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Court : Maharashtra State Consumer Disputes Redressal Commission SCDRC Nagpur

Decided On : Mar-20-2014

Judge : The Honourable Mrs. Jayshree Yengal, Presiding Member &Amp; the Honourable Mr. S.B. Sawarkar, Member

Appeal No. : First Appeal No. A/134 of 2008

Appellant : Nirmal

Respondent : Jayesh

Judgement :

S.B. Sawarkar, Member:

1. The present appeal takes an exception to the order passed by the District Consumer Forum, Akola in complaint case No. 61/2006 dated 27/09/2007. Vide above order the Forum granted the complaint and directed the opposite party to return Rs. 50,000/- and pay interest at the rate of 9% on the above sum from 26/08/2004 till the payment date and also pay the cost of notice of Rs. 611/- and the cost of the litigation of Rs. 500/-

2. Aggrieved against the impugned order the original O.P. filed the appeal as above. (He being now called as appellant and the original complainant being called as respondent for brevity).

3. The facts involved in the case are that the respondent (through his father) complained that he had deposited Rs.50,000/- with the appellant on the condition of payment of interest at the rate of Rs. 1.25 per month on 01/04/2003 based on the receipt issued on 01/04/2003. The appellant also paid interest for few days. But in the month of August-2004 when the respondent requested to refund his deposits, the appellant refused to refund it. The respondent therefore, on 26/08/2004 sent a legal notice but as the appellant did not pay back the amount, he filed a complaint before the Forum on 05/01/2006.

4. The appellant appeared before the Forum and through written statement stated that in the complaint the respondent had stated that, the amount was paid through one Purushottam Sharma where as on the receipt, it is written that the amount is received through one Vinod Kumar. The appellant denied that the amount was given to him as a deposit and also denied to have given the assurance of paying interest upon the deposits. He claimed that the appellant is proprietary concern and it has no legal existence. It is not juridical entity. Therefore the Consumer Forum has no jurisdiction to take a cognizance, as it is not a dispute between the consumer and service provider. The appellant raised the objection that the respondent is doing business in money lending and therefore the Forum should enquire about the various licenses required for money lending. As no appropriate Government stamps have been applied to the receipt the Forum should not entertain the complaint. The appellant therefore, requested that as the complaint is not tenable, it deserves to be dismissed. The appellant also contended that as similar issues are pending in Writ Petitions before Honble High Court the Forum may await the orders of the High Court.

5. The Forum heard both the parties and considered their contentions the Forum relied on the judgment of Mahesh Industries Vs. Murlidhar Gokuldas Taori , Maharashtra Consumer Redressal Commission, Mumbai in appeal No. 1457/2001 dated 22/10/2001, holding that the respondent should get the amount of the deposit with the interest.

6. The Forum also relied on the decision of Supreme Court of India, New Delhi in Special Leave Petition in the case of Mahesh Industries Vs Murlidhar Gokuldas

Taori in which it is held that the respondent should get the deposit with the accrued interest thereon.

7. The Forum also relied on the judgment of Maharashtra State Consumer Dispute Redressal Commission in B.K. Gupta Vs. Dr. Shakil Ahmed and others. In which the State Commission upheld the order of the Forum directing the return of the invested amount with interest from the financial institute.

8. Considering the contention and the ratio of the discussed cases, the Forum held as above and directed the appellant to refund the deposit of the respondent. Hence, the present appeal.

9. The respondent, as consistently remained absent before us, we heard the appeal exparte against the respondent. We heard the Advocate of the appellant and perused the papers and written notes of argument.

10. The appellant before us submitted the lacunae in the receipt allegedly issued by the appellant to the respondent stating that:-

i. As per the complaint the amount was paid through one Puroshottam Sharma with assurance to give interest at the rate of Rs.1.25 per month from 1/04/2003, where as the receipt clearly shows that the amount was received through one Vinod Kumar and not Puroshottam Sharma.

ii. The respondent undertakes the business of money lending and the receipt of deposit submitted with the complaint is a money lending transaction wherein the amount is paid with interest of 1.25 percent for 3 months.

iii. The transaction is money lending transaction and it is not covered by the provisions of the Consumer Protection Act. Therefore, the appeal deserves to be allowed.

11. We considered the contentions and perused the receipt. The receipt itself shows that the amount is given but without any specific entry indicating it to be a deposit with specific interest and the duration. There is also a lacuna that the receipt shows the amount to have been received through one Vinod Kumar

whereas the respondent has complained that the amount was sent through one Puroshottam Sharma. There is small sketchy entry in the corner of the receipt as (tin maha/ 1.25) which rather is difficult to accept as a condition of interest. There is one entry on the back of the receipt the entry shows that Rs. 9375/- cheque, being issued as interest and a dalali of Rs.1125/- being given in cash of which there is no mention in the complaint. The receipt is on the letter head of one œMother India Air Conditioned Show Room of Akola?. Some one has signed on the revenue ticket as proprietor but there is no evidence to show as to who has signed the receipt. There is no evidence on record to show that appellant has signed on it.

12. We also studied the judgment relied by the Forum, while passing the order but these judgments do not have any bearing on the present transaction which is between two independent persons and does not took to be a deposit. There also does not appear to be a consumer and service provider relation between respondent and appellant, where in the respondent had given his money to earn interest upon it. The nature of the receipt is not a official regular receipt of receiving deposit but appears to be a receipt in money lending.

13. Under these conditions, we can not believe on the story of the respondent that he had kept the present amount of his minor son as a deposit with the respondent and the deposit is covered by the ratio drawn from the various judgment discussed by the Forum in its judgment.

14. We find the present transaction to be some sort of cash money transaction and firmly appear not fit in the definition of Consumer dispute and service to the consumer as is envisaged in Section 2(1)(0) of the Consumer Protection Act. We are therefore of the view that the Forum has erred in holding that it is a consumer dispute and therefore the impugned order needs to be set aside.

15. In these circumstances of the case we find no cost needs to be allowed to any one. Hence the order as below.

ORDER

1. The appeal stands allowed.

2. The impugned order dated 27/09/2007 is set aside and complaint is dismissed.

3. Parties to bear their own cost.

4. The member copy be returned to the appellant.

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