

(2001) 05 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

CHAIRMAN, CHANDIGARH HOUSING BOARD-Revisionist

APPELLANT

Vs

MAJ.D.N. Sadhana

RESPONDENT

Date of Decision : 30-05-2001

Acts Referred:

Citation : 2001 3 CLT 534 : 2002 1 CPJ 180

Hon'ble Judges : K.K.Srivastava , P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision : Revision Petition dismissed

Judgement

1. THIS revision is directed against the order dated 19.7.2001 passed by the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh in Complaint Case No. 1392 of 1996 vide which the application of the revisionist for setting aside an ex-parte order dated 8.1.1997 was dismissed.

2. THE respondent - Maj. D.N. Sadhana (Retd.) was allotted House No. 5048, Category III Plot at Manimajra (Phase-I) Scheme, U.T., Chandigarh. He filed the complaint before the District Forum-II against the Chandigarh Housing Board praying that the Chandigarh Housing Board should be reprimanded for delay in construction and giving possession of the said House No. 5048, for reducing the size of the plot and for poor work in construction and claimed compensation against the revisionist - Chandigarh Housing Board. He also prayed that the arbitrary increase of the price of plot from the original amount of Rs. 2.25 lacs to Rs. 3 lacs while giving the allotment letter and further arbitrary increase of Rs. 3.71 lacs be waived. In the alternative, it was prayed that in case the increase in price is to be allowed then the increase of 10% price i.e. Rs. 22,500/- be charged and monthly instalments and rate of interest of 1.35% be fixed. At the time of the presentation of the complaint, the complainant was present in person. The District Forum-II issued notice for 8.1.1997 by order dated 11.9.1996. On 8.1.1997, Counsel for the complainant was present. The opposite party was served but none appeared on behalf of the opposite party i.e. Chandigarh Housing Board and the case was ordered to be proceeded ex-parte. Thereafter, the case was continued to be fixed for ex-parte evidence till 11.8.1997. On

11.8.1997, the complaint was dismissed in default. A restoration application was moved by the complainant and notice was issued to the Chandigarh Housing Board for 5.2.1998 by order dated 20.11.1997. Shri R.D. Vinayak put in appearance on behalf of the opposite party - Chandigarh Housing Board while Mr. Ram Narain, Advocate appeared for Mr. D.V. Mehta, Advocate for the complainant. The District Forum-II allowed the restoration application vide order dated 5.2.1998 and restored the complaint case to its original stage i.e. for the evidence of the complainant. It was mentioned in the order, inter alia, that "...Though opposed, we deem it proper in the interest of justice to decide the case on merit, rather than dismissing it in default..." Thereafter the case was adjourned on several dates on the request of one side or the other or on the joint request of both the parties till 8.7.1999, on which date an application was moved by the Chandigarh Housing Board praying for setting aside ex-parte proceedings. The complainant was absent on the said date while Mr. C.S. Negi appeared and proxy Counsel for the opposite party. Notice of the application was ordered to be given to the Counsel opposite. Reply to the application was filed by the complainant on 28.3.2000 and the case was fixed for disposal of the application for 11.5.2000. It was again adjourned to 19.7.2000 on 11.5.2000. The application for setting aside the ex-parte order moved by the Chandigarh Housing Board and its reply were taken up for consideration on 19.7.2000 and the application was dismissed by the District Forum with the remarks that "...opposite party can continue to appear and assist the Forum". The case was adjourned to 14.9.2000 for the evidence of the complainant. In the meantime, this revision was filed on 18.8.2000 when notice was issued vide order dated 25.8.2000 for 12.9.2000. The notice issued to the respondent was received back unserved. Fresh address of the respondent was furnished on 11.4.2001 and notice afresh was ordered to be issued at the address for under Certificate of Posting. The notice issued to the respondent was not received back undelivered. The notice was presumed to be served on the respondent. The revision petition was taken up for hearing. The learned Counsel for the revisionist put in appearance for the revisionist and submitted his arguments. We have carefully perused the impugned order passed by the District Forum-II and have also perused the record of the complaint case.

The learned Counsel for the revisionist contended that the right of the Chandigarh Housing Board to file the reply and to lead evidence had been closed by the District Forum-II and thereby great prejudice has been caused to the revisionist - Chandigarh Housing Board. A careful perusal of the zimini order of the file of the complaint case does not support the said contention of the learned Counsel for the revisionist inasmuch as the right to file reply and to lead evidence was not considered and ordered as closed by the District Forum-II in any of the order passed till the disposal of the application seeking setting aside of the ex-parte proceedings. Apart from this, the District Forum-II has itself mentioned that the Chandigarh Housing Board could take part in the proceedings and assist the Forum. It may also be pointed out that though the learned

Counsel for the Chandigarh Housing Board continued to put in appearance before the District Forum from the time the case was restored on the application of the appellant till the moving of the application for setting aside the ex-parte proceedings but no attempt was made to move the application earlier than the date when it was moved or to file the written statement to the complaint filed by the respondent. The District Forum-II has in this context observed, inter alia, as under : "...The application for setting aside that ex-parte proceedings was moved on 8.7.1999 and the case stood already posted for evidence of the complainant. Though, ex-parte proceedings are sought to be set aside but in spite of long time that has elapsed, the reply to the main complaint is not ready with the Counsel for the opposite party, even today. It appears that opposite party has moved this application just to prolong the case. Significantly, in between 8.1.1997 and 8.7.1997, the opposite party had been appearing though Counsel namely S/Shri R.D. Vinayak, Rana Inderjot Singh, C.S. Negi and Arun Dogra. In these circumstances, we see no reason to allow this application. Therefore, this application is dismissed with the remarks that opposite party can continue to appear and assist the Forum. For evidence of the complainant, adjourned to 14.9.2000. 19.7.2000 Sd/- Member (Mrs. Agnihotri)"

Sd/- President

3. IT may be pointed out that the order to proceed ex-parte was passed on 8.1.1997. This order regarding the case proceeding ex-parte was for the said date of 8.1.1997 and the same could not be extended to the dates which were fixed subsequently unless the revisionist continued to remain absent on those dates. In case the evidence of the complainant had been recorded, in the absence of the revisionist, the Forum was required to decide the complaint case ex-parte against the Chandigarh Housing Board and in that eventuality, the Chandigarh Housing Board could file an appeal before the State Commission against the order passed by the District Forum-II. In the instant case, the evidence of the complainant was not recorded and several dates were fixed for the purpose. On one of the date i.e. on 11.8.1997, the complaint was even dismissed for default of the complainant. The order of dismissal of complaint was restored with the specific observation of the District Forum-II that the case should be decided on merits. Even in order under revision, it has been mentioned by the District Forum-II that despite the long time that lapsed, reply to the complaint case was not ready with the Counsel for the Chandigarh Housing Board. Till the date when the impugned order was passed, the evidence of the complainant had not been recorded in response to the ex-parte order passed on 8.1.1997. In view of the observations made by the District Forum-II in the impugned order that the opposite party - Chandigarh Housing Board could still continue to appear and assist the Forum, there is no bar on the Chandigarh Housing Board to make submissions before the District Forum-II regarding the merits of the case of the complainant. In our considered view, the right to defend the complaint has not been closed by the District Forum-II and the impugned order cannot be said to have decided the right of the revisionist. The order to

proceed ex-parte was passed on the date for which the notice had been issued to the Chandigarh Housing Board as none appeared before the District Forum-II on behalf of the Chandigarh Housing Board inspite of service of notice. Since the right of the Chandigarh Housing Board to defend the complaint case has not been closed and no adverse order in that regard has been passed, we find no merit in this revision. The revisionist - Chandigarh Housing Board can still appear before the District Forum-II, U.T., Chandigarh in pursuance to the observations made in the impugned order and take part in the proceedings of the complaint case and assist the District Forum-II, U.T., Chandigarh In view of the foregoing discussion, this revision lacks merit and is dismissed. Copies of this order be supplied to the parties free of charges. Revision Petition dismissed.