

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10240 OF 2013
(Arising out of SLP(C) No.27607/2008)

PARIWAR CO-OPERATIVE HOUSING SOCIETY LTD. Appellant(s)

VERSUS

CHANDRASHEKAR M. VIRKUD & ANR. Respondent(s)

O R D E R

Leave granted.

2. Heard Mr. Satyajit Desai, learned counsel in support of this appeal, Mr. Santosh Paul, learned counsel appearing for the first respondent and Mr. Vinay Navare, learned counsel appearing for the second respondent. The appellant Pariwar Co-operative Housing Society Ltd. ("Society" for short) has challenged the order dated 16.5.2008 passed by the National Consumer Disputes Redressal Commission in First Appeal No.69 of 2006 by filing this appeal.

3. The short facts leading to this appeal are this wise. One Mr. Vitthal G. Kapuskar was the Chief Promoter of the appellant Society which has constructed a housing complex at Kanjur Marg (East) in Mumbai. It so transpires that though the aforesaid Mr. Kapuskar, respondent No.2 herein, was the Chief Promoter, subsequently there were certain allegations against him with respect to the management of the funds of the Society and not taking necessary steps with respect to construction. Thereafter, another Managing Committee has taken over which has presently filed this appeal.

4. Respondent No.1 was one of the members of the Society. It was his case that he paid all necessary amounts as a member to get an apartment in the said Society but he was not allotted any apartment. He, therefore, applied for refund of the amount which he had paid to the Society. The amount not having been refunded to him, he moved the Consumer Disputes Redressal Commission of the State of Maharashtra under the Consumer Protection Act, 1986 by filing a complaint being Consumer Complaint No.388 of 2001. An order came to be passed in that proceeding on

17.6.2005 holding the appellant Society responsible for neither giving him possession of any apartment nor returning the amount that was payable to him. Therefore, an order was passed against the appellant Society as well as against respondent No.2.

5. The appellant Society carried the matter in appeal before the National Disputes Redressal Commission pointing out that it was respondent No.2 who was responsible for non-payment of the amount because of the mismanagement on his part of the Society's funds. The National Commission had passed an interim order on 23.2.2006 directing the appellant Society to deposit the entire amount payable to the second respondent, in the State Commission out of which 50% amount was allowed to be withdrawn by respondent No.1 on furnishing personal bonds. Accordingly, respondent No.1 has withdrawn that amount. The appeal was ultimately heard and disposed of by the National Commission by its order dated 16.5.2008 and under that order, the appellant Society and respondent No.2 were directed to pay to respondent No.1, the amount as awarded by the State Commission along with interest at 9% per annum.

6. The submission of the appellant Society, as stated earlier, is that the appellant Society was not responsible for the misdeeds of respondent No.2 and the Society was being unnecessarily held to pay this amount. We have heard the learned counsel for the parties. The order passed by the State Commission was an ex-parte order and that was because at that particular point of time, respondent No.2 was in jail. In any case, by the time the matter was heard in the National Commission, a notice was published in the newspaper for respondent No.2 to appear before the National Commission but he did not appear before the National Commission and this order came to be passed.

7. Mr. Desai, learned counsel appearing for the appellant pointed out that the appellant Society is consisting of middle class people and they are now being made to suffer for the actions/misdeeds of respondent No.2. Mr. Navare, learned counsel appearing for respondent No.2 on the other hand, submitted that the members of the present Managing Committee were also along with respondent No.2 in

all these transactions which took place from time to time.

8. Having noted these facts, however, we are of the view that as far as the present case is concerned, respondent No.1 had made the payment when respondent No.2 was incharge of the Society and the present Managing Committee was not in the picture. That being so, the responsibility to refund the amount primarily lies on the respondent No.2 and in the event of his failure, on the appellant Society. In the circumstances, we modify the order passed by the National Commission as well as the State Commission and hold respondent No.2 primarily responsible for paying the amount of Rs.4,02,382/-. We allow this appeal to that extent.

9. We had asked Mr. Navare on the last date of hearing to seek instructions from respondent No.2 whether he would be agreeable to make the payment. He has informed that he does not have any such instructions. In the circumstances, we direct the respondent No.2 to make the payment of Rs.4,02,382/- in eight weeks' time, failing which it would be open

to respondent No.1 to take further action by moving the State Commission under Section 27 of the Consumer Protection Act, 1986 against respondent No.2 Kapuskar. In the event respondent No.2 makes the payment in the course of those proceedings, well and good. However, in the event of his failing to make payment, the consequences will follow. In the event respondent No.2 deposits the entire amount, half of the amount therefrom will be paid to respondent No.1 and the remaining half would be permitted to be withdrawn by the appellant. The 50% amount which is presently lying in the State Commission will continue to remain there until then. However, in the event of respondent No.2 being sent to imprisonment on his failing to make payment, this 50% amount which is deposited in the State Commission will be permitted to be withdrawn by respondent No.1.

10. We are informed that there are many other proceedings which are pending between the appellant Society and respondent No.2, and many cases are filed by the depositors against respondent No.2. We, therefore, make it clear that this order will be

confined to the facts of this case.

11. Appeal is disposed of as above. No order as to costs.

.....J
(H.L. GOKHALE)

.....J
(KURIAN JOSEPH)

New Delhi;
November 12, 2013.



JUDGMENT