

(2017) 05 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Case No : 137 of 2016

DINESH UPADHYAY S/O SH. VIDHYANAND JI UPADHYAY

APPELLANT

Vs

NIRANJAN SINGH

RESPONDENT

Date of Decision : 05-05-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : 2017 2 CPR 606

Hon'ble Judges : Rekha Gupta

Advocate : ANANT AGARWAL , JAI THAKUR

Judgement

1. The present revision petition has been filed against the judgment dated 09.09.2015 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur ("the State Commission") in First Appeal no. 85 of 2012.

2. The brief facts of the case as per the petitioner/ complainant are that the petitioner was a retired 60 year old person. The petitioner contacted the respondent/ opposite party and gave Rs.20,000/- and other documents for making Patta of his registered house. The respondent orally promised to get the work done. But the respondent failed to do the patta work. On demanding return of the money, Rs.8500/- was returned back but the balance amount of Rs.11,500/- was not returned. Petitioner's son Amresh recorded the abusive language and admission of the respondent advocate for not returning back the amount on his mobile. Hence, the petitioner filed a complaint before the District Forum for making the patta or otherwise for return of the amount of Rs.11,500/- along with compensation.

3. The respondent filed their reply against the complaint before the District Forum and stated that the respondent had never received any money or documents from the petitioner. Further the, petitioner had not stated in the complaint that when the cause of action arose. The complaint of the petitioner was filed beyond limitation. Petitioner's son Amresh Upadhyay had filed an

identical complaint with an affidavit in the Bar Council of Rajasthan on 06.05.2008. The said complaint was dismissed after hearing on 10.05.2008. Hence, the complaint of the petitioner should also be dismissed.

4. The District Consumer Disputes Redressal Forum, Jodhpur (First) Rajasthan, ("the District Forum") vide its order dated 24.04.2012, dismissed the complaint on the grounds that the complainant could not file any evidence to substantiate that he had hired the services of the respondent and hence, was a consumer vis-a-vis the respondent as also on limitation.

5. Aggrieved by the order of the District Forum, the petitioner/ complainant filed an appeal before the State Commission. The State Commission vide its order dated 09.09.2015 while dismissing the appeal observed as under:

"Learned District Forum had given detailed explanation and passed reasonable judgment, which we do not feel to interfere. Complainant had not produced any documentary evidence or receipt regarding engaging a lawyer and payment of Rs.20,000/- for making of Patta to the opposite party. Complainant in his complaint had stated payment of Rs.20,000/- by himself to opposite party but has not stated on which date and in presence of which person the aforesaid amount was given. Complainant in his affidavit dated 09.11.2009 had not stated that amount of Rs.20,000/- was given to OP in whose presence, and whether was given by complainant or by his son. Complainant in his additional affidavit dated 01.02.2011 stated that in February 2006, amount of Rs.20,000/- was given by his son to the OP which fact is contrary to the fact that complainant had given the aforesaid amount in the complaint. Complainant's son Amresh Upadhyay in his affidavit stated that in February, first time Rs.15,000/- and then Rs.5,000/- and in total Rs.20,000/- were given in two times and Manish Mathur in his affidavit stated that complainant's son had given Rs.15,000/- and then Rs.5,000/- to the OP. But this witness had not stated that on which date the amount was given by the complainant's son to the OP. The facts mentioned in the complaint of the complainant and the affidavits of the witnesses regarding payment of amount are contradictory. In addition to this as per complaint after payment of Rs.20,000/- in February 2006 on which date OP has refused to do the work the same has not been stated. Hence, the complaint should have been filed by the complainant within 2 years from February 2006 but the complainant had filed the complaint on 13.08.2008 and no application for condonation of delay in filing the complaint has been filed and therefore, it is clear that complaint is beyond limitation.

Complainant had filed one CD regarding conversation between complainant's son and OP but in that CD the talk is between complainant's son and OP. No report of examination of the voice of complainant's son and OP had been done and no expert report had been filed to infer that conversations in the said CD was of complainant's son and OP. Without any expert opinion the CD could not be said to have any relevance. Complaint by the complainant's son to Bar Council of Rajasthan was also dismissed by Bar Council on 10.05.2008. In these

circumstances, the District Forum has not committed any mistake in not allowing the complaint of the complainant. In absence of grounds, appeal of the complainant is liable to be dismissed and is being dismissed".

6. Hence, the present revision petition.

7. I have heard the learned counsel for the petitioner. He contended that it was true that the Fora below had dismissed the complaint because the petitioner had not filed any evidence to support his complaint. He could not provide any document to show that he had hired the services of the respondent for making patta of his registered house, for which he had paid Rs.20,000/- to the respondent. The respondent on the other hand had stated that he did not do the work of "patta making of the registered properties" and the petitioner had failed to file the receipts to show that he had paid Rs.20,000/- to the respondent for the said work.

8. I have gone through the record, it is seen that the petitioner has filed a very vague complaint bereft of any details. There are no details regarding as to when he had hired the services Mr Niranjan Singh, Advocate, vakalatnama signed by him in this regard, when was payment of Rs.20,000/- made to Mr Niranjan Singh and receipt for the payment of Rs.20,000/-. He has thereafter sought to improve the complaint by filing the affidavit of his son Amresh Upadhyay on 15.11.2010. It was much after the complaint in which the son has stated that he had given the photocopies of the documents relating to his father's registered plot to Mr Niranjan Singh, Advocate in 2006. (date and month not mentioned), and that on 06.02.2006 he had paid Rs.15,000/- given by his father to Mr Niranjan Singh and a further Rs.5,000/- on 08.02.2006. The complainant has thereafter tried to improve on his complaint by filing an affidavit in support of his evidence which was received in the District Forum on 22.11.2011 giving a different version from that in the complaint. The petitioner without filing any evidence has sought to rely only on the recorded conversation as evidence to the complainant. The lower fora had correctly concluded that "No report of examination of the voice of complainant's son and OP had been done and no expert report had been filed to infer that conversations in the said CD were of complaint's son and OP". Without any expert opinion the CD could not be said to have any relevance. Bar Council of Rajasthan has also dismissed the complaint made by the complainant's son against the respondent 10.05.2008. The petitioner has failed to convince that he had hired the services of the respondent and paid Rs.20,000/- and therefore was a "consumer".

9. The Hon'ble Supreme Court in Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., 2011 (3) Scale 654 has observed:

"Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered

opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

10. In view of the above, I find no jurisdictional or legal error or misrepresentation of facts has been shown to us which calls for interference in the exercise of powers under Section 21 (b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is dismissed.