

(2004) 11 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

COL. H.S. GILL

APPELLANT

Vs

AROMA HOTEL

RESPONDENT

Date of Decision : 18-11-2004

Acts Referred:

Citation : 2005 1 CLT 675 : 2005 1 CPC 201 : 2005 1 CPJ 253

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

Final Decision : Appeal allowed

Judgement

1. THE appellant Col. H.S. Gill (Retd.) filed a complaint bearing No. 209 of 2003 before the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (for short hereinafter to be referred as District Forum). THE District Forum vide order dated 6.7.2003 ordered the proceedings of the complaint to be stayed till final disposal of a civil suit pending between the parties before a Civil Court of competent jurisdiction. THE complainant had initially filed a revision petition, which was later on converted into an appeal. Notice of the appeal was served on the respondents, who put in appearance through Mr. H.S. Kathpal, Advocate. Record of the complaint case was received. Mr. Pankaj Chandgothia, Advocate appearing for the appellant contended that the issues involved in this complaint are entirely different and distinct from the civil suit, which has been filed subsequently by the respondents/O.Ps. against the appellant/complainant. THE civil suit is for recovery of money whereas the complaint has been filed claiming the compensation for deficiency in service on the part of the respondents. THE District Forum while considering the rival contentions held that the matter in dispute between the parties in the present case was directly and substantially in issue between the parties in the civil suit. THE procedure for trial in the Civil Court is more elaborate and the truth or falsehood of the version of the respective parties can be probed and x-rayed more deeply while the procedure in the Consumer Forum is summary procedure where detail and thorough inquiry including the detailed cross-examination of the witnesses of the parties is not possible. THEREafter, the Forum held that the rule of prudence that where a matter in a consumer complaint is also directly and substantially in issue

between the parties in the civil suit, they should be directed to get the matter/ cause to be tried in the Civil Court to avoid conflict of judgment. Subsequently in para 11 the District Forum noted the contention of the learned Counsel for the complainant that the complaint was filed earlier in point of time while the O.Ps. filed civil suit subsequently. THE District Forum also noted the contention of the learned Counsel for the complainant that Section 12(4) of the Consumer Protection Act, 1986 as amended by the Amendment Act of 2002 and enforced from 15th April, 2003 provided that where a complaint had been admitted, it will not be transferred to any Court or Tribunal or any other authority set up by or under any law for the time being in force. After noticing these contentions, the District Forum in para 13 held, inter alia, as under: "...Now that the matter in dispute between the parties in this consumer complaint is directly and substantially in issue between the parties in civil suit, we would be reluctant to deal with the dispute in a summary procedure/manner, which may possibly lead to conflict of judgment. THE ends of justice would be better served if the parties are allowed to go full throttle trial in a Civil Court. Faced with this situation it is submitted by the learned Counsel for the complainant that they have not filed a counter claim in the civil suit and have only filed a written statement. However, this fact is not material because in the written statement they have practically taken the same pleas which they have taken in the present complaint. While disposing of that civil suit, the Civil Court would grant relief to the plaintiff-O.P. only when it is able to prove that it had rendered full and satisfactory services to the defendant-complainant, as contracted between the parties. If the complainant-defendant is able to prove in that civil suit that the food was stale and the ACs were also not working then possibly the plaintiff-O.P. may be denied any relief on the basis of bill issued by them to the defendant (present complainant), though the Civil Court may not grant compensation to the complainant for deficiency in service and mental and physical harassment. But all the same, all the issues between the parties shall be tried in that suit because these do arise there. So, the possible alternatives may be two: One, if so advised, the complainant-defendant may convert his written statement into a counter claim though he cannot be compelled to do so because he has already filed this consumer complaint. Or in the alternative to keep this consumer complaint in hibernation till the suit is finally disposed of...."

2. THE District Forum in the earlier part of the impugned judgment and order referred to the facts of the complaint case and the reliefs claimed by the complainant, who claimed compensation of Rs. 7 lacs to the complainant jointly and severally and for a direction to the O.Ps. to pay that compensation for mental agony and harassment caused to the complainant, which was valued at Rs. 50,000/-. Rs. 11,000/- were claimed as litigation expenses. Once the complaint under the Consumer Protection Act filed by the complainant was admitted for adjudication, the complaint being maintainable has to be brought to its logical end inasmuch as after going through the pleas taken in the complaint and written statement and the evidence led by the respective sides. THE District

Forum is required to hold whether there was any deficiency in service on the part of the respondents and if so, to award adequate compensation to the appellant/complainant for deficiency in service as well as for mental agony and physical harassment. This part of the relief and these questions of deficiency in service on the part of the respondents, as defined under the Consumer Protection Act, 1986, cannot be taken into consideration by the Civil Court, which is mainly concerned with the money suit filed by the respondents against the complainant. In our considered opinion the District Forum rightly realised that the complaint cannot be thrown only on the ground that subsequently a civil suit has been filed in which a written statement has been filed by the complainant containing averments, which have been alleged in the complaint and has instead of deciding the same, ordered the same to be stayed till the disposal of the civil suit. In the first place if the identity of the subject matter and the questions in issue material in civil suit and in the complaint case are entirely different and distinct then the liability will be of the complainant to pay the amount to the respondents in the civil suit. Moreover, the parties do not fill the same character in two proceedings i.e., in the complaint case before the District Forum and before the Civil Court in the civil suit. THE District Forum has rightly appreciated that the complainant cannot be asked to amend his written statement and claim a counter claim. Even otherwise in the civil suit the complainant will dispute about his liability to pay to the respondents/plaintiffs in the civil suit, rather than set up any counter claim. Apart from it, as provided by Section 12(4) of the Consumer Protection Act, 1986 as amended upto date, once the complaint case has been admitted for adjudication, the same has to be proceeded with and brought to a logical conclusion. In this view of the matter, the impugned judgment and order ordering the proceedings of the complaint case to remain stayed till the disposal of the civil suit is obviously erroneous in law as well as on facts. THE appeal has thus considerable force and is allowed. THE impugned judgment and order is set aside. THE complaint case is remanded back to the District Forum-II, U.T., Chandigarh with the direction to proceed to decide the complaint case according to law and preferably within one month from the date of receipt of the record or from the date when the parties appear before the District Forum. THE parties are directed to appear before the District Forum-II, U.T., Chandigarh on 25.11.2004. Under the circumstances, the cost of appeal shall abide by the ultimate result of the complaint case. Copies of this order be sent to the parties free of charges. Appeal allowed.