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STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW
REVISION NO. 41 OF 2003

Ghaziabad Development Authority through its Secretary

Revisionist/Opposite party

Versus

Sripal Dixit son of Sri Chandra Bhan Dixit, r/o 17 QA -87 Ayud Niramani ,
Muradnagar, District Ghaziabad

Respondent/Complainant

BEFORE

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT

HON'BLE MR. R.C. CHAUDHARY, MEMBER

For the Revisionist : Sri Sarvesh Kumar Sharma, Advocate
For the Respondent : None is present

DATED: 16.07.2013

JUDGMENT

MR.JUSTICE VIRENDRA SINGH, PRESIDENT

This revision has been preferred against the order dated 13.02.2003 passed by the District Consumer Forum, Ghaziabad, in complaint case no. 705 of 1999 convicting Sri U.N. Thakur, the Secretary of Ghaziabad Development Authority, hereinafter called GDA.

We have heard Sri Sarvesh Kumar Sharma , learned counsel for the revisionist.

No one appeared on behalf of the respondent.

A perusal of the impugned order shows that an order dated 14.09.2000 was passed against the GDA stating therein that the GDA shall pay to the complainant the entire amount deposited by the complainant alongwith 12% p.a. interest within two months thereby adjusting the amount if any paid by the GDA earlier to the complainant. The District Consumer Forum as per order dated 13.02.2003, the impugned order, found that till date the earlier

order of the District Consumer Forum was not complied with and the amount of Rs.1,76,849/- was due against the opposite party i.e. GDA and the GDA since could not even apprise the reason of non payment to the complainant therefore a notice to show cause was sent to the GDA by the District Consumer Forum as per provisions under Section 27 of the Consumer Protection Act, here in after called CP Act but no one appeared before the District Consumer Forum despite the notice sent three times to the GDA. In these circumstances the District Consumer Forum arrived at this conclusion that due to failure of compliance of the order of the District Consumer Forum by Sri U.N. Thakur, the Secretary , GDA, is guilty for non compliance of the order of the District Consumer Forum, therefore, the District Consumer Forum convicted him for simple imprisonment of six months and the warrant of arrest was sent by the District Consumer Forum to the Police Station concerned through S.S.P. Ghaziabad for compliance upto 23.02.2003.

Feeling aggrieved by the impugned order as aforesaid, the GDA came before this Commission by way of this revision. It is contended on behalf of the revisionist that the revisionist has deposited a cheque for a sum of Rs.71,792/- towards interest @ 12% p.a. before the District Consumer Forum in compliance of the order dated 14.09.2000 alongwith objections dated 18.10.2001 and prayed that the execution proceedings may be consigned. The learned District Consumer Forum ignored the objections and despite compliance made by the revisionist, the impugned order was passed on conjectures and surmises. Apart from it Sri Sarvesh Kumar Sharma, learned counsel for the revisionist submitted that the impugned order of conviction is not an order very much perfect in the eyes of law as well as on facts where in the legal provisions pertaining to conviction and sentence have not been complied with by the District Consumer Forum as are provided in the Consumer Protection Act as well as in Criminal Procedure Code applicable in such type of proceedings.

In the light of the contentions of the learned counsel for the

revisionist, we have gone through the legal provisions in this regard.

The Consumer Protection Act, 1986 as per provisions under Section 27 provides that where a person against whom a complaint is made fails or omits to comply with any order made by the Forum shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both.

As per Sub Section 2 of Section 27 of the Consumer Protection Act the Forum shall have the power of a Judicial Magistrate of Ist Class for the trial of offenses under Consumer Protection Act and the Forum shall be deemed to be a Judicial Magistrate of Ist Class for the purpose of Code of Criminal Procedure 1973.

As per provision of Sub Clause 3 of the aforesaid Section 27 of the Consumer Protection Act, all offenses under the Consumer Protection Act may be tried summarily by the Forum.

The summary of the legal provisions as aforesaid shows that District Consumer Forum having the power of Judicial Magistrate Ist class has to adopt the procedure of summary trial provided in Criminal Procedure Code here in after called Cr. P. C. for trial of offence under Consumer Protection Act i.e. offence under section 27 of CP Act. Here in this case before us we find that the District Consumer Forum Ghaziabad thereby passing the impugned order has not complied with the provisions of Criminal Procedure Code provided for summary trial. The impugned order is liable to be set aside merely on this ground too but before setting aside the impugned order, as we have observed in so many cases that the District Consumer Forums have not been adopting the proper procedure for passing conviction orders, we do find it expedient to lay down the law on this subject to enlighten the Consumer Foras for their guidance to pass order in such type of cases in future.

For the offence to be tried summarily, there is a procedure for

summary trials provided in sec. 262 Cr. P. C. It Provides as follows:-

Section 262. **Procedure for summary trials** (1) In trials under this Chapter , the procedure specified in this Code for the trial of summons case shall be followed except as hereinafter mentioned. (2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter."

As per provisions sub clause (1) above, apparently, in summary trials, the procedure specified in Cr. P. C. for the trials of summons-case shall be followed which is provided as follows:-

Section 251. **Substance of acquisition to be stated-** When in a summon-case the accused appears or is brought before the Magistrate , the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.

Section 252. **Conviction on plea of guilty** - If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion , convict him thereon.

Section 254. **Procedure when not convicted** - (1) If the Magistrate does not convict the accused under Section 252 or Section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution , and also to hear the accused and take all such evidence as he produces in his defence. (2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing. (3) The Magistrate may , before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in the court.

Section 255. **Acquittal or conviction** - (1) If the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion cause to be produced, finds the accused not guilty, he shall record an order of acquittal. (2) Where the Magistrate does not proceed in accordance with the provisions of Section 325 or section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law. (3) A Magistrate may, under section 252 or section 255, convict the accused of any offence triable under this Chapter, which form the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby.

Apart from aforesaid provisions sec. 190 Cr.p.c. is also relevant to be perused, which is as follows:-

Section 190. **Cognizance of offences by Magistrate** - (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub section (2) may take cognizance of any offence

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub section (1) of such offences as are within his competence to inquire into or try.

To summarize above provisions of law, we are of this view that consumer Fora first of all have to take cognizance of the offence against the person who have committed the offence under section 27 of CP Act, as per

provisions of sec. 190 Cr. P. C. being empowered as Judicial Magistrate under sec. 27 (2) CP Act. Thereafter the presence of that person who may be called the accused shall be procured before the consumer Fora thereby invoking the provisions of Chapter VI, Cr. P. C. pertaining to processes to compel appearance if required.

When the accused appears or is brought before the consumer fora, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make. If he pleads guilty the consumer fora may convict him. If the person/accused does not plead guilty and has any defence to make, he shall be heard in respect to the offence alleged to have been committed by him in reference to the facts and circumstances under sec. 27 of CP Act. If after affording the opportunity for hearing to the accused and considering the entire facts and circumstances of the case, the consumer fora finds the accused not guilty, the accused shall be acquitted and if the accused is found guilty, the consumer fora shall pass sentence upon the accused as per sec. 27 CP Act.

In the light of the aforesaid discussion we have found in this case before us that the District Consumer Forum Ghaziabad has not complied with the provisions of sec 27 Consumer Protection Act correctly nor the provisions of Code of Criminal Procedure have been applied as are provided to be applied to convict any defaulter under the Consumer Protection Act committing offense wherein all the offences under the Consumer Protection Act have to be tried summarily by the District Consumer Forum.

Therefore, this revision deserves to be allowed and the impugned order of conviction of Sri US Thakur, the secretary of GDA is liable to be set aside. In the light of aforesaid discussion we propose to circulate this order/judgment to all the District Consumer Forums in U.P. for strict compliance in future. Registrar of this commission is directed to comply the

aforesaid directions.

ORDER

The revision is hereby allowed and the impugned order dated 13.02.2003 is set aside.

(JUSTICE VIRENDRA SINGH)
PRESIDENT

(R.C.CHAUDHARY)
MEMBER

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