



2024 INSC 276

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024

(ARISING OUT OF SLP (C.) NO.11757 OF 2022)

ANNAPURNA B. UPPIN & ORS. ...APPELLANTS

VERSUS

MALSIDDAPPA & ANR. ...RESPONDENTS

J U D G M E N T

VIKRAM NATH, J.

Leave granted.

2. This appeal assails the correctness of the order of the National Consumer Disputes Redressal Commission¹ dated 01.04.2022 passed in Revision Petition No.161 of 2022, titled Smt. Annapurna B. Uppin and three others vs. Sh. Malsiddappa and another, whereby the revision was dismissed and the order passed by the State Consumer Disputes Redressal Commission²

¹ NCDRC

² SCDRC

and the District Consumer Disputes Redressal Forum³ allowing the complaint of respondent No.1 and directing the Opposite Parties⁴ No.1 to 5 therein to be jointly and severally liable to pay Rs.5 lakhs along with simple interest @ 18% p.a. from 21.05.2002 to 20.05.2012 with further interest @ 6% p.a. from 21.05.2012 onwards till realisation. Further, an amount of Rs.5,000/- was awarded towards compensation for mental agony and Rs.2,000/- towards costs to the respondent (the complainant).

3. Brief facts giving rise to the present appeal are summarised hereunder:

3.1. The respondent No.1 filed a complaint before the DCDRF, Dharwad, Karnataka, alleging that he had invested Rs. 5 Lakhs in the partnership firm M/s Annapurneshwari Cotton Co., Amargol, Hubli⁵ on 21.05.2002 which was repayable after 120 months with interest @ 18% per annum. The respondent

³ DCDRF

⁴ OP

⁵ The Firm

No.1 sought for premature payment but it was denied on the ground that the same would be paid upon maturity. The respondent No.1 waited for the maturity and he again claimed but still the payment was not made compelling him to issue a notice on 12.02.2014 calling upon the opposite parties to make the payment. However, as the payment was not made, a complaint was filed before the DCDRF alleging deficiency in service.

3.2. Before the DCDRF, the respondent No.2 herein was arrayed as OP No.1 as partner of the firm and the appellants herein were arrayed as respondent Nos.2 to 5 being the legal heirs of one Basavaraj Uppin (since deceased). The appellant No.1 is the widow of said Basavaraj Uppin whereas appellant Nos. 2 to 4 are his sons. Before the DCDRF, separate written versions were filed by OP No.1 and OP Nos.2 to 5. In his written statement OP No.1 admitted that he was partner in the firm along with OP Nos.2 to 5

(being the successors and legal representatives of the deceased Managing Partner Basavaraj Uppin) and the liability of OP No.1 was only to the extent of 10 percent. He also admitted that the firm was accepting finance from individuals and parties on interest basis in order to generate finance for the firm. He also admitted that the complainant had invested an amount of Rs.5 lakhs and the said amount had not been paid. He also admitted that the Managing Partner Basavaraj Uppin, husband of OP No.2 and father of OP Nos.3 to 5 had died on 13.03.2003 and after his death, the legal heirs being OP Nos. 2 to 5 had taken over the business of the firm and were dealing with the same by taking possession of all books of accounts, financial receipts and payments.

3.3. He further stated that though there was no liability of OP No.1, he had been unnecessarily impleaded in order to get unlawful gains by the complainant. Thus, in

effect, he admitted his liability of one-tenth of the share.

- 3.4. On the other hand, OP Nos. 2 to 5 contended that the complainant was not a 'consumer' and he had filed the instant complaint with wrong intention of recovering the amount illegally. They also contended that the complaint was not maintainable in view of section 63 of the Partnership Act, 1932, as there were only two partners and upon death of one of the partners, the firm came to be dissolved and as it was not in existence, the legal heirs of the deceased partner could not be impleaded as opposite parties for recovery of money from the firm. It was also stated that the complainant was one of the partners of the firm. They also denied the deposit of Rs.5 lakhs and that the receipt filed by the complainant was a concocted document. It was also submitted that they had not succeeded and inherited any assets or liabilities of the firm as such they had no liability to pay the same. Further that there was no 'deficiency in service' and no cause

of action arose for filing of complaint before the DCDRF, the complaint thus deserves to be rejected.

3.5. The DCDRF, vide order dated 16.05.2014, allowed the complaint directing OP Nos.1 to 5 therein to pay the sum of Rs.5 lakhs with 18% simple interest per annum from 21.05.2002 to 20.05.2012 and thereafter with simple interest @ 9% per annum from 21.05.2012 till realization, along with compensation of Rs.2,000/- and costs of Rs.1,000/-.

3.6. Aggrieved, present appellant Nos.1 to 4 filed an appeal before the SCDRC, Bangalore, registered as Appeal No.952 of 2014. The said appeal was allowed by order dated 12.03.2014 and the matter was remanded. The order passed by DCDRF was set aside on the ground of denial of opportunity to the opposite parties and the matter was remitted back for a fresh decision.

3.7. The DCDRF, by order dated 29.04.2016, again allowed the complaint with the same terms as its previous order. The appellants herein again preferred an appeal before the SCDRC, Bangalore registered as Appeal no.1707 of 2016 which again came to be allowed vide order dated 22.07.2019, and the matter was again remanded to the DCDRF to reconsider the issue with regard to maintainability of the complaint.

3.8. The DCDRF, by order dated 13.01.2021, again allowed the complaint awarding relief as stated in the opening paragraph. The appeal preferred by the appellants herein before the SCDRC, being Appeal No.207 of 2021, came to be dismissed by order dated 23.09.2021. Aggrieved by the same, the appellants herein preferred a Revision Petition before the NCDRC which came to be dismissed by the impugned order giving rise to the present appeal.

4. Learned counsel for the appellants made the following submissions.

4.1. It is the specific case of the appellants that they were never a part of the partnership firm either as partners or in any other capacity. By an unregistered deed of partnership dated 16.02.1994, the firm was constituted which included the complainant (respondent No.1), husband and father of the appellants, and three others.

4.2. Later on, by another unregistered deed of partnership, the firm was re-constituted wherein three partners have resigned from the firm which included the complainant - respondent No.1. The surviving partners were the husband of appellant No.1 and father of appellant Nos.2 to 4 and the respondent No.2 herein.

4.3. Subsequently, the registered partnership deed came into force on 27.05.1996, which included all the five partners who were part of the first unregistered partnership deed dated 16.02.1994. It included the complainant-respondent as partner No.2.

Thus, the complainant-respondent No.1 was a partner in the firm as per the registered deed dated 27.05.1996.

- 4.4. All the three partnership deeds, the two unregistered ones and third the registered one are filed as Annexures P1, P2 and P3 respectively. The fact as stated by the appellants with respect to the complainant-respondent No.1 being a partner to the firm is clearly borne out from the reading of the said documents.
- 4.5. According to the appellants, once the complainant himself was a partner as per the registered partnership deed dated 27.05.1996, he could not have maintained the complaint for settling the dispute with respect to the partnership firm by way of a complaint under the Consumer Protection Act, 1986⁶.
- 4.6. It was also submitted that the dispute, being purely commercial in nature, appropriate remedy, if any, available to the complainant-

⁶ The 1986 Act

respondent No.1 was before the Civil Court and not by way of alleging 'deficiency in service' and filing a complaint under the 1986 Act.

4.7. It was next submitted that the legal heirs of the deceased partner of a registered firm could not be impleaded as opposite parties in a complaint for recovery of any investment or for any liability of the firm of which their husband/father was a partner.

4.8. It is submitted that not only the DCDRF, the SCDRC but also the NCDRC committed serious error of law in entertaining the complaint and allowing the same.

5. On the other hand, learned counsel for the respondent No.1, the contesting respondent, made the following submissions:

5.1. That the present appeal is not maintainable in view of the recent judgment of this Court in the case of **Universal Sompo General Insurance Company Ltd. vs. Suresh Chand Jain and Another**⁷ wherein this

⁷ (2023) SCC Online SC 877

Court has held that the remedy of Article 226 of the Constitution before the High Court would be available to an aggrieved party where the NCDRC has decided an appeal or a revision but no such remedy would be available where it was an original complaint before the NCDRC. The present petition should be dismissed on the ground of alternative remedy.

5.2. It was next submitted that the contention of the appellants with respect to the registered partnership deed dated 27.05.1996 would not be of any help to the appellants in as much as there was an intervening unregistered partnership of 13.09.1994 and therefore, no reliance can be placed on the registered partnership deed.

5.3. It was next submitted that despite legal notice, the appellants having refused to return the invested amount, clearly amounted to deficiency in service and therefore, the complaint was maintainable. It was also the case of respondent No.1 that the appellants herein inherited the estate of

the Managing Partner Basavaraj Uppin, and hence cannot escape the liability of making the payment due to the respondent No.1.

6. We need not go into other details of the arguments raised by the parties. In our considered opinion, once there was a registered partnership deed dated 27.05.1996, there is no further document placed on record by the complainant-respondent No.1 regarding dissolution of the said registered deed which continued till the time when the investment was made by the complainant respondent No.1 on 21.05.2002 and hence the complainant respondent No.1 would be deemed to be partner of the firm. It is only upon the death of the Managing Partner Basavaraj Uppin in March 2003, that the status of the firm would cease to exist or would stand dissolved.
7. Secondly, the investment made by the respondent No.1 complainant was for deriving benefit by getting an interest on the same at the rate of 18 % per annum, therefore, it would be an investment for profit/gain. It was a commercial transaction and therefore also

would be outside the purview of the 1986 Act. Commercial disputes cannot be decided in summary proceeding under the 1986 Act but the appropriate remedy for recovery of the said amount, if any, admissible to the complainant-respondent No.1, would be before the Civil Court. The complaint was thus not maintainable.

8. Thirdly, there was no evidence on record to show that a fresh partnership deed was executed reconstituting the firm in which the present appellants had become partners so as to take upon themselves the assets and liabilities of the firm. The law is well settled that legal heirs of a deceased partner do not become liable for any liability of the firm upon the death of the partner.
9. The arguments of the respondents that the appellants had alternative remedy of approaching the High Court under Article 226 of the Constitution is of no avail in as much as this Court in **Universal Sompo General Insurance** (supra) has not issued any directions for the pending matters being either dismissed on this

ground or being transferred to the High Court. It would apply prospectively for fresh matters coming up before this Court after the said judgment.

10. For all the reasons recorded above, we are of the view that the District Forum, the State and the National Commissions fell in error in allowing the complaint and upholding it in appeal and revision. The appeal is accordingly allowed. The impugned orders are set aside and the complaint is dismissed.
11. We however, leave it open for the respondent No.1 complainant to avail such other remedy as may be available under law before any Competent Forum.

.....J
(VIKRAM NATH)

.....J
(SATISH CHANDRA SHARMA)

NEW DELHI
APRIL 5, 2024