

STATE CONSUMER DISPUTES REDRESSAL COMMISSION

UTTAR PRADESH LUCKNOW

APPEAL NO. 2321 OF 2008

(Against the judgment/order dated 11.08.2008 in complaint case no. 80/2006 of the District Consumer Forum, Gorakhpur )

Smt Kanta Goyal

Appellant

Versus

Vikas Kumar Agarwal and another

Respondents

BEFORE:

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT  
HON'BLE MR. ROOP SINGH, MEMBER

For the Appellant : Sri S.P. Singh

For the Respondent : None is present

DATED: 17.12.2008

JUDGMENT

MR. JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

Heard learned counsel for the appellant and perused the impugned order and other orders on record.

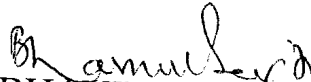
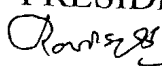
The District Consumer Forum, Gorakhpur vide its judgment of June 14, 2006 directed M/s D.V. Fertilizer Agency through its proprietor Sri Vikas Kumar Agarwal to repay Rs.2,00,000/- to the appellant/complainant Smt. Kanta Goyal . The said amount was deposited with the aforesaid firm by way of account payee Cheque. In the execution proceedings recovery warrant was sought to be issued but the appellant's request had been turned down on the ground that Sri Vikas Kumar Agarwal is not the proprietor of M/s D.V. Fertilizer Agency. It does not seem to be a correct approach since recovery of the aforesaid money was requested to be made by way of attachment of the property of M/s D.V. Fertilizer Agency. A warrant of attachment and sale of the property of M/s D.V. Fertilizer Agency must have been issued. In the alternative the proprietors of M/s D.V. Fertilizer Agency whosoever, were they, must have been convicted under Section 27 of the Consumer

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Protection Act. The appellant with her bonafide named Sri Vikas Kumar Agarwal as the co-proprietor of the firm but if he is not so, recovery proceedings cannot be dropped as such proceedings should have been initiated against the real proprietor namely Sri Radha Krishna Agarwal and if there are more proprietors, against all of them. Sri Radha Krishna Agarwal father of Sri Vikas Kumar Agarwal was also a party to the complaint and therefore, recovery proceedings or proceedings under Section 27 of the Act could very well be initiated against him. If Sri Vikas Kumar Agarwal is not the proprietor of the firm, it would be meaningless to proceed against him as he cannot be held accountable for payment of the money in question even by way of attachment of his private properties.

The District Forum below appears to have erred by not issuing recovery warrant of attachment of the properties of the firm.

Therefore, the impugned order is hereby quashed with a direction to the District Consumer Forum, Gorakhpur to proceed against the firm and its proprietor(s).

  
(JUSTICE BHANWAR SINGH)  
PRESIDENT  
  
(ROOP SINGH)  
MEMBER