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Court : Union Territory Consumer Disputes Redressal Commission SCDRC UT Chandigarh

Decided On : Mar-18-2014

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

Appeal No. : First Appeal No. 82 of 2014

Appellant : Suhinder Kaur and Another

Respondent : M/S. Omaxe Limited (Formerly Omaxe Construction Ltd.

Judgement :

Sham Sunder (Retd.), President:

1. This appeal under Section 27A of the Consumer Protection Act, 1986 (hereinafter to be called as the Act only) is directed against the order dated 26.01.2014, rendered by the District Consumer Disputes Redressal Forum-I, UT, Chandigarh (hereinafter to be called as the District Forum only), passed in Criminal Petition No.90 of 2013, in Consumer Complaint, bearing No.470 of 2012, vide which, it held that the same (Criminal Petition No.90 of 2013) was devoid of merit, and dismissed the same, being fully satisfied. At the same time, it was made clear that the Judgment Debtor/Opposite Party shall supply the TDS certificate, to

the Decree Holders/Complainants, immediately, after it was received from the Income Tax Authorities.

2. The Consumer Complaint, bearing No.470 of 2012, titled as Smt. Suhinder Kaur and another Vs. M/s Omaxe Limited (Formerly Omaxe Construction Limited), was filed by the complainants (now the appellants), in the District Forum, which was accepted by it, vide order dated 28.02.2013, the operative part whereof, reads as under:-

œResultantly, in view of the foregoing discussion and entirety of the case, we are of the opinion that the complaint must succeed. The same is accordingly allowed. The OP is directed to refund an amount of Rs.12,91,192/- deposited by the complainants along with interest at the rate of 12% p.a. from the date of respective deposits till realization. The OP is also directed to pay litigation cost of Rs.25,000/-

This order be complied with by the OP within a period of 30 days from the date of receipt of copy of this order failing which it shall be liable to refund the above said amount of Rs.12,91,192/- to the complainants along with interest @18% p.a. from the date of respective deposits till its actual payment, besides paying litigation cost of Rs.25,000/-.

3. Since, according to the Decree Holders/ Complainants, the order dated 28.02.2013, passed in the Consumer Complaint, bearing No.470 of 2012, had not been fully complied with, by the Judgment Debtor/ Opposite Party, they filed Criminal Petition No.90 of 2013, under Section 27 of the Act, for execution thereof, stating therein that it (Judgment Debtor/Opposite Party), made the following payments, and an amount of Rs.83,840/-, towards interest, was still payable upto 22.04.2013:-

S. No.	Cheque No.	Date	Amount
1.	165233	22.04.2013	12,91,192.00
2.	165234	22.04.2013	7,60,691.00
3.	165236	22.04.2013	25,000.00

It was further stated that the Decree Holders/Complainants, had also engaged the services of an Advocate to file Criminal Petition No.90 of 2013, for which, they paid a sum of Rs.5,000/-, as fees.

4. The Judgment Debtor/Opposite Party, in its written reply, drew the attention of the District Forum towards the calculation sheet, and the cheques, appended with the same (written reply) as Annexure R-1 (colly.) and stated that the order dated 28.02.2013, passed by it (District Forum), in the Consumer Complaint, bearing No.470 of 2012, had been fully complied with. It was further stated that the complainants had overlooked the calculation sheet, as an amount of Rs.84,521/-, already stood deducted as TDS, and the same had been deposited with the Competent Authorities of the Income Tax Department. It was further stated that nothing remained due against the Judgment Debtor/Opposite Party.

5. After the Judgment Debtor/Opposite Party, filed the written reply, the Decree Holders/Complainants, placed on record, the additional affidavit and fresh calculation sheet, stating therein, that since the payments were made after the expiry of a period of 30 days, from the date of receipt of a copy of the order dated 28.02.2013, the Judgment Debtor/Opposite Party, was liable to make the same (payments), alongwith penal interest @18% P.A., instead of @12% P.A. It was further stated that if the amount was calculated, alongwith penal interest @18% P.A., then the Decree Holders/Complainants, were still entitled to get an amount of Rs.5,43,394/-, towards interest. It was further stated that inadvertently, earlier, the Decree Holders/Complainants, calculated the amount as Rs.83,840/- @12% P.A., in Criminal Petition No.90 of 2013, filed before the District Forum.

6. In the counter affidavit, the Judgment Debtor/Opposite Party, stated that certified copy of the order dated 28.02.2013, was provided to its Counsel, on 22.03.2013, by hand, as was clear from the photocopy of the same (order dated 28.02.2013) Annexure R-2. It was further stated that the said order was to be complied with within 30 days, from the date of receipt of its certified copy, and since 21.04.2013 was Sunday, therefore, on the very next working day i.e. 22.04.2013, the same (order dated 28.02.2013), was complied with, by sending the payment, through cheques, aforesaid.

7. After hearing the arguments of the Counsel for the parties, and, on going through the record, the District Forum came to the conclusion, that the order dated 28.02.2013, passed by it, in the Consumer Complaint, bearing No.470 of 2012, stood fully complied with.

8. Ultimately, the District Forum dismissed the Criminal Petition, bearing No.90 of 2013, as fully satisfied.

9. Feeling aggrieved, the instant appeal, under Section 27A of the Act, was filed by the appellants/decreed holders/complainants.

10. We have heard the Counsel for the appellants/decreed holders/complainants, at the preliminary stage, and, have gone through the record of the case, carefully.

11. The Counsel for the appellants/decreed holders/ complainants, submitted that the amount, which was awarded by the District Forum, vide order dated 28.02.2013, in the Consumer Complaint, bearing No.470 of 2012, was credited to the account of the appellants/decreed holders/complainants, on 34th day of receipt of its certified copy, by the Counsel for the Judgment Debtor/Opposite Party. He further submitted that since the order dated 28.02.2013, rendered by the District Forum, in the Consumer Complaint, bearing No.470 of 2012, was not complied with within 30 days, from the date of receipt of its certified copy, by the Judgment Debtor/Opposite Party, certainly the appellants/decreed holders/complainants, were entitled to penal interest @18% P.A., from the respective dates of deposits, till the actual payment was made. He further submitted that if the interest was calculated @18% P.A., as the order dated 28.02.2013, passed by the District Forum was not complied with within 30 days, from the date of receipt of its certified copy, then certainly an amount of Rs.5,43,394/-, towards interest, was still due against the Judgment Debtor/Opposite Party. He further submitted that the District Forum was wrong, in coming to the conclusion, that the order dated 28.02.2013, passed by it, was complied with within 30 days, from the date of receipt of its certified copy. He further submitted that, as such, the order impugned, passed by the District Forum, being illegal, is liable to be set aside.

12. After giving our thoughtful consideration, to the contentions, advanced by the Counsel for the appellants/ decree holders/complainants, and the record, we are of the considered opinion, that the appeal under Section 27A is liable to be dismissed, at the preliminary stage, for the reasons to be recorded hereinafter. In the Criminal Petition, bearing No.90 of 2013, under Section 27 of the Act, the decree holders/complainants, nowhere, claimed that they were entitled to penal interest @18% P.A. The prayer, which was made by them, in Criminal Petition No.90 of 2013, was to the effect, that they had received the amounts of Rs.12,91,192/-, Rs.7,60,691/- and Rs.25,000/-through cheques, and still the amount of Rs.83,840/-, towards interest was payable by the Judgment Debtor/Opposite Party, to them. The interest calculation sheet attached by the appellants/decreed holders/ complainants, alongwith the Criminal Petition bearing No.90 of 2013, also revealed that they themselves calculated the same @12% P.A., which meant that they were satisfied that the payment was made by the Judgment Debtor/Opposite Party, within 30 days, from the date of receipt of certified copy of the order dated 28.02.2013, passed by the District Forum, in the Consumer Complaint, bearing No.470 of 2012, but still the amount of Rs.83,840/-, remained due. Annexure R-1 is the calculation sheet, submitted by the Judgment Debtor/Opposite Party. According to Annexure R-1, interest, which was worked out, came to be Rs.8,45,212/- wherefrom, a sum of Rs.84,521/-, was deducted towards TDS. The order, in the Consumer Complaint, bearing No.470 of 2012, was passed on 28.02.2013, and certified copy thereof, was received by the Counsel for the Judgment Debtor/Opposite Party, by hand, on 22.03.2013. The period of 30 days, if calculated from the date of receipt of certified copy of the order dated 28.02.2013, expired on 21.04.2013. Since, 21.04.2013 was Sunday, according to the provisions of law, the next working day could be said to be the last day/30th day, for compliance of the order dated 28.02.2013, passed by the District Forum, in the Consumer Complaint, bearing No.470 of 2012. On 22.04.2013, the next working day, the order dated 28.02.2013, was complied with, by sending three cheques of Rs.12,91,192/-, Rs.7,60,691/- and Rs.25,000/-, to the Decree Holders/Complainants, by the Judgment Debtor/Opposite Party, through registered post. Sending of communication/cheques, through registered post, was one of the legally recognized modes. Once, the cheques, of the aforesaid

amounts, were out of the hands of the Judgment Debtor/Opposite Party, on 22.04.2013 - the last date for compliance of the order impugned, it could very well be said that it complied with the same, within the time stipulated i.e. within 30 days, from the date of receipt of its (order dated 28.02.2013) certified copy. If the cheques reached on 34th of the receipt of certified copy of the order dated 28.02.2013, though despatched on 31st day (30th day being Sunday) that did not mean that there was non-compliance of the same (order dated 28.02.2013), within the stipulated time. The District Forum was, thus, right, in holding that the order dated 28.02.2013, passed by it, in the Consumer Complaint, bearing No.470 of 2012, was complied with within 30 days, from the date of receipt of its certified copy, and, as such, the Judgment Debtor/Opposite Party was not liable to pay penal interest @18% P.A. The findings of the District Forum, in this regard, therefore, being correct are affirmed.

13. Not only this, after receipt of the cheques aforesaid, the same were got encashed by the Decree Holders/Complainants, without any demur, or protest. Once they accepted the cheques aforesaid, wherein interest had been calculated @12% P.A., and even they claimed the same at that rate (@12% P.A.), in Criminal Petition No.90 of 2013, later on, they (Decree Holders/Complainants), could not, wake up from sleep and turn round saying that they were entitled to penal interest @18% P.A. on the awarded amount, as the order dated 28.02.2013, had not been complied with within 30 days, from the date of receipt of its certified copy. As earlier stated, even in Criminal Petition No.90 of 2013, the Decree Holders/Complainants calculated interest @12% P.A., which was granted by the District Forum, in paragraph number 14 of the order dated 28.02.2013, passed in the Consumer Complaint, bearing No.470 of 2012. All these facts and circumstances, therefore, clearly prove that the order dated 28.02.2013, had been complied with within 30 days, from the date of receipt of its certified copy. There was no reason, on the part of the Decree Holders/Complainants, to raise any protest against the amount, received by them, which was arrived at by calculating interest @12% P.A. The District Forum was, thus, right, in coming to the conclusion that the Decree Holders/Complainants were not entitled to penal interest @18% P.A., as the order dated 28.02.2013, passed by the District Forum, in the Consumer Complaint, bearing No.470 of 2012, was complied with within 30

days, from the date of receipt of its certified copy, by the Judgment Debtor/Opposite Party. The findings of the District Forum, in this regard, being correct are affirmed.

14. Admittedly, a sum of Rs.84,521/-, was deducted by the Judgment Debtor/Opposite Party, towards TDS, at the time of sending cheques of payment, to the Decree Holders/Complainants, on 22.04.2013. The Judgment Debtor/Opposite Party deducted the TDS, in our considered opinion, in accordance with the provisions of the Income Tax Act. That amount was not to be retained by the Judgment Debtor/Opposite Party, but it already deposited the same with the Income Tax Department. As and when the certificate of TDS was received by the Judgment Debtor/Opposite Party, from the Income Tax Department, it was bound to supply the same, to the Decree Holders/Complainants, so as to enable them, to file their income tax return, claiming therein, the necessary deductions. Direction, in that regard, was given by the District Forum, in the order impugned. Such direction, given by the District Forum, in the order impugned, being correct is affirmed.

15. The District Forum, was, thus, right in coming to the conclusion that since the entire payment, which was due to the Decree Holders/Complainants, against the Judgment Debtor/Opposite Party stood made by it, through cheques, as far back as on 22.04.2013 (21.04.2013 being Sunday), within 30 days, from the date of receipt of certified copy of the order dated 28.02.2013, as such, nothing remained due to them (Decree Holders/Complainants), against it (Judgment Debtor/Opposite Party). The District Forum was also right, in dismissing the Criminal Petition, bearing No.90 of 2013, as fully satisfied.

16. No other point, was urged, by the Counsel for the appellants.

17. In view of the above discussion, it is held that the order passed by the District Forum, in Criminal Petition No.90 of 2013, under Section 27 of the Act, being based on the correct appreciation of record, and law, on the point, does not suffer from any illegality or perversity, warranting the interference of this Commission.

18. For the reasons recorded above, the appeal under Section 27A, being devoid of merit, must fail, and the same is dismissed, at the preliminary stage, with no order as to costs. The order of the District Forum is upheld.

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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