

SUPREME COURT OF INDIA

Om Prakash Saini

Vs.

DCM Ltd.

C.A.Nos.4902-04 of 2010

(G.S. Singhvi and Asok Kumar Ganguly JJ.)

06.07.2010

JUDGEMENT

G.S.Singhvi, J.

1. Leave granted.

2. In these appeals, prayer has been made for setting aside order dated 22.8.2008 passed by the learned Single Judge of Delhi High Court in R.A. Nos. 329 of 2007, 401 of 2007 and CM No. 11710 of 2008 in CM (M) No. 398 of 2007.

3. After retirement from the service of Indian Railways, the appellant invested Rs.1,90,000 in the Fully Secured Debentures floated by respondent No.1. The debentures were due for payment on 14th August, 1998, but just before that date, respondent No.1 vide its letter dated 16.7.1998 informed the appellant and other similarly situated persons that due to financial difficulties it will not be possible to pay the amount of maturity on the scheduled dates and a revised scheme has been worked out for payment of the dues. The relevant portions of that letter are extracted below:

“The company had in the month of February, 1997 allotted 17 months and 25 days - 19.5% Secured Redeemable Non- Convertible Private Placed Debentures of Rs.1,000/- each (Debentures) of the Series `A'. These Debentures were issued under Regular and cumulative Schemes. These Debentures are due for payment on 14th August, 1998. However, due to reasons as explained in the next few paragraphs, the payment terms need to be revised.

It is proposed that the payment as per the revised schemes of re- payment shall be made on receipt of your confirmation. In case of Debentures issued under the Cumulative Scheme such payment shall comprise of the interest at the coupon rate. In case of debentures issued under the Regular Scheme the payment shall comprise of the interest for the period commencing from 21.02.1998 to 14.08.1998.

The re-payment plan is as under:- 1 Interest upto the date of By 31.12.1999 maturity as per terms of issue:

50% of principal amount: By 31.12.1999 3 3 Balance principal amount 18 months from plus Simple interest @ the date of 14% p.a. from the date of payment of 1st maturity instalment

4. The above payment will be effected on first come first served basis”

4. The assurance contained in the aforementioned letter was reiterated vide communications dated 26.2.1999 and 17.6.1999 sent by respondent No.1. This appears to be the reason why the appellant did not press for payment of his dues. However, as respondent No.1 did not pay the amount as per the revised scheme, the appellant filed a complaint under the Consumer Protection Act, 1986 (for short, `the 1986 Act') before the State Consumer Disputes Redressal Commission, Delhi (for short, `the State Commission') with the prayer that respondent No.1 may be directed to pay the amount due to him with interest and compensation of Rs.1 lakh.

5. In the reply filed on behalf of respondent No.1, it was pleaded that due to financial crunch, it was not possible to repay the amount due to the NCD holders. This is evinced from paragraph of the reply which reads thus:

“3. In view of the serious financial crunch and cash mis- match, DCM has prepared a restructuring scheme in active consultation with financial institutions and the same has been filed in Hon'ble High Court at New Delhi. Given the revised arrangement for real estate project, the scheme envisaged interest on the aforesaid NCDs upto 31.12.1998 on the basis of contractual interest rate till maturity i.e. 14.08.98 and at 14% thereafter till 31.12.1998. In terms of the scheme, the payment of principal/interest would be made in 2-4 years. The Hon'ble Delhi High Court vide order dated 14.2.2000 was pleased to convene a meeting of the shareholders/creditors on 17/18.05.2000. The notice on the scheme would be issued by Hon'ble Delhi High Court to all the NCD holders in due course.

From the aforesaid the Hon'ble Consumer Forum would appreciate that necessary efforts are being made by the respondent company to repay to the NCD holders and only for the reasons totally beyond the control of the company, the respondent company is at present not able to repay to the NCD holders including complainant.”

6. During the pendency of the complaint, the State Commission passed three interim orders dated 29.9.2003, 15.7.2004 and 7.7.2005 for payment of at least 50% of the amount due to the appellant. These orders read as under:

“29.09.2003 Present: Complainant in person along with counsel Mr. Arya Girdhari. Shri S.C. Verma, an employee of the OP in person.

C-255/99 It is stated by the complainant that he has to undergo bypass surgery on priority basis which cannot be postponed and therefore, he requests on the ground of compassion that at least the principal amount be paid to him on priority. Shri S.C. Verma who is appearing on behalf of the OP, is directed to seek instructions on the above point to ensure that in view of the above fact, at least the principal amount, without prejudice to rights and conditions of the parties, is paid to the complainant.

A copy of this order be given dasti to the representative of the O.P. to enable him to have suitable instructions on the above point.

Re-list on 1.10.2003.

Sd/- (Justice Lokeshwar Prasad) President Sd/- (Mahesh Chandra) Member
15.07.2004 Present: Complainant present in person.
Mr. Rahul Srinivastava, Counsel for the OP.

C-255/99 Vide order/proceedings dated 29.9.2003, the OP was directed to ensure that at least the principal amount to the complainant who has to go by pass surgery be paid without prejudice to the rights and contentions of the parties. The learned counsel for the OP has relied upon the scheme framed by the Hon'ble High Court of Delhi by way of order dated 29.10.2003 whereby the OP was required to pay at least the amount deposited with them by the subscription of the scheme for construction of flats. Since the complainant has to undergo by pass surgery. It is directed that at least 50% of the deposited amount be paid to the complainant on humanitarian ground to meet his medical expenses without the prejudice to the rights and contentions of the parties and without the prejudice to the scheme framed by the Hon'ble High Court of Delhi in the aforesaid order.

Re-list on 26.10.2004.

Sd/- (Justice J.D. Kapoor) President Sd/- (Rumnita Mittal) Member 07.07.2005
Present: Complainant in person.

Mr. Saurabh Sodhi, Counsel for the OP.

C-255/99 Complainant has been paid 50% of the deposited amount.

He is an old man waiting for his by-pass surgery and could not get it done for want of funds. Counsel for the OP is directed to seek instructions from the OP to pay the deposited amount to the complainant on humanitarian ground and the remaining dispute can be decided at the time of final hearing.

Re-list on 05.08.2005.

Sd/- (Mahesh Chandra) Presiding Member Sd/- (Rumnita Mittal) Member”

7. The State Commission finally allowed the complaint and directed the respondent to pay the maturity amount to the appellant as per the terms of contract along with interest at the agreed rate up to the maturity date and 12% after the maturity date. The State Commission also awarded Rs.10,000/- as cost of litigation.

8. Respondent No.1 challenged the order of the State Commission by filing an appeal under Section 21 of the 1986 Act but withdrew the same on 25.4.2007. Thereafter, it filed a petition under Article 227 of the Constitution of India, which was allowed by the learned Single Judge vide his order dated 11.7.2007 on the premise that in the face of the scheme sanctioned by the Company Judge under the Companies Act, the State Commission did not have the jurisdiction to entertain the complaint.

9. The appellant, who could not appear before the High Court on the date of hearing i.e., 11.7.2007, filed an application for recall of the aforementioned order, but the same was dismissed by the learned Single Judge without going into the issue whether the cause shown by the appellant for his non-appearance was sufficient.

10. We have heard learned counsel for the parties and perused the record.

“At the outset, we deem it proper to mention that during the course of hearing of these appeals, learned counsel for respondent No.1 produced fax copy of letter dated 10.4.2008 allegedly written by the appellant to Shri Kirat S. Nagra, Advocate for respondent No.1 admitting that he has received full amount, but learned counsel appearing for the appellant emphatically asserted that the amount due to his client has not been paid.”

11. Ms. Prasanthi Prasad, learned counsel for the appellant argued that the High Court committed a jurisdictional error by entertaining the petition filed by respondent No.1 under Article 227 of the Constitution ignoring that respondent No.1 had already availed the statutory remedy of appeal.

“Learned counsel submitted that there was no extra-ordinary reason which could justify entertaining of a petition by the High Court under Article 227 of the Constitution by making a departure from the settled law that it will not entertain a petition under Article 226 or 227 of the Constitution if an effective alternative remedy is available to the aggrieved person. Ms. Prasanthi Prasad further argued that the learned Single Judge committed a serious error by declining to entertain the application filed by the appellant for recall of order dated 11.7.2007. Shri C.S. Vaidyanathan, learned senior counsel appearing for respondent No.1 argued that even though respondent No.1 had availed the statutory remedy of appeal, the learned Single Judge did not commit any error by entertaining the petition filed under Article

227 of the Constitution because counsel appearing on behalf of respondent No.1 had assured the High Court on 21.3.2007 that the appeal pending before the National Consumer Disputes Redressal Commission will be withdrawn and, as a matter of fact, this was done on 25.4.2007. Learned senior counsel then argued that the learned Single Judge did not commit any error by setting aside the order of the State Commission because it was contrary to the scheme sanctioned by the learned Company Judge under Section 391 read with Sections 392 and 394 of the Companies Act, 1956.”

12. We have considered the respective submissions. The 1986 Act was enacted to provide for better protection of the interests of consumers by making provisions for establishment of consumer councils and other authorities for settlement of consumer disputes and adjudication thereof.

“The 1986 Act is a complete Code unto itself. It defines the various terms like ‘consumer’, ‘consumer dispute’, ‘defect’, ‘deficiency’, ‘goods’, ‘manufacturer’, ‘restrictive trade practice’, ‘service’, ‘unfair trade practice’.

It provides for establishment of consumer councils and adjudicatory forums at the District, State and National levels. Any person aggrieved by an order passed by the District Forum can file an appeal before the State Commission. If he is not satisfied with the order of the State Commission, a further remedy is available by way of revision before the National Commission. If the complaint is decided by the State Commission, the aggrieved person can file an appeal before the National Commission.

Elaborate procedure has been laid down for filing of the complaints and disposal thereof. Since the 1986 Act is a special statute enacted by the Parliament for better protection of the interest of consumers and a wholesome mechanism has been put in place for adjudication of consumer disputes, the remedy of appeal available to a person aggrieved by an order of the State Commission cannot but be treated as an effective alternative remedy.”

13. Admittedly, respondent No.1 had availed the alternative remedy available to it under Section 21 by filing an appeal against the order of the State Commission. During the pendency of the appeal, respondent No.1 chose to challenge the order of the State Commission by filing a petition under Article 227 of the Constitution, which was entertained by the learned Single Judge on the basis of the assurance given by the learned counsel that the appeal filed before the National Commission will be withdrawn. The order passed by the learned Single Judge on 21.3.2007 or the one by which the petition filed by respondent No.1 was finally disposed of does not contain any indication as to why the learned Single Judge thought it proper to make a departure from the rule that the High Court will not entertain a petition under Article 226 or 227 of the Constitution if an effective alternative remedy is available to the aggrieved person. In our view, during the pendency of the appeal filed by

respondent No.1 under Section 21 of the 1986 Act, the learned Single Judge was not at all justified in entertaining the petition filed under Article 227 of the Constitution merely because he thought that the State Commission did not have the jurisdiction to entertain the complaint in view of the scheme sanctioned by the Company Judge under Section 391 read with Sections 392 and 394 of the Companies Act.

14. The dismissal of the application filed by the appellant for recall of order dated 11.7.2007 is clearly vitiated by a patent error of law. In the petition filed by him, the appellant had averred that he could not file reply because of heart ailment and on the date of hearing he could not reach the High Court because of failure of the public bus transport system.

“Respondent No.1 did not controvert these averments. Notwithstanding this, the learned Single Judge dismissed the application without even examining sufficiency of the cause shown by the appellant for his non-appearance on the date of hearing.”

15. In the result, the appeals are allowed. The impugned order is set aside and the matter is remitted to the High Court for fresh adjudication of CM (M) No. 398 of 2007. While deciding the matter, the High Court is expected to take note of the fact that respondent No.1 had an effective alternative remedy against the order passed by the State Commission and, as a matter of fact, it had availed the remedy of appeal. If the High Court comes to the conclusion that respondent No.1 should be relegated to the remedy of appeal, then it may pass appropriate order to facilitate recall of order dated 25.4.2007 passed by the National Commission so that respondent No.1 may be able to pursue the remedy of appeal.