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09.04.2024
KAUSHIK

CO 181 of 2020

Gour Mohan Sadhukhan
Vs.
The General Manager, UCO Bank & Ors.

Mr. Sankar Biswas
Ms. Ananya Adhikari
... for the petitioner

Mr. R. N. Ghose
... for the Opposite Party/bank

Mr. R. N. Ghose, learned counsel appearing on behalf of the Opposite Party/Bank undertakes to file 'vakalatnama' in course of the day.

The petitioner herein filed a complaint before District Consumer Redressal Forum (in short District Forum) under Sections 12 and 13 of the Consumer Protection Act, 1986 praying for the Opposite Party Nos. 1 to 3 jointly or severally be directed to hand over the peaceful vacant physical possession of the schedule mentioned property and that the said Opposite Parties are jointly or severally be directed to register the deed of conveyance of the schedule property in favour of the petitioner along with other incidentl reliefs. Ultimately, after hearing, the District Forum was pleased to allow the complaint of the petitioner on contest.

Being aggrieved by and dissatisfied with the said judgment and order passed by the District Forum on 12th May, 2015, the Opposite Party herein preferred appeal under Section 15 of the Act of 1986 before the State Consumer Disputes Redressal Commission (in short State Forum). It was also urged before the State Forum that the complaint was not filed within the statutory period. The State Forum after contested hearing was pleased to held that the schedule property being purchased through an auction sale, the respondent cannot be considered as a consumer. Accordingly, the State Forum held that the appeal is not maintainable as the present dispute is not a consumer dispute.

Being aggrieved by that order, the petitioner herein preferred this application contending that the order impugned is perverse and the forum below has committed illegality in allowing the first appeal without considering that the instant case is maintainable in view of the definition of "consumer" defined in Section 2(1)(d) and also under the definition of "complaint" as defined in Section 2(1)(C)(iv) of the Act of 1986. The petitioner herein has availed service from the Opposite Party and as such the petitioner is the service provider and the dispute is certainly a consumer dispute and accordingly he has prayed for setting aside the order impugned.

The learned counsel appearing on behalf of the Opposite Party/Bank has raised objection contending that the State Forum has rightly held that the application is not maintainable since complaint was filed beyond the statutory period and since the dispute does not come within the definition of “consumer dispute” and the petitioner is not a “service provider”. Accordingly, he submits that the order impugned does not call for interference invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made by both the parties.

On perusal of Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act, 2002), it appears that any person including borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor/bank or with his authorised officer under chapter III of the Act of 2002, may make an application to the Debts Recovery Tribunal having jurisdiction of the matter.

During hearing, learned counsel for both the parties agreed that in such cases, the appropriate remedy is to prefer an application under Section 17(1) of the Act of 2002 before the Debts Recovery Tribunal.

In such view of the matter, I do not find any illegality or impropriety in the order impugned.

C.O. 181 of 2020 is accordingly dismissed.

However, the dismissal order will not preclude the petitioner from preferring appropriate application before the appropriate authority to ventilate his grievances, subject to other provisions of law.

In the event of filing such application before the appropriate forum, all points shall be kept open for adjudication.

Urgent photostat certified copy be given to the parties expeditiously, if applied for, on usual undertakings.

(Ajoy Kumar Mukherjee, J.)