

SUPREME COURT OF INDIA

M/s Shreenath Corp.

Vs.

Consumer Education & Research Society

C.A.No.9052 of 2014

(Sudhansu Jyoti Mukhopadhaya and V.Gopala Gowda JJ.)

07.07.2014

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. Leave granted.
2. These appeals are directed against common interim order dated 15th May, 2012 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the, ~National Commission) in interlocutory applications for stay in First Appeals preferred by the appellants.
3. The factual matrix of the case is as follows:- A number of complaints u/s 17(1) of the Consumer Protection Act, 1986 (hereinafter referred to as the, ~Act) were filed by different persons before the Consumer Disputes Redressal Commission, Gujarat State, Ahmedabad (hereinafter referred to as the, ~State Commission) against the appellants - opposite parties.
4. The State Commission by order dated 30th January, 2012 allowed the applications in part and directed the appellants-opposite parties to pay certain amount with interest in favour of the complainants.
5. Against the aforesaid orders, the appellants preferred separate appeals u/s 19 of the

Act before the National Commission being First Appeal Nos.91-104 of 2012. In all these appeals separate interlocutory applications for stay were filed by the appellants. The National Commission by impugned common order dated 15th May, 2012 passed conditional interim order which reads as under:

Heard.

Issue notice on main appeal as well as on stay applications to the respondents, returnable on 22.11.2012.

In the meanwhile, operation of the impugned order shall remain stayed, till next date, subject to appellants depositing 50% of the awarded amount (principal amount), within three months from today, with the State Commission.

On deposit of the amount, State Commission shall put the same in fixed deposit in a Nationalized Bank, initially for one year. Dasti.

6. Learned counsel for the appellant contended that the impugned interim order dated 15th May, 2012 passed by the National Commission is contrary to the provisions of Section 19 of the Act. It was further contended that deposit of specific amount has been prescribed under the second proviso to Section 19 of the Act, and, therefore, the National Commission cannot pass an order asking the appellant before it to deposit an amount more than 50% of the amount awarded by the State Commission or Rs.35,000/- whichever is less. In support of such contention learned counsel for the appellant relied upon judgment of Delhi High Court in Dr.(Mrs.) K. Kathuria v. National Consumer Disputes Redressal Forum, AIR 2007 Delhi 135.

7. On the other hand, according to counsel for the respondents, the impugned order is a conditional order of stay and is not passed under second proviso to Section 19 of the Act.

8. After giving our careful consideration to the facts and circumstances of the case and submissions made by learned counsel for the parties, we find ourselves entirely in agreement with the submission made on behalf of the respondents.

9. Section 19 of the Consumer Protection Act, 1986 deals with appeals against the

order made by the State Commission in exercise of its power conferred by sub-clause (i) of clause (a) of Section 17 and the said section reads as follows:-

19.Appeals.-Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of Section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by

a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent of the amount or rupees thirty-five thousand, whichever is less.

On plain reading of aforesaid Section 19, we find that the second proviso to Section 19 of the Act relates to pre- deposit required for an appeal to be entertained by the National Commission.

10. This Court in State of Haryana v. Maruti Udyog Ltd. and others, (2000) 7 SCC 348, while dealing with case of waiver of pre-deposit in an appeal under first proviso to Section 39(5) of the Haryana General Sales Tax Act held:

7. There cannot be any dispute that right of appeal is the creature of the statute and has to be exercised within the limits and according to the procedure provided by law. It is filed for invoking the powers of a superior court to redress the error of the court below, if any. No right of appeal can be conferred except by express words. An appeal, for its maintainability, must have a clear authority of law. Sub-section (5) of Section 39 of the Act vests a discretion in the appellate authority to entertain the appeal if it is filed within sixty days and the amount of tax assessed along with penalty and interest, if any, recoverable from

the persons has been paid. The aforesaid restriction is subject to the proviso conferring discretion upon the appellate authority to dispense with the deposit of the amount only on proof of the fact that the appellant was unable to pay the amount. Before deciding the appeal, the appellate authority affords an opportunity to the party concerned to either pay the amount or make out a case for the stay in terms of proviso to sub-section (5) of Section 39 of the Act. Once the conditions specified under sub-section (5) of Section 39 are complied with, the appeal is born for being disposed of on merits after hearing both the sides.

11. The second proviso to Section 19 of the Act mandates pre-deposit for consideration of an appeal before the National Commission. It requires 50% of the amount in terms of an order of the State Commission or 35,000/- whichever is less for entertainment of an appeal by the National Commission. Unless the appellant has deposited the pre-deposit amount, the appeal cannot be entertained by the National Commission. A pre-deposit condition to deposit 50% of the amount in terms of the order of the State Commission or Rs.35,000/- being condition precedent for entertaining appeal, it has no nexus with the order of stay, as such an order may or may not be passed by the National Commission. Condition of pre-deposit is there to avoid frivolous appeals.

12. It is not the case of any of the appellants that the Consumer Forum including State and National Commissions has no power to pass interim order of stay. If the National Commission after hearing the appeal of the parties in its discretion wants to stay the amount awarded, it is open to the National Commission to pass an appropriate interim order including conditional order of stay. Entertainment of an appeal and stay of proceeding pursuant to order impugned in the appeal stands at different footings, at two different stages. One (pre-deposit) has no nexus with merit of the appeal and the other (grant of stay) depends on prima facie case; balance of convenience and irreparable loss of party seeking such stay.

13. In view of the finding recorded above, the interference with the impugned order dated 15th May, 2012 passed by the National Commission is not called for. In absence of any merit, the appeals are accordingly dismissed. No costs.