

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).22470/2007

(From the judgement and order dated 01/10/2007 in FA No.512/2007 of The NATIONAL CONSUMERS DISPUTES REDRESSAL COMMISSION, NEW DELHI)

SIRIPURAPU SHANKAR Petitioner(s)

VERSUS

CONSUMER INT. PROT. RES. ASSCN. & ORS. Respondent(s)

(With appln(s) for permission to file additional documents and with prayer for interim relief and office report)

WITH SLP(C) NO. 22997 of 2007

(With prayer for interim relief and office report)

SLP(C) NO. 24575 of 2007

(With appln.(s) for exemption from filing O.T. and impleadment and with prayer for interim relief and office report)

SLP(C) NO. 24684 of 2007

(With appln.(s) for exemption from filing O.T. and impleadment and with prayer for interim relief and office report)

Date: 19/02/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE H.L. GOKHALE
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Petitioner(s) Mr.Pallav Shishodia, Sr.Adv.
In SLP(C)22470/07 Mr.K.Subba Rao, Adv.
& 22997/07 Mr. Aniruddha P. Mayee, Adv.

In SLP(C) 24575/07 Mr.P.S.Narsimha, Sr.Adv.
& 24684/07 & Mr.K.Maruthi Rao, Adv.
for RR In SLP(C) Mrs.Anjani Aiyagari, Adv.
22470/07 & 22997/07

For Respondent(s) Mr.D.Bharat Kumar, Adv.
In SLP(C)22470/07 Mr.S.Mohandas M., Adv.
& 22997/07 Mr. Abhijit Sengupta, Adv.

Mr. K. Shivraj Choudhuri, Adv.

Mr. Venkateswara Rao Anumolu, Adv.

UPON hearing counsel the Court made the following
O R D E R

SLP(C) NOS. 22470/2007 AND 22997/2007

These petitions are directed against order dated 1.10.2007 passed by the National Consumer Disputes Redressal Commission (for short, 'the National Commission') whereby the appeals filed by the petitioner and his family members against the orders of the A.P. State Consumer Disputes Redressal Commission (for short, 'the State Commission') were dismissed and the direction given for refund of the amount deposited by the respondents was upheld.

The only ground on which the petitioner has questioned his liability to repay the amount deposited by the respondents is that he was neither a Director nor an office bearer in the Chit Fund Company.

We have heard learned counsel for the parties and perused the record.

Although, in the counter affidavit filed before the State Commission, the petitioner appears to have taken the plea that he was not a Director of the Chit Fund Company, the State Commission did not accept the same and determined his liability by recording the following observations:

"The complainant also filed a memo on behalf of chit subscribers stating that all the Directors are from a single family and the details are as follows:

S.No	Name	Designation	Family position
1.	Siripurapu Pattabhi Rama Rao	Chairman	Father
2.	Siripurapu Vishnu Mohan	Managing Director	Son
3.	Kamineni Nagabhushanam	Director	Father in law to the son of the Chairman
4.	Kamineni Hanumantha Rao	Director	Brother in law of Managing Director
5.	S.Kanaka Durga	Director	Wife of Managing Director
6.	S.P.R.Sagar	Director	Elder son of the Chairman
7.	Sri. S.Pattabhi	Director	Grandson of Chairman son of Managing Director
8.	Siripurapu Shankar	Director	3rd son of Chairman

As per the details in the counters, the opposite parties except opposite party No.4 were Directors at the time of cause of action. Form-32 clearly shows that opposite party No.4 resigned on 25-3-2000 and the complainant himself submitted in his complaint only those Directors are liable who worked as Directors at the time of cause of action. Taking into consideration that opposite party No.4 resigned on 25-3-2000, he is liable jointly and severally to pay the amounts prior to this date only. From the record, we observe that only item 17 pertaining to the chi: ULTI-14 has commenced on 30-5-1999 which is prior to the date of resignation of opposite party No.4. Therefore, opposite party No.4 is liable jointly and severally along with other Directors to pay item No. 17 amount only. Pass books filed by the complainant and issued by the opposite parties clearly show the name of the subscriber, the reference number, date of commencement of chit, number of months, value of the chit, amount paid by the subscriber including the dividend. Taking into consideration, the pass books issued by the opposite parties and the details of payments listed in these payments and also the pleadings, we are of the opinion that the opposite parties (except opposite party No.4) are liable for refunding the amounts paid by the complainant which details are as follows:

S.No	Name of the Subscriber	Value of Chit	Amount paid+ Dividend	Cash refunded	Less 5% commission	Amount to Be Refunded
1.	Kilaru Krishna Kumari	50,000	39,410	-	2,500	36,910
2.	T.Raieshwari	1,00,000	1,00,000	-	5,000	95,000
2a.	T.Rajeshwarl	1,50,000	1,35,000	-	7,500	1,27,500
3.	Dr. M.Nageswara Rao	2,50,000	1,85,000	-	12,500	1,72,500
3a.	Dr. M.Nageswara Rao	1,50,000	1,10,000	-	7,500	1,02,500
4.	Koduru Sudha Rani	5,00,000	4,50,000	-	25,000	4,25,000
5.	M.Rama Raghava Rao	2,50,000	1,85,000	-	7,500	1,77,500
6.	Potluri	5,00,000	5,00,000	Cheque for	25,000	4,75,000

	Sitamba			3,45,298 bounced		
6a	Potluri Sitamba	1,00,000	90,000	-	5,000	85,000
7.	K.Balamani	1,00,000	67,500	21,500	2,500	43,500
8.	MV Subramanyam	50,000	46,000		5,000	43,500
9.	MBK Murthy	50,000	42,500	Cheque for 10,000 & 2,000 bounced	2,500	40,000
10.	Ch.Surya Kumari	50,000	43,750	-	2,500	41,250
11.	Shilpa Paruchuri	50,000	26,250	-	2,500	23,750
12.	Pendurti Susheela	1,00,000	97,500	Cheque for Rs.10000/- bounced	5,000	92,500
13.	Smt.P.Sree Krishna Kumari	2,50,000	1,60,000	-	12,500	1,47,500
14.	T.Brahmaiah	1,50,000	99,688	...	7,500	92,188
15.	Velagapudi Bhogeswara Rao	2,50,000	1,45,000	-	12,500	1,32,500
16.	U.Raja Rao	5,00,000	4,62,500	-	25,000	4,37,500
17.	S.Subba Rao	2,50,000	2,30,000	Cheques bounced Rs.2,09,42 4	12,500	2,17,500
17 a	S.Subba Rao	2,00,000	1,40,000		10,000	1,30,000
17 b	S.Subba Rao	5,00,000	1,37,500		25,000	1,12,500

Together with interest at 7.5% p.a. from the date of filing of complaint till the date of realization together with costs of Rs.3,000/- to be paid to the complainant within a period of 6 weeks from the date of receipt of this order. Opposite party No.4 is liable jointly and severally to pay only ULTI-14 which has commenced on 30-5-1999 along with other Directors.

In the result the complaint is allowed in part directing the opposite parties (except opposite party No.4) to pay the amounts as directed in the table aforementioned in the column "Amount to be refunded" together with interest at 7.5% p.a. from the date of filing of complaint till the date of realization together with costs of Rs.3,000/- to be paid to the defacto complainant within a period of 6 weeks from the date of receipt of this order. Opposite party No.4 is liable jointly and severally to pay only ULTI-14 which has commenced on 30-5-1999 along with other Directors."

A reading of the impugned order shows that the counsel who appeared on behalf of the petitioner before the National Commission had not argued that his client is not liable to refund the amount because he was not a Director of the Company. This is the reason why there is no discussion on this issue in the order under challenge.

Shri Pallav Shishodia, learned senior counsel for the petitioner, submitted that such a plea had been raised before the National Commission but the same had not been considered. However, having carefully gone through the record of the special leave petitions, we find that such a point had not been raised and argued before the National Commission. If such an argument had been advanced and not considered by the National

Commission, then the appropriate course available to the petitioner was to file a petition for clarification of the impugned order. In the alternative, the petitioner would have made a specific statement to this effect in the special leave petition and also filed an affidavit of the Advocate who appeared on his behalf before the National Commission. Since neither of that course has been adopted, the petitioner cannot be heard to complain that the National Commission has not considered the plea that he was not a Director of the Company and, as such, he was not liable to refund the amount to the respondents.

With the above observations, the special leave petitions are dismissed. Interim order passed by this Court on 7.12.2007 stands automatically vacated. The petitioner shall discharge his liability towards the respondents within a period of two months from today and submit a report to this effect before the State Commission.

SLP(C)Nos.24575 of 2007 and 24684 of 2007

The applications for impleadment are allowed.

We have heard learned counsel for the parties and carefully perused the record. In our considered view, the impugned order does not suffer from any legal infirmity warranting interference by this Court under Article 136 of the Constitution.

The special leave petitions are accordingly dismissed. Interim order passed by this Court on 10.01.2008 stands automatically vacated. The petitioners shall discharge their liability towards the respondents within a period of two months from today and submit a report to this effect before the State Commission.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master