

(2003) 10 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

K.S. GOPALKRISHNAN

APPELLANT

Vs

PRESIDENT/GENERAL SECRETARY, VASANT CO-OPERATIVE
GROUP HOUSING SOCIETY

RESPONDENT

Date of Decision : 08-10-2003

Acts Referred:

Citation : 2004 2 CLT 574 : 2004 2 CPJ 270

Hon'ble Judges : Lokeshwar Prasad , Rumnita Mittal , Mahesh Chandra J.

Final Decision : Appeal dismissed

Judgement

1. THE present appeal has been filed under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as the "Act") against order dated 14.10.1996, passed by the District Forum (North) in Complaint Case No. 1309/1994 entitled Shri K.S. Gopalkrishnan v. Vasant Co-operative Group Housing Society. By the impugned order the learned District Forum rejected the prayer of the appellant Shri K.S. Gopalkrishnan for restoration of possession of the terrace but directed that evidence be produced regarding other two issues mentioned in the complaint. THE facts relevant for the disposal of this appeal in brief are as follows: THE appellant was a Member of the Vasant Co-operative Group Housing Society and was allotted Flat No. 80, Vasant Apartments, Plot No. 6, Mayur Vihar, Phase -I Extension, Delhi - 110091. However, the respondents failed to deliver the possession of the flat to the appellant in spite of clearance of all the dues. THE appellant filed a Complaint No. 730/93 in the District Forum, Tis Hazari, Delhi and the learned District Forum vide order dated 8.3.1994 directed the respondent society to deliver the possession of the flat and also pay interest on the deposited amount besides other reliefs. THE appellant then filed another complaint bearing No. 3291/1993 in the same District Forum for restoration of possession of the terrace. However the learned District Forum vide order dated 4.7.1994 dismissed the complaint on the ground that the dispute is not covered under the Act and the complainant should approach Civil Court for the required relief. No appeal was filed by the appellant against the said order of the District Forum. However, the appellant filed another Complaint No.

1309/1994 in the District Forum - I for the same relief. He also added two other reliefs in the complaint namely relief regarding issue of directions for putting antenna system functional and secondly relief regarding the issue of directions to make the staircase light functional. THE learned District Forum, after hearing the parties on the points of maintainability of above mentioned complaint, held that the order dated 4.7.1994 passed by the Forum in Complaint No. 3291/1993 has become final as neither the complainant has filed any appeal against that order nor moved any application for restoration of the complaint dismissed vide order dated 4.7.1994. Hence the District Forum vide order dated 14.10.1996 held that the complainant cannot seek any relief with regard to the restoration of possession of the terrace. However the learned District Forum proceeded to hear the complainant regarding other two reliefs claimed in the complaint and directed the parties to adduce their evidence by way of affidavits to settle the controversy and fixed 29.12.1996 for this purpose.

2. AGGRIEVED by the order of the District Forum, the present appeal has been filed. This appeal was filed on 30.10.1996 against the order dated 14.10.1996. This case has wrongly been registered as an appeal by the office as it has been filed against the interim order dated 14.10.1996 and it should have been registered as revision. No stay was requested by the appellant in this case and hence no stay was granted by this Commission, Complaint No. 1309/1994 proceeded in the District Forum and finally the complaint was disposed of by the District Forum vide order dated 30.6.1997. The learned District Forum dismissed the complaint of the appellant as the appellant had failed to make out the case of deficiency in service on the part of the respondent society.

The main contention of the respondents in the reply filed before this Commission is that the order of the District Forum dated 4.7.1994 had become final as no appeal has been filed against that order by the appellant and hence the appellant has no right to seek relief insofar as it related to the recovery of the possession of the terrace. Hence, the impugned order dated 14.10.1996 passed by the learned District Forum suffers from no illegality and hence the appeal should be dismissed. It was further stated by the respondents that the order dated 14.10.1996 passed in Complaint No. 1309/1994 was not appealable as by this order the learned District Forum directed the parties to adduce their evidence by way of affidavit. These directions related to two other reliefs sought by the appellant.

3. WE have heard both the parties and have also considered the evidence on records as well as the documents filed by both the parties. The appellant has filed detailed arguments supported by various judgments of the Hon"ble National Commission regarding the merits of the case. However, we do not consider it necessary to enter into the merits of the case as it is not necessary. In the first complaint filed by the appellant order was passed for the delivery of the possession of the flat along with some compensation and interest. In pursuance of that order the appellant was given the possession of the flat but no order was

passed regarding delivery of the possession of the terrace to the appellant. The appellant did not file any appeal against that order. If the appellant was not satisfied by that order, he should have filed an appeal under Section 15 of the Act. Instead of filing an appeal, he filed another complaint in the same District Forum for getting the possession of the terrace. On the date of hearing of this complaint the appellant was not present and after hearing the respondent the complaint was dismissed vide order dated 4.7.1994 and the District Forum found that the relief sought by the appellant cannot be given under the Consumer Protection Act and hence he should approach the Civil Court. The appellant Sh. K.S. Gopalkrishnan did not file any appeal against the order dated 4.7.1994 and instead filed a fresh Complaint No. 1309/1994 for restoration of the possession of the terrace besides two other reliefs mentioned above. However, the learned District Forum by the impugned order held that the order dated 4. 7.1994 by which the complaint No. 3291/1993 of the appellant was dismissed on 4.7.1994 has become final as no appeal has been filed against that order. Hence the appellant cannot seek same relief with regard to the restoration of the possession of the terrace in another complaint. Accordingly the learned District Forum by the impugned order came to the conclusion that the complaint of the appellant insofar as it relates to the relief relating to the recovery of the possession of the terrace is not maintainable. However, the learned District Forum proceeded to hear the appellant regarding other two reliefs. It is also relevant to note that finally the above complaint filed by the appellant was dismissed by the District Forum vide order dated 30.6.1997. The appellant has mainly argued on the merits of the case that he is a consumer of the Cooperative Society and that has also deposited the additional charges for the terrace after a resolution was passed by the General Body to charge extra charges for use of terrace. As already stated above we do not consider it necessary to enter into the merits of this issue as the main dispute relates regarding the maintainability of the present appeal.

4. WE have carefully considered the arguments advanced from both sides, this case has a chequered history. The appellant has filed one complaint after another for seeking relief for the possession of the terrace. By the order dated 4.7.194 passed in Complaint No. 3291/1993, the learned District Forum rejected the contention of the appellant and dismissed the complaint on the ground that the proper Forum is the Civil Court for adjudicating this issue. However, instead of filing appeal against that order, the appellant filed another Complaint No. 1309/1994 since no appeal was filed against the order dated 4.7.1994 that order has become final and no second complaint on the same issue is maintainable. In our view the learned District Forum was justified in holding that the order dated 4.7.1994 has become final and hence no second complaint for the same relief is maintainable. The impugned order of the learned District Forum is a well reasoned order and suffers from no infirmity, hence there is no ground to interfere with the order. The appeal is, therefore, dismissed with no order as to cost. The above mentioned appeal, filed by the appellant, stands disposed of in

above terms. Appeal dismissed.