

Kamlesh Aggarwal vs Narain Singh Dabbas & Anr on 10 January, 2015

Author: V.Gopala Gowda

Bench: R. Banumathi, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 224-225 OF 2015

KAMLESH AGGARWAL

.....APPELLANT

Vs.

NARAIN SINGH DABBAS & ANR.

.....RESPONDENTS

J U D G M E N T

V.GOPALA GOWDA, J.

Aggrieved by the dismissal of her First Appeal Nos. 645 and 646 of 2013 vide order dated 8.1.2014 by the National Consumer Disputes Redressal Commission, New Delhi, purported to have been filed under Section 21 of the Consumer Protection Act, 1986 (for short "the Act"), against the order dated 30.7.2013 passed by the State Consumer Disputes Redressal Commission, Lucknow in Appeal Nos. 2082 and 2083 of 2010, the appellant has filed these appeals, urging various relevant facts and legal contentions seeking for setting aside the said order.

The brief facts of the case are stated as under :-

The appellant filed a Complaint No. 24 of 1998 before the District Consumer Disputes Redressal Forum, Ghaziabad (for short "the District Forum") against Navchetna Sahkari Awas Samiti Ltd.-the respondent in the original complaint, for not allotting and registering plot No. 114, Village Khoda, Ghaziabad in her name as the Awas Samiti, in a resolution passed by it, cancelled the membership of the appellant from the Navchetna Sahkari Awas Samiti Ltd. in default of payment by her.

The District Forum vide its order dated 17.10.2003 after conducting an enquiry as provided under the provisions of the Act, accepted the complaint of the appellant and directed the Navchetna Sahkari Awas Samiti Ltd. to allot the said plot in favour of the appellant and also to register the same in her favour within 3 months from the date of the order. Since, there was non compliance of the order dated 17.10.2003, the appellant filed Execution Petition before the District Forum to

execute the order and requested it to punish the respondents under Sections 25 and 27 of the Act. In the said case one Gulab Singh (the alleged subsequent allottee of the plot in question) filed an application in the above proceedings for impleadment before the District Forum as he was in the possession of the plot in question, which was allotted by the respondents and a Civil Suit No. 1510 of 2005 filed by him was pending in the Civil Court. The District Forum vide its order dated 13.9.2006 held that the order dated 17.10.2003 is null and void. It was further held by the District Forum that the appellant should approach the Civil Court and only after the rejection of the suit of Gulab Singh in the Civil Court the execution proceedings will be heard by the District Forum and pass appropriate order and rejected the application of impleadment of Gulab Singh.

Being aggrieved by the order dated 13.9.2006 of the District Forum, the appellant filed Appeal No. 2636 of 2006 before the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow (for short "the State Commission"). The State Commission has passed an order dated 7.9.2007 holding that it was not open for the District Forum to review the same matter on merits at the instance of the impleading applicant and declare its earlier decree as null and void. Thus, the State Commission allowed the appeal of the appellant and directed the District Forum to proceed afresh with the execution proceedings.

The said order dated 7.9.2007 of the State Commission was not challenged by the respondents, but Gulab Singh filed Revision Petition No. 4069 of 2007 before the National Consumer Disputes Redressal Commission, New Delhi (for short "the National Commission") against the said order. The National Commission, having found either no illegality or material irregularity in the order dated 7.9.2007 passed by the State Commission, dismissed the Revision Petition of Gulab Singh on 12.8.2008 by observing that the State Commission was fully justified in allowing the appeal filed by the appellant and setting aside the order dated 13.9.2006 passed by the District Forum.

The appellant filed the application for execution of the order dated 17.10.2003 before the District Forum. On 29.5.2010, the District Forum allowed the execution petition directing for compliance of the order dated 17.10.2003. It further directed to provide alternate plot as a replacement for the plot in question to the appellant and if there is no plot available, in that circumstances, to pay the amount as compensation to the appellant at the current rate equivalent to the area of the plot in question.

The respondents filed review application before the District Forum in Execution Case No. 96 of 2010 for review of order dated 29.5.2010. The District Forum vide its order dated 26.11.2010 dismissed the review application and found the respondents guilty for non-compliance of order dated 17.10.2003 passed in Complaint Case No. 24 of 1998 and ordered for three months imprisonment of the respondents along with penalty amount of Rs.3000/- payable by them under provisions of Section 27 of the Act. Being aggrieved by the abovesaid order, the respondents filed Appeal Nos. 2082 and 2083 of 2010 before the State Commission which were allowed by its order dated 30.7.2013 by setting aside the order dated 26.11.2010 of the District Forum. The State Commission observed that the District Forum has not adopted the procedure of summary trial at the time of passing the order of conviction and sentence imposed upon the respondents as provided under the Criminal Procedure Code, 1973, for non-compliance of order dated 17.10.2003. The State

Commission also observed in its order that at no point of time the respondents were afforded an opportunity of being heard against the disobedience of the order dated 17.10.2003 of the District Forum, which is mandatory as per provisions of sub-clause (3) of Section 27 of the Act and it has to try them by following the summary procedure by the District Forum empowered as Judicial Magistrate of the First Class for the purpose of Code of Criminal Procedure. Thus, the State Commission has allowed the appeal of the respondents and set aside the conviction and sentence order passed against them.

The appellant being aggrieved by the order dated 30.7.2013 filed First Appeal Nos. 645 and 646 of 2013 before the National Commission. The National Commission vide its order dated 8.1.2014 dismissed the appeals holding that there is no provision in the Act regarding the filing of second appeal under Sections 27 or 27A of the Act; even under Section 21 of the Act, a petition filed against the order passed under Section 27A of the Act could not be entertained by it as the appellant has no right and the National Commission has no jurisdiction to entertain such appeal. Hence, these appeals are filed by the appellant as she is aggrieved by the order of both the State Commission and the National Commission. Mr. Digendra Sharma, the learned counsel appearing on behalf of the appellant contended that the National Commission should not have dismissed the appeals of the appellant as the same would render the appellant remediless for executing decree passed against the respondents who have till date not complied with the order dated 17.10.2003 passed by the District Forum and even the same has not been challenged by the Navchetna Sahkari Awas Samiti Ltd. and therefore, the same has attained finality. It was further contended by him that by dismissing the second appeal of the appellant, the order dated 17.10.2003 would become ineffective and she has not got the fruits of the order. The order passed by the District Forum in favour of the appellant, which has attained finality cannot be made in- executable on technical grounds. Even if the order of the District Forum in convicting and sentencing the respondents is found to be illegal, the State Commission ought to have remanded the matter to the District Forum with a direction to it to follow the procedure and pass appropriate order. On the contrary, Mr. Anukul Chandra Pradhan, the learned senior counsel appearing on behalf of the respondents contended that the appellant has the remedy of revision before the National Commission as available under Section 21(b) of the Act.

It was further contended by him that the District Forum should have followed the provisions of Criminal Procedure Code while dealing with the application filed by the appellant under Section 27 of the Act and passed the order and therefore he submits that the impugned order does not warrant interference by this Court.

We have heard both the learned counsel on behalf of the parties. In the facts and circumstances of the case, we are of the view that the State Commission should have remanded the matter to District Forum after setting aside its order dated 26.11.2010 with a direction to proceed with the matter in accordance with the procedure contemplated under the Code of Criminal Procedure referred to supra for taking penal action against the respondents who are the concerned officers of Navchetna Sahkari Awas Samiti Ltd. for non-compliance of the order. The National Commission has rightly declined to exercise the power under Section 21 of the Act to set aside the order dated 30.7.2013 of the State Commission as no second appeal is provided against the order of the State Commission in view of sub-Section 2 of Section 27A of the Act, which states as under :-

"27A. Appeal against order passed under Section 27.-(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), an appeal under Section 27, both on facts and on law, shall lie from -

the order made by the District Forum to the State Commission; the order made by the State Commission to the National Commission; and the order made by the National Commission to the Supreme Court (2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission....."

From the reading of the above provisions of the Act, it is clear that against the order passed by the District Forum under Section 27A of the Act, appeal lies to the State Commission and against the order of the State Commission, the appeal lies to the National Commission and against order of the National Commission, the appeal lies to the Supreme Court and sub- section 2 of the Act states that except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission as the case may be. Therefore, we have to hold that the order passed by the National Commission in holding that appeals filed by the appellant is not maintainable, is legal and valid and does not call for interference by this Court. The petition filed under Article 136 of the Constitution of India seeking leave to file appeal against the order of the National Commission is also not maintainable in law, however we have to interfere with the order of the State Commission only to the extent in not remanding the case to the District Forum for passing an order in accordance with law, in not doing so, the right accrued in favour of the appellant will be lost and therefore, we have to pass appropriate order in this regard .

Having regard to the fact situation that the appellant, who is a consumer, has been litigating the matter before the District Forum, State Commission and the National Commission for the last 17 years to get her legitimate right of getting the sale deed registered in respect of the allotted site made by the Navchetna Sahkari Awas Samiti Ltd. in her favour who is its member since 1962, therefore, we deem it proper to exercise our power under Article 142 of the Constitution of India for the reason that the State Commission has erred in not remanding the case to the District Forum, after it has found fault with the order of the District Forum in convicting and sentencing the officers of Navchetna Sahkari Awas Samiti Ltd. who are the respondents herein for not following the procedure as provided under the Criminal Procedure Code and for that reason we deem it just and proper to remand the case to the District Forum with a direction to the District Forum to follow the procedure under Section 262 read with Chapter XX, Section 251 of the Code of Criminal Procedure to initiate penal action against the respondents under Section 27 of the Act for non compliance of the statutory provisions.

It is also needless to mention in this order that no remedy is available to the appellant against the order of the District Forum even under Section 24 of the Act for the reason that the order passed by the State Commission, which was not interfered with by the National Commission holding that second appeal is not maintainable against the order of the State Commission. Further, the order passed by the State Commission is under Section 27A of the Act in the appeal against the order dated 30.7.2013 of the District Forum which under Section 27(2) of the Act convicted and sentenced

the respondents in the execution proceedings for non implementation of the order dated 17.10.2003 passed by the District Forum on the original complaint. Therefore, this Court in exercise of power of this Court under Article 142 of the Constitution of India, the order of the State Commission is modified to the extent of remanding the case to the District Forum to execute the decree and take penal action against the respondents by following the procedure under Section 262 read with Chapter XX and Section 251 of the Code of Criminal Procedure in accordance with law.

Further, it is needless to observe in this order that apart from initiating proceedings under Section 27 of the Act, the alternative right is also available to the appellant to execute the order of the District Forum by invoking the provisions of Code of Civil Procedure, 1908 under Order XXI read with the Rule 32 for seeking direction to the respondents to get sale deed in respect of the Plot No. 114, Village Khoda, Ghaziabad executed by the Navchetna Sahkari Awas Samiti Ltd. and register the same before the Sub- Registrar and put her in possession of the same in accordance with the aforesaid provisions. The execution of the decree in the aforesaid terms is permissible in law in view of the provisions of Section 13(4), (6) and (7) of the Act, as the provisions of Order XXI read with the Rule 32 of Code of Civil Procedure are applicable to the District Forum to follow the procedure for execution of the order passed by it. In view of the aforesaid provisions of the Act, the provisions of Order XXI read with the Rule 32 of Code of Civil Procedure, are applicable in the execution proceedings before the District Forum for executing the orders passed on the complaint of the appellant to get the fruits of the same in the absence of either express or implied exclusion of Code of Civil Procedure to execute the order of the District Forum. The said provisions of Code of Civil Procedure are applicable to the procedure for disposal of the complaints by the District Forum not only in relation to the matters enumerated under Section 13(4),(6) and (7) of the Act but the other provisions of Code of Civil Procedure viz. Order XXI read with the Rule 32 are applicable for execution of the order of the District Forum and to give effect to the order passed by it on the complaint as the same will be in the nature of decree as defined under Code of Civil Procedure as the procedure contemplated under the said order read with Rule 32 which is a substantial procedural right of the appellant and the same can be invoked by her as the decree holder.

In addition to above, the alternative remedy is also available to the appellant to take penal action against the concerned officers of the Navchetna Sahkari Awas Samiti Ltd. under Section 27 of the Act and therefore, she is at liberty to avail the said remedy also if she wants to get the decree dated 17.10.2003 executed by the District Forum as the same has attained finality in her favour.

With the aforesaid observation and direction to the District Forum and liberty to the appellant, we allow these appeals to the above said extent. No costs.

.....J. [V. GOPALA GOWDA]
.....J. [R. BANUMATHI] New Delhi, February 10, 2015