

(1995) 09 SC CK 0022

In the Supreme Court Of India

Case No : Civil Appeal No's. 7849-7851 of 1995

Housing Board, Haryana

APPELLANT

Vs

Housing Board Colony Welfare Association and others

RESPONDENT

Date of Decision : 01-09-1995

Acts Referred:

Consumer Protection Act, 1986 — Section 15, 2
Haryana Consumer Protection Rules, 1988 — Rule 4(10)
Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulations,
1972 — Section 11(4)

Citation : AIR 1996 SC 92 : AIR 1995 SC 92 : (1996) 87 CompCas 898 : (1995) 6 JT 293 : (1995) 5 SCALE 89 : (1995) 5 SCC 672 : (1995) 3 SCR 219 Supp

Hon'ble Judges : Kuldeep Singh, J; Faizan Uddin, J

Bench : Division Bench

Advocate : M. Chandra Shekharan, Additional Solicitor General, Indu Malhortra and Shrin Jain, for the Appellant; S.M. Ashri and C.S. Ashri, for the Respondent

Final Decision : Disposed Of

Judgement

Faizan Uddin, J.—Delay condoned.

2. Leave granted.

3. The appellant Housing Board is a statutory body constituted for the purposes of providing cheap and economical housing facilities. The land for construction of tenements is provided by Haryana Urban Development Authority (hereinafter HUDA) which is also a statutory body. The land is acquired by the appellant-Board from HUDA under stipulation with regard to enhancement in the price of the land consequent upon judicial pronouncement. The appellant-Board invited applications for allotment of houses/flats from the economically weaker section, belonging to LIG/MIG category. The appellant-Board issued allotment letters to various applicant specifically mentioning in Clause (9) of the allotment letters that as a result of the land award or arbitration proceedings, etc. if there is an increase in the cost, the Board may enhance the price of the dwelling houses/

flats allotted to them. This condition was reiterated in Clause 2(w) of the Hire Purchase Tenancy Agreement (Form A) entered into u/s 11(4) of the Housing Board. Haryana (Allotment, Management & Sale of Tenements) Regulations. 1972. It was also provided that there shall be no enhancement in the price after a period of 7 years from the date of allotment. According to the appellant-Board, this Clause 2(W) of Form 'A' of the Regulations was, however, amended by a notification dated 26.5.1985 whereby a proviso was inserted to the effect that the restriction of 7 years shall not be applicable when the escalation in the price is due to judicial pronouncement or award of an arbitrator.

4. Consequent upon the judicial pronouncements enhancing the compensation granted to the land owners. HUDA also raised an additional demand on 5.3.1992 on the appellant-Board demanding a sum amounting to Rs. 27,96,011.80 (approximately) for the land given to the appellant-Board. In pursuance of this demand by HUDA, the appellant-Board in turn, issued additional demand letters to its various allottees of the houses/flats towards the enhanced price of the land as per terms of the agreement and the regulations. In order to avoid payment of interest on the demand by HUDA the appellant-Board paid the entire amount to HUDA in May, 1992 including the interest that had accrued till the date of said payment.

5. Three complaints were made before the District Consumer, Forum Kurukshetra by the respondents herein in the three appeals against aforementioned additional demand raised by the appellant- Board by contending that in view of Clause 2(W) of the agreement the additional demand was barred by time having been made after more than 7 years of the allotment of houses/flats. The appellant-board defended the said complaints by disputing the jurisdiction of the Consumer Forum to entertain such a complaints besides other grounds of attack. The appellant-Board took the stand that there was no 'service' rendered within the meaning of clause 'O' of Sub-section (1) of Section 2 of the Consumer Protection Act. 1986 (hereinafter the Act) nor there was any 'deficiency' in the service within the meaning of Clause (g) of Section 2(1) of the Act. According to the appellant the dispute, if any, related to an alleged breach or the terms of contract for which the remedy lies in the Civil Court and not in the Consumer Forum.

6. The District Forum by its order dated 22.10.1992 rejected the objections and defence set up by the appellant-Board, allowed all the three complaints and quashed the additional demand made by the appellant-Board. The appellant-Board filed three separate appeals on 30.11.1992 before the State Commission against the aforementioned order dated 22.10.1992 quashing the additional demands. The State Commission took the view that all the three appeals as were filed beyond the prescribed period of limitation u/s 15 of the Act and as no sufficient cause for condonation was pleaded, dismissed all the three appeals as barred by time. Being aggrieved by the aforementioned order of the State Commission passed in First Appeals Nos. 389, 390 and 391 of 1992, the

appellant-Board preferred revision Petitions before the National Consumer Disputes Redressal Commission, New Delhi (hereinafter 'National Commission') being Revision petition Nos. 66 to 68/1993. The National Commission maintained the order of State Commission and dismissed all the three revisions by a common order dated 7.1.1993 impugned in these appeals.

7. learned Counsel for the appellant-Board submitted that the President of the District Forum had pronounced the order dated 22.10.1992 in open court and after such pronouncement of the order he proceeded on leave. Since the President had not signed the said order before proceeding on leave, the same was not made available to the appellant. The said order was, however, attested and certified on 30.10.1992 a copy whereof was furnished to the appellant only on 3.11.1992. Since 29.11.1992 was a Sunday the appeals before the State Commission were filed on 30.11.1992. According to the learned Counsel for the appellant the appeals were filed within one month from 30.10.1992, the date on which the attested and certified copy of the order was supplied to the appellant. learned Counsel for the appellant vehemently urged that according to Sub-rule (10) of Rule 4 of the Haryana Consumer Protection Rules, 1988 it was obligatory on the part of the District Forum to furnish signed and dated copy of the order free of charge to the appellant and that such a copy was furnished to the appellant on 30.10.1992 and, therefore, the appeals filed before the State Commission on 30.11.1992, would be within the prescribed limitation u/s 15 of the Act and there was no question of making any application for condonation of delay in filing the appeals. He further submitted that the appellant-Board could not have filed the appeals against the order of the District Forum on the basis of mere pronouncement thereof in the open Court unless the contents of the order were made available to the appellant for the purposes of preparing the appeal and challenging the same in the higher Forum. learned Counsel for the appellant, therefore, urged that the State Commission as well as the National Commission both committed a serious error in dismissing the appeals and the revisions on the ground that the same were barred by time and no sufficient cause for condonation of delay was pleaded.

8. Before considering the merits of the submissions made by the learned Counsel for the appellant it would be appropriate first to look into the relevant provisions relating to the limitation. Section 15 of the Act makes a provision for appeal and prescribes the limitation for the same. It reads as under :

15. Appeal. - Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of an order, in such form and manner as may be prescribed.

Provided further that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period.

9. Further the State Government made Rules under Sub-section (2) of Section 30 of the Act known as the Haryana Consumer protection Rules, 1988 (hereinafter referred as Rules). Sub-rule (10) of Rule 4 and Sub-rule (3) of Rule 8 which are relevant for purposes of these appeals are reproduced hereunder :

Rule 4(10). - "Orders of the District Forum shall be signed and dated by the members of the District Forum constituting the Bench and shall be communicated to the parties free of charge."

Rule 8(3). - "Each memorandum shall be accompanied by the certified copy of the order of the District Forum appealed against and such of the documents as may be required to support grounds of objection mentioned in the Memorandum.

10. Reading of the provisions of Section 15 reproduced above goes to show that any person aggrieved by an order made by the District Forum may prefer an appeal to the State Commission within a period of 30 days from the date of the order. But under the proviso the State commission is enjoined with the discretion to entertain the appeal even after the expiry of the period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within 30 days from the date of order. Section 15 does not prescribe any other requirement for the purposes of filing a proper and valid appeal to the State Commission. The other requirements for a properly constituted appeal are contained in Sub-rule (3) of Rule 8 which contemplates that each Memorandum of Appeal shall be accompanied by a certified copy of the order of the District forum appealed against and such other documents as may be required to support the grounds of objection mentioned in the Memorandum of Appeal. Sub-rule (10) of Rule 4 further makes it obligatory that the order of the District Forum shall not only be signed and dated by the members of the District Forum constituting the Bench but it enjoins a duty to communicate the order so passed signed and dated by the members of the District Forum, to the parties free of charge.

11. From the scheme of the Act it becomes apparent that the Consumer Protection Act, 1986 has been enacted with the object to provide for better protection of the interest of the consumers, as a measure for economical and speedy remedy for the settlement of their disputes and matters connected therewith. It is with this object in view that Rule 4(10) has also been made. It provides for communication of the order of the District Forum to the parties free of charge in order to avoid the delay as well as to save the parties from the burden of expenses that may be incurred for obtaining the certified copy. If the rule itself enjoins a duty for communicating the order of the District Forum duly signed and dated to the parties free of charge, there will hardly be an occasion for the parties to make an application for obtaining a certified copy thereof. Thus, Section 15 of the Act cannot be read in isolation but it has to be read alongwith Rules 4(10) and 8(3) of the Rules and a combined reading of Section 15 and the Rules reproduced above gives an impression that the purpose, object and intention of these statutory provisions is to protect the interest of the parties before the District Forum by making it obligatory on the District Forum to provide

a copy of the order duly signed and dated by the members of the Bench and the period of limitation prescribed with regard to the filing of an appeal shall be computed as commencing from the date of communication of the order in the manner laid down in Sub-rule (10) of Rule 4.

12. In the facts and circumstances stated above, the date of pronouncement of the order in the open Court by itself cannot be the starting point for determining the period of limitation u/s 15 of the Act. It has also to be shown that the order of the District Forum so pronounced was duly signed and dated by the members of the District Forum constituting the Bench and the same was communicated to the parties free of charge. That being so, it has to be appreciated that mere pronouncement of an order in the open Court will not be enough but under the scheme of the Rules a copy of the said order has also to be communicated to the parties affected by the said order so that the party adversely affected therefrom may have a fair and reasonable opportunity of knowing the text, reasons and contents thereof so as to formulate grounds of attack before the appellate or higher forums. In the absence of such communication of signed and dated order, the party adversely affected by it will have no means of knowing the contents of the order so as to challenge the same and get it set aside by the appellate authority or the higher Forum.

13. In the present case as laid before the State Commission the appellant contended that the order was pronounced by the District Forum in the open Court on 22.10.1992, it was not signed and dated as the President had proceeded on leave soon thereafter and therefore, neither the reasons on which the said order was based were known nor a copy thereof was furnished to the appellant- Board so as to know the reasons and contents of the order. It was also the case of the appellant that on an enquiry by the counsel for the appellant-Board (he was informed by the Stenographer of the President that the order would be dictated and typed after the return of the President and that the copy would be made available to the parties only on 30.10.1992 under the signature of the President and the copy was in fact made available to the counsel for the appellant only on 3.11.1992, it may be pointed out that Shri Tirath Singh, learned Counsel appearing for the appellant-Board before the National Commission had filed his own affidavit affirming these facts which have not been controverted by the respondents. On the contrary the reply filed in this Court by Shri K.C. Chug, President, Housing Board colony Welfare Association, Kurukshetra on behalf of the respondents has admitted that in the present case free copies were ready with the office on 30-10-1992 which were collected by the counsel for the answering respondent on 30.10.1992 whereas the counsel for the petitioner got the same on 3.11.1992. From these facts it is abundantly clear that the copies were duly signed and dated by the members of the forum on 30.10.1992. That being so that period of limitation in view of the above discussion will commence from the date on which the copies of the order were ready and made available i.e., 30.10.1992. In the present case the appeals were filed before the State Commission on 30.11.1992 and since 29.11.1992 was

Sunday, the appeals were prima facie within time. In these facts and circumstances there was no question of making any application for condonation of delay in filing the appeals as there was no delay at all.

14. For the reasons stated above the appeals succeed and are hereby allowed. The impugned orders of the National Commission and the State Commission are set aside. The appeals are remitted back to the State Commission for disposal on merits in accordance with law. No order as to costs.