

(2012) 10 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

Acron Developers Pvt Ltd , John Britto , Amar Britto APPELLANT
Vs

Rajesh Malhotra , Deepa Amrita Malhotra , Rohan Malhotra , RESPONDENT
Pravan Malhotra

Date of Decision : 09-10-2012

Acts Referred:

Citation : 2012 0 NCDRC 583

Hon'ble Judges : K.S.Chaudhari , Suresh Chandra J.

Advocate : Edwin De M.Furtado , Nandita Rao

Judgement

1. THIS revision petition has been filed by the petitioners against the impugned order dated 4.5.2012 passed by the learned Goa State Consumer Disputes Redressal Commission, Panaji (in short, "the State Commission ") in Complaint No.10/2010 Shri Rajesh Malhotra & Ors. Vs. Acron Developers Pvt. Ltd. & Ors. by which application filed by the complainant was allowed and OP NO. 3-petitioner was directed to appear in witness box for cross-examination.

2. HEARD the learned Counsel for the parties and perused record. Learned Counsel for the petitioner submitted that by the impugned order, learned State Commission has directed the petitioner to appear in the witness box for oral cross-examination whereas in the same complaint vide order dated 31.8.2012 while allowing application for cross-examination of the complainants, learned State Commission directed that said cross-examination shall take place by way of submission of questionnaires by the opposite party to be answered on affidavit by the said complainants and thus State Commission has used double standard while allowing application for cross-examination, hence, impugned order may be set aside. On the other hand, learned Counsel for the OP submitted that order passed by the State Commission is in accordance with law and order dated 31.8.2012 has been passed looking to the age of complainants and as such, no double standards have been used by the State Commission, hence, petition may be dismissed.

Perusal of record clearly reveals that by impugned order while allowing

application of complainant learned State Commission directed OP No. 3 to appear in witness box for oral cross-examination whereas by order dated 31.8.2012 application for oral cross-examination of complainant was rejected and application of OP was allowed only to the extent of submission of questionnaire which is to be answered on affidavit by the said complainants. Prima facie, double standards have been used by the State Commission while disposing the application of both the parties for the same purpose. It was observed in order dated 31.8.2012 that as the party was residing in Goa they were conveniently available for cross-examination in the witness box whereas complainants are of the age of 72 years and 65 years residing at Gurgaon, it would cause hardship to them for appearing for cross-examination in the witness box in Goa.

3. WHEN the complainants are purchasing property in Goa, they have to take care of their property and for this purpose they have to visit again and again and merely on the ground of age of 72 years and 65 years they could not have been exempted from oral cross-examination in the witness box and merely because petitioner-OP resides in Goa he cannot be compelled for oral cross-examination in the witness box. There cannot be two-fold approach of the State Commission on the same issue. This Commission in *Neeraj Amarnath Dora (2011) 3CPR 162 (NC)* observed: "Henceforth in all matters wherever there is a prayer for cross-examination of the witnesses by the learned advocates for the parties, learned advocates to produce the interrogatories on record and those interrogatories should be replied by concerned parties on affidavit. Thereafter, the Commission would decide whether any further cross-examination on any point is necessary or not. "

Thus, it becomes clear that instead of asking the parties for oral cross-examination in the witness box, parties should be asked to reply on interrogatories and only after that if necessitated further cross-examination should be permitted. In such circumstances, we are of the view that learned State Commission has committed error in observing double standards and ordering OP No. 3 for appearing in witness box for oral examination and impugned order is liable to be set aside. Consequently, the revision petition filed by the petitioner is allowed and impugned order dated 4.5.2012 passed by the learned State Commission is modified and petitioner is directed to reply on interrogatories submitted by the complainant by way of affidavit and thereafter the Commission would decide afresh whether any further cross-examination on any point is necessary or not. There will be no order as to costs.