
(2009) 01 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Nawal Kishore Kashyap

APPELLANT

Vs

BIHAR STATE HOUSING CO-OPERATIVE FEDERATION LTD.

RESPONDENT

Date of Decision : 14-01-2009

Acts Referred:

Citation : 2009 0 NCDRC 8 : 2009 2 CPJ 47

Hon'ble Judges : B.K.Taimni , Anupam Dasgupta J.

Final Decision : Appeal dismiss

Judgement

1. THIS appeal challenges the order dated 05.05.2003 of the Bihar State Consumer Disputes Redressal Commission, Patna (hereafter, the State Commission) in consumer complaint no. 45 of 1994. By the said order, the State Commission dismissed the complaint in limine on the ground of maintainability, viz., that the dispute was one between a member of a co-operative housing society and the society and hence could have been taken for adjudication only before the Registrar of Co-operative Societies under the Bihar State Co-operative Societies Act, instead of a Consumer Forum like the State Commission, under the Consumer Protection Act, 1986 (hereafter, the Act).

2. WE have gone through the rather sketchy papers before us and have heard Mr K. L. Nandwani (who, on behalf of Mr Sameer Nandwani, appeared for the appellant and assisted the Commission as amicus curiae) as well as Mr Manish Mishra for the respondent co-operative Federation. The undisputed facts of the case are few. The complainant, Sheo Dayal Singh (who appears to have passed away during the proceedings before the State Commission and was succeeded by his legal representative Nawal Kishore Kashyap) was a member of the Vardhan Grih Nirman Co-operative Society Ltd. and, in that capacity, applied for a loan of Rs. 20 lakh to the respondent Federation for construction of his house. Of this, the Federation sanctioned a loan of Rs. 1.75 lakh only.

The case of the complainant before the State Commission was that the parties in question signed the agreement for this loan, according to which the sanctioned loan was to be released in three instalments. However, out of the first instalment

of Rs. 70,000/-, only Rs. 65,450/- were actually paid to the complainant-appellant after long delay and after the first cheque issued in this behalf had bounced. The second instalment of Rs. 49,012/- was released, also after delay and much correspondence. The respondent Federation, according to the complainant-appellant, never released the third and final instalment though the former met all necessary requirements therefor. He was, therefore, compelled to issue a registered notice to the respondent Federation and failing to elicit a response even thereto, file the complaint before the State Commission. In this complaint, he alleged deficiency in service on the part of the respondents and sought direction to the respondent to release to him the third instalment of Rs. 65,000/- and to pay a sum of Rs. 66,000/- towards compensation.

3. IN the appeal memorandum, the appellant has claimed that the delays in release of the first (including the bouncing of the first cheque) and second instalments of the sanctioned loan had been admitted by the respondent Federation in its written version before the State Commission. However, a copy of this document has not been filed by the appellant along with the memorandum of appeal or later in these proceedings. The State Commission has also recorded in its impugned order that the Vardhan Grih Nirman Co-operative Society, of which the appellant was a member, had not recommended the release of the third instalment of the loan. No document has been produced before us to rebut this ground nor are the counsel appearing for the parties, including Mr Nandwani, able to throw any light on this issue. The appellant has also failed to show if he was unable to construct his house because of the alleged deficiencies on the part of the respondent Federation, including non-release of the final instalment of the sanctioned loan. IN fact, it is not even claimed that such was the case. Secondly, no evidence or document appears to have been produced before the State Commission to substantiate the claim for compensation on account of the alleged deficiencies. Thirdly, even a copy of the complaint before the State Commission and the document(s), if any, accompanying it are not before us. IN such a situation, we are constrained to observe that the appellant complainant has been unable to make out even a prima facie case for consideration. Before parting with the matter, we must, however, observe that the State Commission erred in dismissing the complaint only on the ground of its maintainability under the Act. The complainant had not initiated any prior proceedings under the Bihar State Co-operative Societies Act. It was, therefore, very much open to him to seek redress, in accordance with section 3 of the Act. This is the law on the subject, as settled by this Commission in the case of Smt Kalavati and Others v. United India Vaish Co-operative Thrift and Credit Society [I (2002) CPJ 71 (NC)]. The State Commission would do well to keep this in mind.

4. IN view of the discussion above, we dismiss the appeal leaving the parties to bear their own costs.