K. SAGAR, M.D., KIRAN CHIT FUND MUSHEERABAD A

v.

A. BAL REDDY & ANR.

(Civil Appeal No. 1498 of 2005)

JUNE 11, 2008

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[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

Consumer Protection Act, 1986:

Jurisdiction – Dispute between Chit Fund and its prized subscriber – Jurisdiction of Consumer Forums – Held: The issue of jurisdiction of Consumer Forum in entertaining disputes in question was raised before the State Consumer Commission but it was not considered by it – Revision Petition dismissed by National Consumer Commission even without referring its earlier decision on the issue – Hence, the matter remitted to State Consumer Commission to decide the issue relating to jurisdiction.

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The question which arose for determination before this Court in this appeal was as to whether the Consumer Forums have jurisdiction to entertain dispute between the Chit Fund and its subscriber/subscribers.

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Appellant-Chit Fund contended that the Consumer Forums have no jurisdiction to entertain the dispute between a chit fund and one of its prized subscribers or between the prized subscribers.

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Respondents-subscribers submitted that this issue was not specifically raised before the Forums below and therefore should not be entertained.

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Partly allowing the appeal, the Court

HELD: 1. It is not correct as contended by the respondent No. 1, the subscriber, that the question of jurisdiction was not raised before the Consumer Forums. In

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fact the State Commission observed that since the respondents before it i.e. functionaries of the chit fund were not consumers, the issue regarding jurisdiction cannot be adjudicated in the appeal before it. The National Commission unfortunately does not appear to have referred to its earlier decision while dismissing the revision petition. In the aforesaid background, this Court is of the view that the issue relating to jurisdiction has to be decided by the forums first. Hence, the impugned order of the National Commission confirming the order passed by the State Commission is set aside and the matter is remitted to the State Commission to consider the question of jurisdiction. (Paras – 7, 8 and 9) [1132-D,E,F & G]

2. It is clarified that this Court has not expressed any opinion on the merits of the case. (Para – 9) [1133-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1498 of 2005

From the final Order dated 12.4.2004 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 1227 of 2001

L. Roshmani (for M/s. P.S.N. & Co.) for the Appellant.

A. Bal Reddy Respondent-in Person.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission, New Delhi (in short the 'National Commission'). Before National Commission challenge was to the order passed by the Andhra Pradesh State Consumer Disputes Redressal Commission, Hydrabad (in short the 'State Commission'). By its order dated 19.6.2001 the State Commission allowed the appeal filed by the respondent No.1 (hereinafter referred to as the 'Complainant'). The District Forum II Hyderabad had dismissed the complaint filed by the complainant.

2. Factual scenario giving rise to the revision before the National Commission is as follows:

The complainant joined as a member in Chit Fund Co. of which opposite party No. 1 is the Managing Director and opposite party No. 2 is the manager. The present appellant was running a chit for Rs.1 lakh with monthly payment of Rs.5,000/- for 20 months in the year 1995. He was a prize bidder subscriber. He was paid Rs.60,000/- by cheque. The complainant defaulted after paying for 11 months from January, 1996. When the present appellant issued a notice to him demanding an amount of Rs.79,300/-, the complainant replied that out of the chit amount of Rs.70,000/-, the present appellant paid only Rs.60,000/- and the balance of Rs.10,000/- was payable to him with interest and that since he paid Rs.54,700/- already, he is ready to pay the balance of Rs.45,300/- in instalments. The complainant approached the District Forum for a direction to the opposite parties to pay Rs.14,000/- to him.

3. Though the appellant i.e. Kiran Chit Fund accepted membership of the complainant to the Chit Fund, it took the stand that the prize amount has been paid to M/s Kiwanis Finance Pvt. Ltd. as per the authorization letter of the complainant an no due certificate was also given to the complainant. There was exchange of affidavits. The District Commission proceeded on the basis that admittedly the commission was a defaulting prized subscriber. It also held that there was no scope of taking any action on the complaint. Accordingly, the complaint was dismissed. In appeal, the State Commission took the view that a sum of Rs.45,300/- was to be paid to the complainant. It took the view that whether the chit fund was a consumer cannot be adjudicated in the appeal. Accordingly the appeal filed by the complainant was allowed. The National Commission was of the view that in the cheque somebody had added some figures but who did the mischief was not known. However since somebody has committed the mischief, the revision petitioner before it cannot be granted any benefit. The revision petition was accordingly dismissed without cost.

A 4. In support of the appeal, learned counsel for the appellant submitted that the Consumer Forums have no jurisdiction to entertain the dispute between a chit fund and one of its prized subscribers or between the prized subscribers.

B 5. Strong reliance was placed on a decision of the National Commission in M/s Dwarkadish Chits Pvt. Ltd. and Anr. vs. Sanju Ram Aggarwal in First Appeal No. 590 of 1992 decided on 13th January, 1995 reported in (1986-96) National Commission and SC on Consumer Cases 2469(NS).

C 6. Learned counsel for the respondent No. 1 who appeared in person took the stand that this issue was no specifically raised before the forums below and therefore should not be entertained.

D 7. We find that M/s Dwarkadish Chits' case (supra) dealt with the issue of jurisdiction under the Consumer Protection Act, 1986 (in short the 'Act') as to whether the Consumer Forums established under the Act have jurisdiction to entertain dispute between the chit fund and one of its prized subscriber or between the subscribers. It is not correct as contented by the re-
E spondent No. 1 that the question of jurisdiction was not raised. In fact the State Commissioner observed that since the respondents before it i.e. functionaries of the chit fund were not consumers, the issue regarding jurisdiction cannot be adjudicated in the appeal before it. The National Commissioner unfortunately
F does not appear to have referred to its earlier decision while dismissing the revision petition.

8. In the aforesaid background, we are of the view that the issue relating to jurisdiction has to be decided by the forums first.

G 9. We therefore, set aside the impugned order of the National Commission confirming the order passed by the State Commission, and remit the matter to the State Commission to consider the question of jurisdiction. To avoid unnecessary delay let parties appear before the State Commission without further
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notice on 7th of July, 2008 so that the date of hearing can be fixed. We make it clear that we have not expressed any opinion on the merits of the case. The parties are permitted to produce certified copy of the judgment so that necessary follow up action can be taken. A

10. The appeal is allowed to the aforesaid extent with no order as to costs. B

S.K.S. Appeal partly allowed.