
(2012) 11 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

Kishore Ramchandra Bhide

APPELLANT

Vs

Habitat India Agro Development Pvt Ltd

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Citation : 2012 4 CPJ 706

Hon'ble Judges : J.M.MALIK , VINAY KUMAR J.

Final Decision : Petition dismissed

Judgement

1. SHRI Kishore Ramchandra Bhide, petitioner/complainant is the Member of Green Acres Horticultural Development Cooperative Society Limited, opposite party No. 2/respondent No. 2. Respondent No. 2 was established for development of Horticulture and promoting overall growth of agricultural activities. The society had purchased agricultural land at Dolkham Tal, Shahpur Distt. Thane and plot No. 7 at survey No. 88, was allotted to the complainant. The society was to construct the farm house belonging to the complainant. Since the stay was granted against the society by the authority, therefore, the society could not construct the said farm house.

2. THE complainant has filed this case with the prayer that the amount paid by him in the sum of Rs.2,18,500/ -, out of total consideration of Rs.3,30,950/ - alongwith interest @12% per annum, be given to him. The District Forum dismissed the complaint. Being aggrieved by the order of District, Forum, an appeal was preferred before the State Commission which dismissed the same.

3. THE District Forum dismissed the complaint on two counts. Firstly, the society was not in a position to construct the house due to stay order. Secondly, it was observed that considering the nature of the activities for which allied services of the society were hired, it is a commercial purpose being a horticulture business. Learned counsel for the petitioner argued with vehemence that the above said farm house is being purchased for residential purpose, which would be used seasonally and to store fertilizers and transacting the cultivation of fruits and vegetables. It was admitted by the learned counsel for the petitioner that the

petitioner has got a separate residential house.

4. WE find it extremely difficult to countenance this contention. We have perused the complaint. The relevant paras of the complaint are reproduced as follows: "The respondent No. 2 society is categorized as Agricultural society. The complainant states that respondent No. 2 society has purchased huge land at Dolkham Tal. Shahpur Dist. Thane for achieving its object and in turn has proposed to develop it for horticultural, forestry and agricultural cultivation. A scheme accordingly was launched by the respondent No. 2 society to divide the land into several plots and allot it to its members upon certain terms and conditions. The complainant herein is member of the respondent No. 2 society and in accordance with its scheme entered into an agreement with the said society on 10-5-1989. In accordance with the said agreement. The Society has allotted a plot admeasuring one acre to the complainant herein upon certain terms and conditions which are set out in the agreement dated 10.5.1989. The complainant craves leave to refer to any rely upon the said agreement dated 10-5-1989."

"The complainant is self-employed, a qualified Engineer."

5. ALTHOUGH , the petitioner stated that he is a consumer, yet, he has not mentioned that he is purchasing this farm house for self-employment or for earning his livelihood. It is rather clear that this farm house is being purchased for earning profits. The petitioner is already employed.

6. THE Supreme Court has discussed the term "3consumer" in the celebrated authority reported in Laxmi Engineering Works vs. PSG Industrial Institute, 1995 3 SCC 583 wherein it was held: "The National Commission appears to have been taking a consistent view that where a person purchases goods "with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit", he will not be a "consumer", within the meaning of Section 2 (d) (i) of the Act. Broadly affirming the said view and more particularly, with a view to obviate any confusion the expression "large scale" is not a very precise expression Parliament stepped in and added the explanation to Section 2(d)(i) by Ordinance/ Amendment Act, 1993. The explanation excludes certain purposes from the purview of the expression "commercial purpose" a case of exception to an exception. Let us elaborate: a person who buys a typewriter or a car and uses them for his personal use is certainly a "consumer" but a person who buys a typewriter or a car for typing others' work, for consideration or for plying the car as a "taxi", can be said to be using the typewriter/car for a commercial purpose. The explanation however clarifies that in certain situations, purchase of goods for "commercial purpose" would not yet take the purchaser out of the definition of expression of expression "consumer". If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of "self-employment", such purchaser of goods is yet a "consumer". In the illustration given above, if the purchaser himself works on typewriter or plies the car as a taxi himself, he does not cease to be a consumer. In other words, if the buyer of goods uses

them himself, i.e. by self -employment, for earning his livelihood, it would not be treated as a "commercial purpose" and he does not cease to be a consumer for the purposes of the Act. The explanation reduces the question, what is a "commercial purpose", to a question of fact to be decided in the facts of each case. It is not the value of the goods that matters but the purpose to which the goods bought are put to. The several words employed in the explanation, viz, "uses them by himself", "exclusively for the purpose of earning his livelihood" and "by means of self -employment" make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood. A few more illustrations would serve to emphasise what we say. A person who purchases an auto -rickshaw to ply it himself on hire for earning his livelihood would be a consumer. Similarly, a purchaser of a truck who purchases it for plying it as a public carrier by himself would be a consumer. A person who purchases a lathe machine or other machine to operate it himself for earning his livelihood would be a consumer. (In the above illustrations, if such buyer takes the assistance of one or two persons to assist/help him in operating the vehicle or machinery, he does not cease to be a consumer). As against this, a person who purchases an auto -rickshaw, a car or a lathe machine or other machine to be plied or operated exclusively by another person, would not be a consumer".

A person cannot be said to be consumer if he purchases the second house.

7. THE revision petition is without merit and the same is, therefore, dismissed.