provisions of the Act, is that the orders passed by the Consumer Foras, when attain finality, are complied with, in letter and spirit. The object behind the provisions of Section-27 of the Act, is not that if the parties amicably settle the matter, and the orders passed by the Consumer Foras are complied with, in letter and spirit, though belatedly, the service provider/Opposite Party, should be kept in custody. Since the order passed by the District Forum, on 01.01.2009, has been fully complied with, in our considered opinion, the appellant, who is undergoing sentence, need not be kept in jail, any longer, as that will serve no useful purpose. Even Minakshi, daughter of Ashok Kumar, appellant, submitted the affidavit that the wife of Ashok Kumar i.e. her mother died on 26.02.2014. This fact is also established from a copy of the death

certificate, issued by the Registrar, Birth Death-cum-Secretary, Municipal Corporation, Panchkula. The appeal, thus, deserves to be accepted. In this view of the matter, the interest of justice, would be adequately met, if the impugned order is set aside.

17. For the reasons recorded above, the instant appeal filed by the appellant, under Section 27A of the Act is accepted, with no order as to costs. The impugned order dated 12.07.2010, qua the appellant, is set aside. The appellant is directed to be set at liberty, at once, in this case. The District Forum is directed to issue release warrants, of the appellant, immediately, to the Jail Authorities concerned.

18. Certified copy of the order be sent to the District Forum immediately.

19. Certified copies of this order, be sent to the parties, free-of-charge.

20. The file be consigned to Record Room, after completion.

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