

(2000) 09 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

GANAPATHY PADMANABHA NAYAK

APPELLANT

Vs

MARCELINA RODRIGUES

RESPONDENT

Date of Decision : 19-09-2000

Acts Referred:

Citation : 2001 3 CPJ 283 : 2001 3 CPR 225 : 2002 1 CPC 226

Hon'ble Judges : J.N.Prabhudessai , Sandra Vaz E.Correia J.

Final Decision : Complaint dismissed

Judgement

1. BY this order, we shall dispose of an application for amendment of the complaint dated 23.8.2000 moved by the complainants.

2. SUCCINCTLY, the facts of this case are that the complainants had entered into an agreement with the opposite party dated 6.6.1997 wherein they had agreed to surrender their tenancy rights for a consideration of Rs. 20 lakhs and the opposite party Nos. 5 and 6 agreed to allot on ownership basis one flat admeasuring 260 sq. mts. for a consideration of Rs. 26 lakhs. Possession of the said flat was to be delivered within 21 months. During the intervening period of construction, the complainants were provided alternate accommodation by the opposite party Nos. 5 and 6. In spite of the complainants making regular payments as per the agreement, the opposite party failed to deliver possession within the stipulated period. The complainants thereafter filed the present complaint alleging deficiency of service by the opposite party for delay in delivery of possession and for non-payment of the entire rent of the alternate accommodation. At para 37 of the complaint, the complaint was valued at Rs. 27.90 lakhs. It was pointed out that the present complaint was not within the pecuniary jurisdiction of this Commission, and the matter was fixed for arguments on this point on 23.8.2000. Instead the complainant moved the present application on that date.

Heard arguments. Opposite party Nos. 5 and 6 have also filed their reply. Counsel for the complainant submitted that the complaint was inadvertantly valued at Rs. 27.90 lakhs when actually the extra area to be paid for by the

complainant was Rs. 6 lakhs and the sum of Rs. 20 lakhs was the consideration towards relinquishment of his tenancy rights. He further submitted that since the opposite party had failed to provide services as per the agreement, the question of valuation does not arise, and that the valuation be read as Rs. 7.90 lakhs by amending para 37 of the complaint. On the other hand, Counsel for the opposite party Nos. 5 and 6 contended that Redressal Forums under the Consumer Protection Act were not empowered to entertain such amendment applications as they were vested with limited powers under CPC.

3. THE points that arise for our consideration in this application are, (i) whether this Commission has jurisdiction to allow an amendment application to bring the complaint within its jurisdiction; and (ii) whether the complainant proves that the valuation of the complaint is Rs. 7.90 lakhs. Redressal Forums under the Consumer Protection Act have been vested with limited powers under CPC. Section 13(4) of the Act has specified the powers vested in the District Forum. So also, Sections 12, 13 and 14 of the said Act and the corresponding rules made thereunder have laid down the procedure to be followed while disposing a complaint. Thus, Commission has no powers to entertain an amendment application under Order 6 Rule 17 of CPC.

4. IN 1993 (2) CPR 526, SCDRC MP, while dealing with this question held as under : "...Moreover, when the original complaint was not of the cognizance of the District Forum, it could not have entertained it at all. If the complaint itself was not entertainable, there was no question of the District Forum considering any application for amendment in the complaint. We, therefore, hold that the complaint as originally filed was not cognizable by the District Forum and the District Forum had no jurisdiction to allow an amendment application bringing a complaint which was outside its pecuniary jurisdiction within its jurisdiction..."

Had the complainants relinquished their claim to the amount of Rs. 20 lakhs, probably the result of this application would have been different. In the light of the above we find the first point of consideration in the negative. Admittedly, the parties have fixed the value of the flat to be allotted to the complainants as Rs. 26 lakhs of which the amount of Rs. 20 lakhs which was payable by the complainant to the opposite party Nos. 5 and 6 was adjusted against the consideration for the relinquishment of their tenancy rights. The complainants have not specifically relinquished their claim to the said amount of Rs. 20 lakhs in the present application. Viewing this issue from the other angle, in the prayer of the complaint, the complainant has claimed an amount of Rs. 90,000/- towards rent of the alternate premises and a further sum of Rs. 1,00,000/- towards mental torture and agony. Even if these amounts are added up, we still end up with an amount of Rs. 1,90,000/- which is again beyond our jurisdiction.

5. THE second issue of consideration is also answered in the negative. We, therefore, pass the following order : (a) THE application for amendment of complaint stand dismissed. (b) THE complaint stands dismissed with liberty to present before proper Redressal Agency within 30 days, if so advised. (c) No

costs. Complaint dismissed.