

(2012) 01 P&H CK 0052

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 102 of 2012 (O and M)

Kanwar Sat Pal Singh

APPELLANT

Vs

State Consumer Disputes
Redressal Commission, U.T.
Chandigarh and others

RESPONDENT

Date of Decision: Jan. 19, 2012

Acts Referred:

- Consumer Protection Act, 1986 - Section 25, 27

Citation: (2012) 166 PLR 18

Hon'ble Judges: Tej Pratap Singh Mann, J; Satish Kumar Mittal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.

This Letters Patent Appeal has been directed against the order dated 23.11.2011, passed by the learned Single Judge, whereby the writ petition (CWP No. 16825 of 2011) filed by Kanwar Sat Pal Singh (appellant herein) challenging the order dated 28.7.2011 (Annexure P-6) passed by the State Consumer Disputes Redressal Commission, U.T., Chandigarh hereinafter referred to as "the State Commission") upholding the order dated 12.7.2010 (Annexure P-4) passed by the District Consumer Disputes Redressal Forum-I, UT Chandigarh (hereinafter referred to as "the District Forum"), vide which appellant Kanwar Sat Pal Singh and Ashok Kumar, both Directors of M/s Shivcon Infrastructures Enterprises Ltd., Chandigarh (hereinafter referred to as "the company"), were sentenced to undergo imprisonment for two years and to pay a fine of Rs. 10,000/- each u/s 27 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act"), has been dismissed. We have heard learned counsel for the appellant and gone through the order passed by the learned Single Judge as well as the orders, passed by the District Forum and the State Commission.

2. In the present case, on a complaint filed by Ashutosh Goyal alias Ashu Goyal (respondent No. 3 herein) against the company and its four Directors, including the appellant, vide order dated 1.1.2009 (Annexure P-2), the appellant as well as three other Directors of the company were directed to refund to him a sum of Rs. 6.50 lacs along with interest @ 9% per annum from the date of respective deposits till realisation, besides compensation of Rs. 10,000/- for mental agony and harassment suffered by him at the hands of those Directors, including the appellant, and for adopting an unfair trade practice by them. All those Directors, including the appellant, were ordered to comply with the said order within 30 days from the receipt of copy of the order, failing which they were to pay the amount along with penal interest @ 12% per annum from the date of filing of the complaint i.e. 12.6.2008, till realisation.

3. Undisputedly, the aforesaid order dated 1.1.2009 (Annexure P-2) has become final. When the said order was not complied with, respondent No. 3 filed application u/s 27 of the Act for punishing the appellant and other Directors of the company for not complying with the above order.

4. It is pertinent to mention here that when the proceedings u/s 27 of the Act were pending before the District Forum, the appellant appeared through his counsel and sought time to make the payment, upon which the case was adjourned to 21.5.2010. On that day, payment was not made. Again, on request of the appellant, the case was adjourned to 29.6.2010, on which date, neither the appellant nor any body on his behalf appeared. Thereafter, the case was adjourned to 5.7.2010, 9.7.2010 and 12.7.2010, but no payment was made by the appellant to respondent No. 3.

5. Thus, when after availing sufficient opportunities, the appellant failed to comply with the order of the District Consumer Forum, vide order dated 12.7.2010 (Annexure P-4), the appellant was ordered to be sentenced, as indicated above, u/s 27 of the Act.

6. The said order was upheld in appeal by the State Commission vide order dated 28.7.2011 (Annexure P-6), which was also challenged by the appellant by filing Civil Writ Petition No. 16825 of 2011. Vide order dated 23.11.2011, the writ petition has also been dismissed by the learned Single Judge, which has been challenged in this Letters Patent Appeal.

7. During the course of hearing, learned counsel for the appellant argued that against the initial order dated 1.1.2009 (Annexure P-2), respondent No. 3 was having the remedy of execution u/s 25 of the Act, and without availing the said remedy, he has filed the application u/s 27 of the Act for imposing penalty on the appellant and other Directors of the company, which according to the learned counsel was an absolute abuse of the process of additional remedy. Learned counsel further argued that the appellant is one of the Directors of the company and in the application u/s 27 of the Act, no averment pertaining to his role or handling the affairs of the

company has been made, therefore, without those specific averments, the District Forum has committed grave illegality while passing the order of sentence against the appellant. Learned counsel submits that the order of sentence could have been passed only against the person, who at the time of the commission of the offence was in-charge of the company and responsible to it for the conduct of its business.

8. We do not find any force in the submissions made by learned counsel for the appellant.

9. Undisputedly, in this case, on a complaint filed by respondent No. 3 against the company as well as its four Directors, including the appellant, vide order dated 1.1.2009 passed by the District Forum, all the Directors, including the appellant, were directed to refund to respondent No. 3 a sum of Rs. 6.50 lacs along with interest @ 9% per annum from the date of respective deposits till realisation, along with a compensation of Rs 10,000/-. Admittedly, the said order has become final. It has not been disputed by the appellant that in spite of having sufficient time, he did not make the payment to respondent No. 3, in compliance with the aforesaid order dated 1.1.2009. When the said order was not complied with respondent No. 3 filed application u/s 27 of the Act, in which the appellant appeared and sought time to make payment, but in spite of having sufficient opportunities, he did not make any payment. Ultimately, the order of sentence was passed by the District Form on 12.7.2010, which was upheld in appeal by the State Commissioner as well as by this Court in the writ petition, filed by the appellant.

10. The remedies under Sections 25 and 27 of the Act are independent remedies. It is open to a consumer to proceed either u/s 25 or u/s 27 of the Act, or simultaneously under both the provisions. If the order of making payment passed by the District Forum, or the State Commission or the National Commission, is not complied with, the District Forum, the State Commission or the National Commission, as the case may be, is not debarred from proceeding u/s 25 or Section 27 of the Act or simultaneously under both the provisions. Section 27 of the Act clearly provides that where a trader or a person against whom a complaint is made fails to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person shall be punishable with imprisonment for a term prescribed. This provision does not provide that for non-compliance of the order made by the District Forum, penalty can be imposed only after availing the remedy of execution by the consumer, as provided u/s 25 of the Act. Therefore, there is no force in the contention of learned counsel for the appellant that by entertaining the application u/s 27 of the Act filed by respondent No. 3, without availing the remedy u/s 25 of the Act, the District Forum has committed an illegality.

11. As far as the second contention is concerned, again there is no requirement that for awarding sentence u/s 27 of the Act, it has to be proved that the Director of a company, who is to be punished, has vicarious liability of the company. The order of

sentence under this provision can be passed against any person, against whom on a complaint filed by a consumer, an order is made by the District Forum or the State Commission or the National Commission. So, the only requirement is that if an order is passed against a person, and such person has not complied with that order, then he can be punished u/s 27 of the Act. In the instant case, the order was also against the appellant and he was given sufficient opportunities to comply with the said order passed by the District Forum, but he had failed to comply with the same. Before the learned Single Judge also, an opportunity was given to the appellant to comply with the initial order dated 1.1.2009 passed by the District Forum, but he was not inclined to comply with the said order. Even in this appeal, an offer was given to learned counsel for the appellant that if the appellant complies with the aforesaid initial order within two weeks, the court can consider his prayer for setting aside the order of sentence, but the learned counsel, after having instructions, does not accept the said offer, saying that if the appellant pays the said amount, then it will amount to acknowledgment, which will effect many other complaints pending against him.

In view of the above, we do not find any illegality in the order passed by the learned Single Judge.

No merit.

Dismissed.