
(2006) 01 NCDRC CK 0053

In the National Consumer Disputes Redressal Commission

DANISH GRIH NIRMAN SAHAKARI SAMITI

APPELLANT

Vs

ANURAG SETH

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

Citation : 2006 2 CPR 303 : 2006 4 CPJ 393

Hon'ble Judges : N.K.Jain , Pramila S.Kumar J.

Final Decision : Appeal allowed

Judgement

1. HEARD. By the order impugned the Forum below has directed appellant-society to execute sale deed of an extra land admeasuring 1,200 sq. ft. situated just adjoining to a plot purchased by the respondent-complainant from one Smt. Saroj Bhatoria to whom the land was earlier allotted and sold by the appellant-society.

2. AT the outset it is seen that the respondent-complainant before filing his complaint (filed on 21.10.2004) had already filed a civil suit on 13.9.2004 in the Court of Civil Judge, Class-II, Bhopal seeking declaration of his title over the said piece of land and for issuance of permanent injunction against the appellant-society not to dispossess the complainant from that land. Although no relief for execution of any sale deed as such is claimed in the said civil suit, nevertheless the fact remains that the subject matter in dispute in the said suit as also in the complaint filed before the District Forum were the same. The suit is still pending. The provisions of the Consumer Protection Act are in addition to and not in derogation of the provisions of any other law for the time being in force (vide Section 3). That being so, if a party chooses to file civil suit in respect of the dispute raised by him subsequently in his complaint under the Consumer Protection Act, the complaint cannot be entertained. Hon'ble the National Commission in the case of M/s. Special Machines, Karnal, I (1991) CPJ 78 (NC), has held: "This Commission has also held in earlier cases, as a matter of policy and principle that where the subject matter of a complaint is sub-judice before the ordinary Civil Court, a concurrent adjudication in respect of the same will not

be conducted by this Commission under the Act. The objection is not really on the ground of lack of jurisdiction but is one based on considerations of propriety and prudence keeping in view the necessity for avoidance of conflicting decisions and multiplicity of proceedings." In the instant case also, the cause of action is the same both for the civil suit and the present complaint. The complaint filed by the respondent was, therefore, not maintainable and the order passed by the District Forum is wholly unsustainable in law.

In the result, this appeal succeeds and is allowed. The impugned order is set aside and the complaint of the respondent is dismissed. We may however clarify that any finding recorded or observation made by the District Forum or this Commission shall not be treated as final decision on merits or demerits of the case and the parties shall be free to agitate their case in the said civil suit. We also make no order as to costs. Appeal allowed.