

(1989) 12 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

CHAIRMAN, RAJ. HOUSING BOARD

APPELLANT

Vs

SHYAM LAL SOMANI

RESPONDENT

Date of Decision : 18-12-1989

Acts Referred:

Citation : 1994 2 CPJ 530

Hon'ble Judges : S.K.Mal Lodha , Saria Khan J.

Final Decision : Appeal allowed

Judgement

1. BY this appeal under Sec-15 of the Consumer Protection Act, 1986 (Act No. 68 of 1986) ("the Act" herein) the opposite parties-appellants question legality and correctness of the order dt. 14-6-89 passed by the District Forum, Udaipur in Complaint Case No. 12/89. In view of the short point involved in this appeal it is not necessary to recount the facts in detail. Suffice it to state, that the complainant filed a complaint purporting to be under Sec. 12 of the Act dated 17-1-89 against the opposite parties-appellants. The complainant has prayed that the opposite-parties may be restrained from realising improper cost of the allotted House No. 1 Ta-24 Sector 5 Udaipur, Hiran Magri and that the opposite-parties may be directed to remove the deficiencies in the house and to issue a possession letter. The opposite-parties contested the complaint on various grounds by filing the version of the case dated 14-3-89. Besides raising the objection of jurisdiction of the District Forum to entertain the complaint, in the additional pleas it was submitted by the opposite-parties the complainant has filed a suit in respect of the house in question in the Court of District Judge, Udaipur for permanent injunction which was transferred to the Court of Additional District Judge No. 2 Udaipur, The suit was registered as Suit No. 100/88. The complainant (Plaintiff in the suit) also submitted an application for temporary injunction under Order XXX-IX, Rules 1 and 2 C.P.C. which was registered as Application No. 43/88. This application was rejected on 4-1-89. A rejoinder was filed by the complainant. The fact of instituting the suit was admitted. It was however, submitted that the institution of the suit by the complainant prior to the establishment of the District Forums under the Act does

not preclude the complainant from pursuing his remedies under the Act. The District Forum, Udaipur tried the complaint and granted reliefs to the complainant by its order dt. 14-6-89. The District Forums observed:- (Hindi Matter Committed.) Being aggrieved the opposite parties have filed this appeal as aforesaid. We have heard Mr. Arjun Lai Tolani, Advocate for the appellants and Mr. Subhash Saxena, Advocate for the respondent and Mr. Shyam Lal Somani respondent. Learned Counsel for the appellants vehemently argued before us that the suit instituted by the complainant-respondent in respect of the house in question for permanent prohibitory injunction is still pending before Additional District and Sessions Judge No. 2, Udaipur and as the subject matter of the complainant was/is subjudice before a Civil Court, the District Forum should not have exercised its jurisdiction in passing the impugned order. Learned Counsel for the appellants also submitted Photostat copy of the order-sheet dt. 30-5-89 passed in the suit instituted by the complainant which is as under: (Hindi Matter ommitted.) Photostat copy of the plaint dt. 31.10.89 has also been submitted for our perusal. The reliefs claimed by the complainant (plaintiff in the suit) are contained in para 24 of the plaint. We have carefully considered the complaint and the suit instituted by the complainant which is still pending before the Civil Court. The subject matter of both (suit and the complaint) is the house in question and the reliefs claimed in the complaint are substantially the same which have been claimed in the plaint instituted by the complainant against the opposite-parties. The argument of Mr. Subhash Saxana, learned Counsel for the complainant-respondent that as the District Forum was established after the institution of the suit and the complaint filed by the complainant satisfies the ingredients of the complaint as defined in the Act and the reliefs claimed by the complainant can be granted under Sec. 14(1) of the Act. There is no bar in regard to the maintainability of the suit. In support of this he invited our attention to Sec. 3 of the Act which says that the provisions of the Act shall be in addition to and not in derogation of the provision of any other law for the time being in force. It is not necessary for us to make a probe in this matter in view of the various authoritative pronouncements of the National Commission, New Delhi. It was held in (1) Consumer Unity and Protection Centre v. Nadiad Municipality and Others (Original Petition No. 7/88 decided on May 10,1989 by the National Commission) that where the matter is a sub-judice before the High Court it would not be appropriate that National Commission should go into the merits of the case. Before the National Commission there was a complaint under the Act. This question was re-examined in (2) Dr. Indira Singhi Managing Director HM.T. v. Karnataka State Electricity Board (Original Petition No. 4/88 decided on July 24 1989), it observed as under:- ".We have unhesitatingly come to the conclusion that this Petition has to fail on the short ground that the subject matter of the complaint put forward before this Commission is sub-judice in the City Civil Court Bangalore where the petitioner has filed a suit claiming practically the identical relief. On this short ground, we decline to go into the merits of this case and reject this petition..."

Again in (3) Mr. M.L. Joseph v. State Bank of India, Trichur, II (1992) CPJ 446 (NC) (Original Petition No.12/89 decided on August, 23, 1989 by the National Commission) it was held that:- "Having regard to the facts set out in the counter affidavit filed on behalf of the State Bank of India, we are of the view that this matter falls in the realms of a civil dispute which has to be settled by a Civil Court. It is seen from the counter affidavit that a suit is already pending in the Sub Court, Trichur...."

2. FOLLOWING respectfully the aforesaid decisions we have taken a view in (4) Bansilal Meena v. Rajasthan Financial Corporation and Another (Complaint Case No. 57/89 decided on Nov. 7, 1989) that when the matter is sub judice before the Civil Court in respect of the complaint filed before the Commission it will not be appropriate that the Commission should go into the merits of the complaint. It was observed by us as under:- "We are of opinion that this complaint should fail on the short ground that the subject matter of the complaint put forward by the complainant before this Commission is sub judice in the Court of Munsif-Magistrate No. 2 Jaipur City, Jaipur, where the complainant has filed a suit claiming identical reliefs. On this short ground we decline to go into the merits of the case and reject the complaint."

The District Forum went completely wrong when it held that for the reasons given by it, the pendency of the suit does not debar it from granting the reliefs prayed for by the complainant in the complaint filed under the Act. This is completely contrary to the principles laid down by the National Commission in the aforesaid decisions as well as by the State Commission. The crucial test that should have been applied by the District Forum should have been whether a suit in respect of the subject matter was pending before a Civil Court or not. The reliefs which were claimed in the complaint as well as in the suit are substantially the same. In this view of the matter it should not have gone into the merits of the case and granted the reliefs to the complainant.

For the aforesaid reasons we allow this appeal and set aside the order dated 14.6.89 passed by the District Forum, Udaipur, in Complaint Case No.12/89. The complainant will be at liberty to pursue his remedy in the suit and nothing said herein by us in this order will prejudicially affect the rights of the complainant in the suit which is pending before the Additional District and Sessions Judge No.2 Udaipur. In the circumstances of the case we order that the parties shall bear their respective costs. Appeal allowed.