

H. K. SINGLA

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v.

AVTAR SINGH SAINI & ORS.

(Civil Appeal No. 11969 of 2018)

DECEMBER 14, 2018

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[UDAY UMESH LALIT AND R. SUBHASH REDDY, JJ.]

Consumer Protection Act, 1986: s. 27 – Penalties – On facts, allegation of the complainant that he had deposited the money with the Employees Co-operative USE Thrift and Credit Society and Society did not repay the amount with interest, as assured – Application u/s. 27 by the complainant against the appellant-Secretary of the society – District Forum passed an order of imprisonment against the appellant – In appeal, the State Commission passed an interim order staying the operation of the order of the District Forum, subject to the appellant depositing the entire amount – Said order upheld by the National Commission – On appeal, held: No order was passed against the appellant by the District Forum in its individual capacity – Appellant was shown as Secretary of the Society during the relevant period – Prima facie, for the default committed by the society, and in absence of any personal liability imposed on the appellant, no order for imprisonment u/s. 27 of the Act could be ordered against the appellant – On filing these appeals, interim order granting stay of arrest was passed and the said order continued from time to time – Thus, the order of the District Forum to the extent of imprisonment of the appellant, during the pendency of the appeal preferred by the society before the State Commission, is suspended – State Commission to consider the plea whether the appellant can be imprisoned or not in absence of any order by the District Forum imposing personal liability on the appellant.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11969 of 2018.

From the Judgment and Order dated 08.11.2012 of the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No. 657 of 2012.

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With

Civil Appeal Nos. 11970-11972, 11973-11974 of 2018.

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A Manoj Swarup, Ms. Lalita Kohli, Abhishek Swarup, Mahendra
for M/s. Manoj Swarup & Co., Ms. Madhusmita Bora, Pawan Kishore
Singh Advs. for the appearing parties.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

B 1. These appeals are filed by the appellants, aggrieved by the
order dated 08.11.2012 passed in First Appeal Nos.652/12; 653/12; 654-
656/12; 657/12 by the National Consumer Disputes Redressal
Commission, New Delhi. For the sake convenience and brevity, the
facts of the appeal preferred against Appeal No.657/12 are being referred
C to. The said appeal is preferred against the order passed by the State
Commission by way of interim order pending the appeal. These appeals
were filed in the year 2013. At first instance, this Court has passed
orders granting stay of arrest of the appellant herein on 22.03.2013 and
the said order continued from time to time.

D 2. The appellant herein was Secretary of Chandigarh State Bank
of Patiala Employees Co-operative USE Thrift & Credit Society. We
are informed that the said society is in liquidation and a liquidator is
appointed. The first respondent herein filed a complaint before the District
Forum and the society was directed to pay the maturity amount
along with the interest @ 10% per annum in addition to the award of
E Rs.10,000/- by way of compensation and Rs.5000/- by way of costs.
Aggrieved by the order of the District Forum, it appears that the society
has preferred appeal before the State Commission and the order of the
District Forum was upheld and appeal was dismissed by imposing the
costs of Rs.5000/- and the said order of the appellate forum has become
F final.

G 3. Alleging that the society has not paid the maturity amount along
with the interest as ordered by the District Forum, the first respondent
herein has approached the District Forum by way of application under
Section 27 of the Consumer Protection Act, 1986. The District Forum
sentenced the appellant herein to two years' simple imprisonment and
imposed a fine of Rs.5000/-. It was further ordered that in case of
failure to deposit the fine, appellant has to undergo further simple
imprisonment for a period of three months.

H 4. Aggrieved by the order of the District Forum under Section 27
of the Consumer Protection Act, 1986, the appellant herein has preferred
appeal before the State Commission and the State Commission has passed

interim orders, subject to condition of depositing the entire amount as ordered by the District Forum within a period of eight weeks from the date of passing of the order. A

5. Aggrieved by the order of the State Commission, at first instance the society has filed a Revision Petition before the National Commission and the said Revision Petition was subsequently withdrawn by seeking liberty to file the appeal. After withdrawal of the Revision Petition, the appeals were filed and the said appeals were dismissed by common order dated 08.11.2012. The operative portion of the order passed by the National Commission reads as under: B

“Appellant had shown his inability to pay the decretal amount. Under the circumstances, the District Forum convicted the appellant and sentenced him to Simple Imprisonment of two years. Appellant filed the appeal before the State Commission. State Commission by an interim order stayed operation of the order of the District Forum subject to deposit of the entire decretal amount. We do not find any infirmity in the interim order passed by the State Commission. The decree passed against the appellant attained finality. Under the circumstances, District Forum under Section 27 of Consumer Protection Act, 1986 had no other option other than to convict the appellant. The State Commission has rightly stayed the operation of the impugned order subject to deposit of the entire decretal amount. Dismissed.” C D E

6. We have heard the learned counsels for the appellant and the first respondent and perused the counter affidavit and rejoinder and other material placed on record.

7. Section 27 of the Consumer Protection Act, 1986 empowers the District Forum, State Commission, National Commission to impose the penalties. It empowers the authorities to pass an order to punish a person with imprisonment for a term which shall not be less than one month but which may extend to three years or with a fine, in case a trader or a person against whom the complaint is made, fails or omits to comply with any order passed by the authorities. F G

8. In this case, it is to be noticed that it is the allegation of the respondent/complainant, that he had deposited the money with the society and society had not repaid the amount with interest, as assured. The application under Section 27 is filed by showing the appellant as Secretary of the society. When the order of imprisonment was passed by the District H

A Forum, the appellant herein has filed appeal before the State Commission. It appears from the record that when he sought interim relief before the State Commission, State Commission has passed the interim order granting stay, subject to condition of depositing the entire amount. In view of the condition imposed, the appellant approached the National Commission by way of appeal which is dismissed by impugned order.

B 9. In this appeal, it is to be noticed that there is no order passed against the appellant herein by the District Forum in its individual capacity. The appellant was shown as Secretary of the Society during the relevant period. For the default committed by the society, and in absence of any personal liability imposed on the appellant, the appellant is to be imprisoned under Section 27 of the Act is doubtful. In view of the pendency of the appeal filed before the State Commission, we do not wish to record any definite finding on the same. Prima facie, we are of the view that for the default committed by the society no order for imprisonment can be ordered against the appellant herein. On filing these appeals in the year 2013, this Court has passed interim order granting stay of arrest and the said order continued from time to time.

C 10. In these circumstances, we deem it appropriate to dispose of these appeals by suspending the order of the District Forum to the extent of imprisonment of the appellant herein, during the pendency of the appeal preferred by the society before the State Commission. It is open to the State Commission to consider the plea whether the appellant can be imprisoned or not in absence of any order by the District Forum imposing personal liability on the appellant. As appeals are of 2012, we request the State Commission to dispose of the appeals as expeditiously as possible.

D 11. As we are informed that society is in liquidation and a liquidator is appointed, we keep it open to the first respondent to take necessary steps in accordance with law to recover the amount, which is ordered to be paid by the District Forum.

E 12. All these appeals are disposed of with the directions as indicated above, with no order as to costs.

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