

(2022) 10 DEL CK 0120

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 253 Of 2020, Civil Miscellaneous Application No. 7683 Of 2020

Emaar MGF Land Ltd & Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-10-2022

Acts Referred:

Citation : (2022) 10 DEL CK 0120

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Dhanesh Relan, Arindam Dey, Saubhagya Sundriyal, Ripu Daman Bhardwaj, Neha Sharma, Ajay Laroia, Rajinder Kumar, Gaura Malhotra

Final Decision : Allowed

Judgement

C. Hari Shankar, J

1. The petitioner Emaar MGF Land Ltd is aggrieved by orders dated 20th September 2019 passed by the learned National Consumer Disputes Redressal Commission ("the learned NCDRC") in First Appeal 1079/2017 (Emaar MGF Land Ltd v. Amlak Singh Sandhu), and 22nd November 2019, whereby RA 297/2019, seeking review of the order dated 20th September 2019, has been dismissed by the learned NCDRC.

2. Paras 1 to 5 of the order dated 20th September 2019, passed by the learned NCDRC in FA 1079/2017, read as under:

"1. Heard learned counsel for both sides, and perused the entire material on record.

2. F.A. no. 402 of 2017 was decided by this Commission vide its reasoned judgment dated 26.07.2018.

Similar facts and same questions of law are involved.

3. We note that the instant first appeal, F.A. no. 1079 of 2017, is similar to the F.A. no. 402 of 2017 decided by this Commission vide its Order dated 26.07.2018.

4. The instant first appeal, F.A. no. 1079 of 2017, is disposed of in terms of the examination and reasons as contained in the Order dated 26.07.2018 in F.A. no 402 of 2017.

5. Specifically, the award, as firmed-up in para 36 of the Order dated 26.07.2018 in F.A. no. 402 of 2017, shall be applicable, mutatis mutandis, in the instant first appeal, F.A. no. 1079 of 2017.”

(Emphasis supplied)

FA 402 of 2017, be it noted, was titled as Emaar MGF Land Ltd. V. Govind Paul (“Govind Paul”, hereinafter).

3. Thus, the order dated 20th September 2019 did not contain any independent reasons for deciding the petitioner’s first appeal. The learned NCDRC merely chose to adopt, mutatis mutandis, order dated 26th July 2018 in Govind Paul.

4. The petitioner moved RA 297/2019 before the learned NCDRC seeking review of the aforesaid order dated 20th September 2019. In para 17 of the said review application, the petitioner enumerated various features which, according to the petitioner, distinguished the petitioner’s case from the case of Govind Paul.

5. The review application of the petitioner was dismissed vide the following order dated 22nd November 2019, which appears to have been passed in circulation, as there is no appearance of any counsel recorded thereon:

“Dated: 22.11.2019

ORDER

The review was listed in chamber; it was taken up in bench.

This review application has been filed against the Order dated 20.09.2019 passed by this Commission.

We have perused the relevant material including inter alia the review application filed by the appellants/applicants and the Order dated 20.09.2019 as well as the Order dated 26.07.2018 of this Commission.

The Order dated 20.09.2019 is self-contained and self-speaking.

We find no error apparent, nor any reason evident, to re-open and reexamine the case in review.

The review application, being bereft of merit, is dismissed.

The Order dated 20.09.2019 stands as it stood.”

6. In the considered opinion of this Court, the learned NCDRC could not have proceeded, in the case of the petitioner, in the manner in which it did.

7. Mr. Dhanesh Relan has also drawn the attention of this Court to a short order dated 21st July 2000 passed by the Supreme Court in HVPNL v. Mahavir (2001) 10 SCC 659, which, with respect to the manner in which first appeals should be disposed of by the learned NCDRC, holds thus, in para 2:

"2. We may point out that while dealing with a First Appeal, this is not the way to dispose of the matter. The Appellate Forum is bound to refer to the pleadings of the case, the submissions of the counsel, necessary points for consideration, discuss the evidence and dispose of the matter by giving valid reasons. It is very easy to dispose of any appeal in this fashion and the higher Courts would not know whether learned State Commission had applied its mind to the case. We hope that such orders will not be passed by the State Consumer Disputes Redressal Commission, Haryana at Chandigarh in future. A copy of this order may be communicated to the Commission."

8. In the present case, it is apparent that, apart from adopting, *mutatis mutandis*, the order passed by it in Govind Paul, the order dated 26th July 2018 of the learned NCDRC contains no finding with respect to the facts of the said appeal or the points in issue therein.

9. In the event that an appeal which comes up for hearing before the learned NCDRC is identical, on facts and law, to an earlier appeal that has been decided, it might, in a given case, be permissible for the learned NCDRC to adopt the decision in the earlier case to the later *mutatis mutandis*. If, however, either party moves an application seeking review of the order and highlights, in the application, points of distinction between the two cases, the learned NCDRC is required, at the very least, to return a finding on the said contentions, while dealing with the Review Application.

10. The order dated 22nd November 2019, which appears to have been passed in Chamber, does not record any finding regarding the points of distinction between the petitioner's case and Govind Paul.

11. The result is that the petitioner has been denied an opportunity, both at the stage of decision of the appeal as well as at the stage of review, to distinguish the case of the petitioner from Govind Paul. Equally, as neither order distinguishes the two cases, the submissions of the petitioner with respect to the points of difference between the present case and Govind Paul, as contained in the review application filed by the petitioner, have gone undecided on merits.

12. In that view of the matter, I deem it appropriate to dispose of the present petition by setting aside the impugned order dated 22nd November 2019 passed by the learned NCDRC and remanding the matter to the learned NCDRC for *de novo* consideration of RA 297/2019 filed by the petitioner before it.

13. Inasmuch as the submissions of the petitioner with respect to the features which distinguish the case of the petitioner from that of Govind Paul have not met with any decision on merits either in the order dated 20th September 2019

or in the order dated 20th November 2019, the learned NCDRC is requested to grant a personal hearing to both parties before taking a decision on RA 297/2019 de novo.

14. This Court is making it clear that it does not express any opinion on whether the facts of FA 1079/2017 were, or were not, identical to those in FA 402/2017. Equally, this Court does not express any opinion on whether the grounds on which the petitioner seeks to distinguish the two cases are, or are not, meritorious.

15. The learned NCDRC would be at liberty to take a view in the matter.

16. For the said purpose, both parties may appear before the learned NCDRC on 10th November 2022.

17. The learned NCDRC is requested to take a decision on the petitioner's review application as expeditiously as possible.

18. The petition stands allowed to the aforesaid extent with no orders as to costs.