

(2013) 09 NCDRC CK 0074

In the National Consumer Disputes Redressal Commission

Gariba Construction Co.

APPELLANT

Vs

Malad Dipti Apt. Chs Ltd

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : 2013 0 NCDRC 651 : 2013 4 CPR 153

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : JITENDRA MOHAN SHARMA , Sanchit Garg

Judgement

1. THIS revision petition has been filed by the petitioner/OP against the order dated 21.06.2008 passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (in short, "the State Commission ") in Appeal No. 537/2008 - M/s. Gariba Construction Vs. Malad Dipti Apartments Co-op. Hsg. Soc. Ltd. by which, while allowing appeal, order of District Forum allowing complaint was upheld.

2. COMPLAINANT /respondent filed complaint before District Forum and learned District Forum while allowing complaint, ordered as under: "(1) The opposite party is directed to take immediate steps to handover the "Conveyance " of entire Society Property in favour of M/s. Malad Dipti Apartments Co-op. Housing Society that bearing Registration No. BOM/W-P/HSG/TC/9323/96-97 dated 24.10.1996 having its office at Khoti Village Malad, Marnlatdarwadi Road No. 5, Malad (West), Mumbai 400 064.

(2) The opposite party is directed to take immediate steps to obtain the Occupation Certificate of the Complainant 's Building Premises from the Greater Mumbai Municipal Corporation and handover the same to the Complainant.

(3) The opposite party is directed to pay to the complainant Rs.15,000/- towards the costs of the complaint ".

Appeal filed by the petitioner was dismissed by learned State Commission vide impugned order against which, this revision has been filed.

3. HEARD learned Counsel for the parties and perused record.

4. LEARNED Counsel for the petitioner submitted that impugned order is not a speaking order and learned State Commission has not dealt with the points raised in memo of appeal; hence, revision petition be allowed and matter may be remanded back to the learned State Commission for disposal by speaking order. On the other hand, learned Counsel for the respondent submitted that impugned order was passed on the admission of Counsel for the petitioner which is in accordance with law; hence, revision petition be dismissed. Order of learned State Commission runs as under: "We carefully examined the correctness of the order. There is no serious dispute with regard to compliance to be made by the present appellant. It is an admitted fact that the appellant failed to execute the conveyance in favour of Cooperative Housing Society. Similarly, Forum below directed present appellant to obtain Occupancy certificate. Builder has not executed Conveyance deed since long. Forum below therefore rightly directed to award Rs.15,000/- by way of compensation. Limitation issue was discussed in the body of the judgment. However, appellant is ready to comply the order. Therefore there is no hitch in compliance of the order. In the result, we pass following order:-

ORDER 1. Misc. application no. 775/08 is allowed. Delay is condoned on payment of cost of Rs.1000/- to be paid to the other side. 2. Appeal stands dismissed summarily. 3. Appellant shall comply the order of the District Consumer Forum within a period of 2 months from today. 4. Execution of the order of District Consumer Forum be stayed till then. 5. No order as to costs. 6. Pronounced and dictated in the open court. 7. Copies of the order herein be furnished to the parties. "

5. IT is admitted position that impugned order is not a speaking order. Learned Counsel for the respondent submitted that this summary order was passed as learned Counsel for the petitioner was ready to comply the order. This argument cannot be accepted because if petitioner was ready to comply with the order of the State Commission, the appeal should have been withdrawn instead of dismissing appeal as summarily.

6. PERUSAL of impugned order reveals that on that date Mr. M.S. Naik @ Mr. U.B. Wavikar, Advocate were allowed to appear on behalf of petitioner and previous Advocate Mr. Prashant Pandit, Advocate was allowed to withdraw his appearance. If appellant was ready to comply the order and appeal was to be withdrawn then there was no necessity for change of Advocate. In revision petition it has been pleaded that petitioner never instructed Mr. U.B. Wavikar or Mr. Naik that petitioner was ready and willing to comply with the order of District forum and further stated that statement was voluntarily made by the Advocate of the petitioner without instructions from the petitioner and in such circumstances, this summary order was passed. It has further been stated that petitioner had excellent case for succeeding in the appeal so appeal was filed.

7. AS learned Counsel for the petitioner submitted that Advocate appearing before the State Commission was not instructed by the petitioner to show willingness to comply with the order of District Forum, order dismissing summarily is liable to set aside.

8. HON "ble Apex Courtin (2001) 10 SCC 659 - HVPNL Vs. Mahavir observed as under: "1. In a number of cases coming up in appeal in this Court, we find that the State Consumer Disputes Redressal Commission, Haryana at Chandigarh is passing a standard order in the following terms:

"We have heard the Law Officer of HVPN - appellant and have also perused the impugned order. We do not find any legal infirmity in the detailed and well-reasoned order passed by District Forum, Kaithal. Accordingly, we uphold the impugned order and dismiss the appeal ".

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 ".

In the light of above judgment, it becomes clear that Appellate Court while deciding an appeal is required to deal with all the points raised by the appellant in memo of appeal and as in the impugned order all the points have not been dealt with, it would be appropriate to remand the matter back to learned State Commission for disposal by speaking order after dealing with all the contentions raised in the memo of appeal.

9. CONSEQUENTLY , revision petition filed by the petitioner is allowed and impugned order dated 05.04.2008 passed by the learned State Commission is set aside and matter is remanded back to the learned State Commission for deciding it by speaking order after giving an opportunity of being heard to the parties.

10. PARTIES are directed to appear before the learned State Commission on 28.10.2013. A copy of this order be sent to the Maharashtra State Commission, Mumbai.