
(2018) 03 NCDRC CK 0147

In the National Consumer Disputes Redressal Commission

Case No : Revision Petition No. 175 Of 2016

Jiten K. Ajmera & Anr

APPELLANT

Vs

M/S. Tejas Co-Operative Housing Society

RESPONDENT

Date of Decision : 16-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 107(1)(d), Order 41 Rule 27
Consumer Protection Act, 1986 — Section 21(b)

Citation : (2018) 03 NCDRC CK 0147

Hon'ble Judges : Rekha Gupta, J; Anup K Thakur, J

Bench : Division Bench

Advocate : P N Puri, Prasenjit Keswani

Final Decision : Dismissed

Judgement

Rekha Gupta, J

1. The present revision petition has been filed against the judgment dated 10 th December 2015 of the Maharashtra State Consumer Disputes

Redressal Commission, Mumbai (â??the State Commissionâ??) in First Appeal no. 85 of 2013.

2. The brief facts of the case as per the respondent / complainant are that the respondent was a housing society and the petitioner/ opposite parties

are the legal heirs of the original developers/ builder Smt Mrudula Ajmera. Smt Mrudula Ajmera had taken the possession of the plot from the original

land owners and constructed the flats of different sizes on it and sold it to all the flat holders in the year 2000. In the complaint it was stated that it was

necessary for the developer/ builder Shri Ajmera to form a Housing Society of the flat holders as per the agreement. But they did not do so and finally

the respondent flat holders formed a co-operative housing society with their own

attempts and expenses and it was registered on 30.09.2012. In the year 2004 the original developer/ builder Smt Ajmera died and as per the petitioner, opposite party no. 1 and no.2 are running the business of Smt Mrudula Ajmera since deceased and the petitioners are the legal heirs of Smt Ajmera. As per the agreement it was necessary for the developer/ builder to execute the transfer deed in favour of the society. The society demanded the transfer deed from the petitioners/ opposite parties but they had not responded and no necessary action was taken for the transfer deed.

3. The petitioner had not obtained the occupancy certificate for the building in respect of the society and hence they had to pay the water taxes and other taxes at higher rates to the corporation and thus bear the additional financial burden. The respondent society gave a notice dated 18.10.2007 to the petitioner to obtain the occupancy certificate and to execute the transfer deed in favour of the society. The petitioners replied on 19.01.2008 and suggested a meeting to discuss the same. A meeting between the office holders of the society and the petitioners was held on 31.01.2008 and in that the petitioners promised to obtain the occupancy certificate and execute the transfer deed but no proper action was taken. The society sent a reminder on 11.02.2008 to the petitioners and again received a demand for the occupancy certificate and transfer deed. But the petitioners had not responded and hence the complainant Society passed a proper resolution and filed this complaint.

4. The respondent society states that the original developer/ builder Smt Ajmera had recovered the following amounts at the time of the agreement to establish the society and other expenses viz. Rs.32,100/- from 1 BHK flat holders and Rs.37,100/- from 2 BHK flat holders. The number of 1 BHK flat holders is 14 and the number of 2 BHK flat holders is 7 and like this from 21 flat holders, the petitioner developer/ builders had recovered total Rs.7,09,100/- but Smt Ajmera had made no attempts in her life time to form the society and had not spent the amount. Finally the flat holders took the action and deposited Rs.1,15,368/- with the respondent and got registered the society. Hence, the Society demanded that the amount of Rs.7,09,100/- recovered from the flat holders and the amount of Rs.1,15,368/- spent by the flat holders themselves, i.e., the total amount of Rs.8,24,468/- be refunded with 15% interest. Further, as the petitioners have

neither obtained the occupancy certificate nor the transfer deed in the name of the society, they should pay a compensation @ Rs.25,000/- and Rs.50,000/-, to every flat holder i.e., total Rs.7.00 lakh.

5. The petitioner/ opposite parties in their reply denied every statement in the complaint. The petitioners stated that they do not run the business of Smt

Mrudula Ajmera as developers but were doing a separate business. As Smt Ajmera had left other legal heirs and as those are not the parties in the

complaint, hence, the complaint was defective. The petitioners stated that as the members of the society had carried out illegal additions and

alterations, the corporation had not given the occupancy certificate. Further, for the transfer deed the members of the respondent society had not

forwarded the copy of the draft conveyance; no Deed of Conveyance could be executed in favour of the complainants.

6. The District Consumer Disputes Redressal Forum, Mumbai Sub-District (the District Forum) vide its order dated 27.02.2013 while allowing

the complaint gave the following order:

1.

It is being declared that the opposite parties have failed to supply the service amenities to the complainant for to form the society and for the

occupancy certificate and transfer deed.

2. The order is being issued to the opposite parties that they should obtained the occupancy certificate for the building in the possession of the society,

within 3 months after the receipt of the copy of this judgment. If the opposite parties will fail to obtain the occupancy certificate within the above

period then they should pay the punishable expenses amount of Rs.500/- per day to the society and as the order is being issued to the opposite parties.

3. It is also being ordered to the opposite parties that, they should execute the transfer deed in favour of the society about the property in the

possession of the society within six months after the receipt of the copy of this judgment.

4. The order is being passed to the opposite parties that the amount of Rs.1,80,600/- recovered from the society members under the agreement that

they should return the society with 9% interest since the date of filing the complaint.

5. The order is being passed to the opposite parties that the amount of

Rs.1,15,368/- recovered from the society that they should return with 9% interest since the date of filing the complaint.

6. Addition to it the order is being passed that the opposite parties should return the extra amount of Rs.1,98,198/- paid by the society to the corporation for the water taxes with 9% interest since the date of filing the complaint.

7. Also it is being ordered that the opposite parties should pay the joint amount of Rs.25,000/- to the society for the senses of the complainant.â??

7. Aggrieved by the order of the District Forum, the petitioner/ opposite parties no.1 and 2 filed an appeal before the State Commission. While filing the appeal the petitioners have filed an application for taking additional evidence on record. As per the application the reasons given for the application are as under:

The application has been already made by Mrs Sujata Shetty, the Architect of the appellants, to the Municipal Corporation of Greater Mumbai for issuance of occupation certificate in respect of the building of the respondentâ??s society. Therefore, on 25.07.2013, the officers of MCGM visited the subject building.

The Architect of the appellants by her letter dated 8 th August 2013 requested the Executive Engineer, Building Proposal (WS) K/ Ward, MCGM to approve the occupation of the members of the respondentâ??s Society in the subject building at the earliest.

However, the Municipal Corporation of Greater Bombay by their letter bearing reference no. CE/5067/BP/(WS)/AK dated 26.08.2013 informed M/s

Sujata Shetty the Architect of the appellants, informing her that as per the site visit done by the officers of the MCGM , it has been observed that

there is unauthorised enclosure of elevation features by occupants which is violating the requisite last approved plans dated 02.07.2001 and therefore the MCGM directed to remove the said unauthorised work.

The appellant states that pending the hearing and final disposal of the above appeal, they have received the aforesaid documents from their Architect

Mrs Sujata Shetty, after the filing of the above appeal.

The appellants state that the documents as referred hereinabove could not be produced during the course of hearing of the above complaint or at the

time of filing of the above appeal as the same have come in existence only after the filing of the above appeal. The appellants state that the additional documentary evidence has bearing on the issue which are involved in the present appeal.

The appellants therefore prayed that:

The appellants be permitted to produce the said additional evidence in appeal no. 85 of 2013;

For such further and other reliefs as the nature and circumstances of the case may require;

For costs of the application be provided.

8. The State Commission in their order dated 10.12.2015 while rejecting the application observed as under:

â?? Heard both the parties on application for permission to file additional documents. Appellant wants to make out a case that he is not getting

occupation certificate from the Municipal Corporation due to non-co-operation of the respondents. Statutory obligation is on the builder/ developer/

promoter. He has to meet out the difficulties for deciding the legality and correctness of the order. Those documents are not necessary. Hence,

application seeking permission to file additional documents is rejected.â??

9. Hence, the present revision petition.

10. We have heard the counsel for the petitioner. He has stated that the State Commission had erred in rejecting their application because the

additional information was essential to show that the flat purchasers and members of the Complainant/ Society have made alterations and additions in

the premises in their occupation in contravention of the sanctioned plan and because of this they were not able to get the occupation certificate. The

Honâ??ble Supreme Court in the case of A Andisamy Chettiar vs A Subburaj Chettiar in Civil Appeal no. 14055 of 2015 (Arising out of SLP Â©

No. 7798 of 2015) decided on 08.12.2015 has held as under:

Under the scheme of Code of Civil Procedure, 1908 (for short â??the Codeâ?) whether oral or documentary, it is the trial court before whom parties

are required to adduce their evidence. But in three exceptional circumstances additional evidence can be adduced before the appellate court, as

provided under S. 107(1)(d) read with Rule 27 of Order XLI of the Code. Rule 27 of Order XLI reads as under: -

27. Production of additional evidence in Appellate Court. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

The Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, The Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission. (emphasis supplied) From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the Code to allow a party to adduce additional evidence without fulfillment of either of the three conditions mentioned in Rule 27.

11. In the instant case, it is an admitted fact that the additional documents sought to be introduced did not exist while the matter was before the District Forum. The two documents sought to be introduced are the Architect's letter to MCGM for occupation certificate dated 08.08.2013 which is well after the order of the District Forum dated 27.02.2013. The reply of MCGM is also of 26.08.2013. Hence, it cannot be said that the additional information sought to be introduced, satisfy the pre-conditions laid down under section 107 (1) (d) read with Rule 27 of Order XLI of the Code of Civil Procedure, 1908. Further, the State Commission has also categorically stated in their order that the documents "are not necessary". We are of the opinion that at the appellate stage the petitioner cannot seek to introduce the documents regarding subsequent events, unless the appellate court consider it necessary.

12. In view of the above, we find that no jurisdictional or legal error or misrepresentation of facts have 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.