(2015) 08 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

Nirmal Kumar Pandey And Ors. APPELLANT

Vs

Kollati Constructions Ltd. And Ors. RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Citation : (2015) 08 NCDRC CK 0013

Hon'ble Judges : V.B.GUPTA J.

Final Decision : Petition Dismissed

Judgement

1. PETITIONERS /Complainants have preferred present petition under Section 21(b) of Consumer Protection Act, 1986 (for short, ''Act'') against order dated 29.11.2010 passed in F.A. No. 446/2008 by Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (for short, ''State Commission'').

2. BRIEF facts are, that petitioners are joint owners of a building having purchased it under registered sale deed from Respondent No. 4/Opposite Party No. 1, which was constructed and developed by Respondent No. 2/Opposite Party No. 4 on behalf of Respondent No. 1/Opposite Party No. 3. Respondent No. 5/ Opposite Party No. 2 is son of Respondent No. 4 and Respondent No. 2/Opposite Party No. 4 is close relative of respondents No. 4 and 5. It is stated that respondent No. 4 and respondent No. 2 on behalf of respondent No. 1 have entered into an agreement for construction and completion of Row Duplex House. Sanction for construction was obtained by Respondent No. 4 from Cantonment Board, Secunderabad. In June, 2002, Petitioner entered into a Tripartite -Agreement dated 28.6.2002 with Respondents No. 2 and 4 on the promise that they would arrange housing loan from LIC Housing Finance Ltd. Thereafter, sale deed dt. 16.7.2002 was executed. It is submitted that respondent No. 2 got completed the Row Duplex House and delivered possession of the same to the petitioners during 3 week of July, 2002. Thereafter, petitioners performed house warming ceremony on 14.8.2002. Thus, petitioners have been enjoying the aforesaid house as absolute and exclusive owners having purchased the same for sale consideration of Rs. 22.50 lakhs, inclusive of the cost of

construction. It is alleged, that in first week of September, 2007 petitioners came to know that respondent No. 4 has executed certain gift settlement deed in favour of respondent No. 5 in June, 2001 in respect of entire landed properties actually owned by respondent No. 4, in which Road Duplex House were constructed by respondent Nos. 4 and 2. Petitioners have further learnt that respondent No. 5 has mortgaged various extent of lands. Thus, alleging criminal conspiracy, fraud on the part of the respondents, petitioners have filed consumer complaint on the ground of deficiency seeking following reliefs. "(i) An award of Rs. 10.00 Lakhs against the opposite parties towards damages and compensation in favour of the complainants for the unfair trade practice and deficient services on the part of the opposite parties.

(ii) To direct the opposite parties 1 to 5 to keep the complainants indemnified and harmless of the claim of the 6 opposite party by settling the debt allegedly contracted by the opposite parties falsely mortgaging the property.

(ii) To direct the opposite parties 1, 3 and 4 to complete the unfinished works such, construction of Arch, laying of internal Roads, colouring the common areas and all unfinished works worth of about Rs. 10,00 lakhs."

3. THE District Forum vide order dated 18.2.2008, dismissed the complaint at the admission stage itself on the ground that dispute does not attract the provision of the Act. In order to enquire into the execution of so called gift settlement deed in favour of the respondents by the owners and having raised the plea of fraud, forgery, the Consumer Forum has no jurisdiction to resolve the dispute, more so when it has to determine the matter in summary manner. It followed the decision N. Shiva Rao v. M/s. Dwaraka Motors Company reported in, 1 (1993) CPJ 88 (NC).

4. BEING aggrieved, petitioners filed appeal before the State Commission, which dismissed the same vide its impugned order. Hence, this revision.

5. NOTICE of present petition was issued to all the respondents. Respondents No. 1 to 3 were served by publication, but they did not appear. Hence, they were proceeded ex parte.

6. RESPONDENT No. 6 was duly served, but did not appear. Hence, was proceeded ex parte. Respondents No. 4 and 5 were deleted in terms of statement made by learned counsel dt. 5.3.2014.

7. I have heard the learned counsel for petitioners and gone through the record.

8. IT is submitted by learned counsel for the petitioners, that petitioners have made specific allegations against respondents No. 1 and 2, that they did not complete the common amenities, such as construction of arch on the centre of the premises, laying of internal roads and miscellaneous works worth about Rs. 10 lakhs. Thus, there are sufficient allegations on record requiring adjudication on merits by the Consumer Forum. In support, learned counsel has relied upon following judgments; "(i) Lucknow Development Authority v. M.K. Gupta : (1994)

1 Supreme Court Cases 243;

(ii) Faqir Chand Gulati v. Uppal Agencies Private Limited and Another, : (2008) 10 Supreme Court Cases, 345 and

(iii) K.N. Sharma v. Toshali Resorts International and Another, : (2003) 9 Supreme Court Cases, 288."

The State Commission in the impugned order observed; "5) The point that arises for consideration is whether the order of the Dist. Forum is vitiated by mis - appreciation of fact or law?

6) The complainants have purchased duplex houses under registered sale deed dt. 16.7.2002 from R1 owner of the property and obtained possession. Since then they have been in possession of the property. Now they allege that having promised that there were no encumbrances, and that the title is free from all encumbrances, they learnt that a suit O.S. No. 138/2006 was filed by R4 builder against his vendor R1 and others alleging that settlement deeds that said to have been executed by R1 in favour of R2 are sham and nominal and does not have any title. The complainants allege that "It is thus clear that the R1, R2, and R4 with fraudulent intentions, and deceitful means have created fake settlement deeds without any true intention to transfer right, title and interest only for the purpose of availing loans in the name of R5 from R6 bank. In spite of impleading themselves as parties to the said suit to prove that settlement deeds were nominal or that they were sham etc., filed a complaint under the Consumer Protection Act seeking indemnification from R1 to R5 by stating that the debt allegedly contracted by R1 to R5 would not bind them. Alleging that this constitutes unfair trade practice and deficiency in service they claimed Rs. 20 lakhs towards compensation.

7) The very purpose of introducing Section 12(3) of Consumer Protection Act is to see that the complaints not connected with consumer dispute are not entertained. If notices are ordered in order to find out whether the said complaint is maintainable or not the very purpose of introduction Section 12(3) will be defeated. It would un -necessarily delay the proceedings. The complainant can as well seek appropriate remedy in a competent forum instead of unnecessarily litigating the matter before the Consumer Forum where there is no jurisdiction. The Dist. Forum lacks jurisdiction to decide the matter. The contention that the complaint cannot be dismissed at threshold has no meaning, more so, in the light of introduction of Section 12(3) of Consumer Protection Act.

8) The complainant intends to declare that the settlement deeds executed by the parties are nominal and non -est though for the self same cause a suit is pending. We fail to understand how the complainant can term it as consumer dispute. There is no consumerism in this. These acts cannot be said to constitute either deficiency in service or unfair trade practice. By mere using of those words it would not come to the rescue of the complainant to file a complaint before the consumer fora under the Consumer Protection Act. Ex -facie the complaint is not

within the purview of Consumer Protection Act. There is no consumer relationship between the parties. We do not see any mis -appreciation of fact or law by the Dist. Forum in this regard. We do not see any merits in the appeal.

9) In the result the appeal is dismissed. No costs."

9. THE petitioners in their consumer complaint besides other facts, have averred that; "3.7. It respectfully submitted that recently in the first week of September 2007, to the utter shock and surprise of the Complainants, they have come to know that the 1st Opposite Party has executed certain gift settlement deeds in favour of the 2 Opposite party in the month of June, 2001 in respect of the entire landed properties actually owned by the 1st Opposite Party in which the Row Duplex Houses were constructed by the Opposite Parties 1 and 4, construction of which were started in the year, 2000 itself and permission was taken in the year 1999. The complainants further learnt that the 2 Opposite party has mortgaged the various extents of land absolutely owned by the 1st Opposite Party which were developed by the 4 Opposite Party from the year 1999 onwards pursuant to certain sanctions obtained in the name of the 1st Opposite party from the Secunderabad Cantonment Board and all the properties were developed by the 1st and 4 Opposite parties as Row Duplex Houses which have been sold in the similar fashion as stated above to various purchasers including to the Complainants. It is further learnt that certain loans were even taken by the 5 Opposite party from the 6 Opposite party Bank for the said purpose. The 2 Opposite party appears to have fraudulently created false equitable mortgage in favour of the 6 Opposite Party Bank despite knowing fully well that the 2 Opposite Party did not have any valid title or interest under the settlement deeds executed by the 1st Opposite Party in favour of the 2 Opposite Party. The entire properties owned by the 1st Opposite party, have been developed by construction of Row Duplex Houses by the 4 Opposite party and the constructions were carried on by the 4 Opposite party from 1999 -2000 onwards and by the Mid of 2001 the Row Duplex Houses have literally come up and the constructions activity was in full swing.

3.8. It respectfully submitted that the 1st Opposite Party seems to have executed certain Settlement Deeds purporting to convey title in various extents of the house properties in favour of the son of the 1st Opposite Party i.e., 2 Opposite Party without there being any intent to actually transfer the property as the said property did not exist at all as row duplex houses have literally came up and physical features of the property were changed by the construction activity. The settlement Deeds are nothing but, fraudulent, sham, nominal and void documents as the very Row Duplex Houses were being constructed in properties of the 1st Opposite party and the properties alleged under the Settlement deeds, did not exist at all by Mid of June, 2001 as Row Duplex Houses which were being built by the 4 Opposite party. It is thus clear that the 1st, 2 and 4 Opposite Party with fraudulent intentions and deceitful means have created fake settlement deeds without any true intention to transfer right, title and interest only for the purpose of availing loans in the name of 5 Opposite Party from the 6 Opposite Party Bank. The Settlement Deeds were not acted upon by the 1st and 2 Opposite party and also the 4 Opposite Party and the 2 Opposite party has not accepted the settlement deeds nor acquired possession of the properties comprised in the Settlement Deeds to the knowledge of the 1st to 6 Opposite parties.

3.9. It is respectfully submitted that the entire properties owned by the 1st Opposite party Accused have been lawfully conveyed by the 1st Opposite party by developing the same into several Row Duplex Houses. The complainants are further given to understand that the 2 Opposite party has even figured as one of the witnesses in the sale transaction of the Row Duplex Houses sold by the 1st Opposite party in association, concert, conspiracy with the 4 Opposite party and the very physical features and nature of the properties was changed and therefore the question of acting upon or accepting the gift settlement does not arise. Thus, it is clear that the settlement deeds created by the 1st, 2 and 4 Opposite party are sham, nominal invalid and void documents and the interest if any, created under those documents in favour of the 6 Opposite party Bank is invalid and void. It appears that the 6 Opposite party Bank did not conduct any enquiry nor inspect the properties with regard to the alleged rights of the 2 Opposite Party under the settlement deeds and there is no valid document at all in favour of the 2 Opposite party establishing that the settlement deeds were accepted and acted upon by the parties. Further, by the date of the settlement deeds, the very nature of properties have since been changed by construction of row duplex houses it is clear that the documents of Settlement Deeds were apparently created only for the purpose of raising loans fraudulently and with dishonest intentions in collusion and connivance with the erring officials of the 6 Opposite party is figured as one of the witnesses in the registered document of memorandum of creation of mortgage in favour of the 6 Accused Bank.

3.10. It is submitted that the 4th Opposite party on behalf of the 1st Opposite party and 3rd Opposite party Company have received amounts towards the sale consideration and for completions of various works from the Complainants. The Complainants have even discharged the loan to L.I.C. and taken back the title deeds and other connected papers from LIC Housing Finance Ltd. The available receipts, Tri Partite Agreement, Work Order are filed herewith.

3.11. It is submitted that the Complainants have also gathered that the Opposite Party No. 4 has filed a Civil Case against the Opposite Parties 1 and 2 in O.S. No. 138/06 on the file of I Additional Chief Judge, City Civil Court, Hyderabad in which Opposite Parties No. 1 and 2 have filed their written Statements stating that the aforesaid Settlement Deeds were created for nominal purpose and they are sham and not acted upon. Thus, it is a big fraud, conspiracy, collusion between all the accused in creating false and bogus rights in favour of the 2nd accused with intent to raise loans fraudulently by creating false rights in favour of the 6th Opposite party Bank.

3.12. It is submitted under the aforesaid circumstances, the Complainants have got issued legal notice dated 17.09.2007 informing them about their guilty collusive actions and further calling upon all the Opposite Parties to resolve the issue with the 6th Opposite party Bank. The legal notice was acknowledged by all the Accused and the 5th Opposite party replied accepting the relation with the 2nd Opposite party and further accepting the alleged mortgage created for a loan taken by him from the 6th Opposite party Bank. The 5th Opposite party has intentionally relied on the mortgage which has been falsely created by the 2nd Opposite party knowing fully well that no such property under the settlement deed exists. Thus, the guilty intentions of the 5th Opposite party even at this time are glaring and apparent. Thus, all the Opposite Parties by their common intentions to deceive by hatching a criminal conspiracy in concert with each other and by their acts of omissions and commissions which is glaring by their admitted conduct have committed various offences for which they shall be prosecuted and punished for the various grave offences affecting the valuable ownership rights of the Complainants and various other purchasers of the row duplex houses.

3.13. It is further respectfully submitted that, it is quite clear that all Opposite parties in concert with each other have entered into a criminal conspiracy and created fake settlement deeds in order to avail loans from the 6th Opposite party Bank in the name of the 5th Opposite party despite knowing fully well that no right, title or other interest was passed on by the 1st Opposite party in favour of the 2nd Opposite party and all of the Opposite parties have fraudulently created settlement deeds deceptively with dishonest intentions. By the aforesaid said serious acts of omissions and commissions all of the Opposite parties have subjected the Complainants to untold hardship and created fuss in the minds of the Complainants who are the bonafide purchasers of the Row Duplex house constructed in part of the house No. 3 -6 -158. The complainants are apprehensive that the 6th Opposite party Bank may falsely proceed against the Complainant''s property and also various other Duplex House Owners claiming false rights created in favour of the 6th Opposite party bank by the 2nd Opposite party without any valid right, title or other interest under the Settlement deeds which are inherently void documents."

10. AS per above averments made by the petitioners in their complaint, it is manifestly clear, that by no stretch of imagination present dispute can be said to be a "Consumer Dispute". Admittedly, petitioners have made allegations of fraud, criminal conspiracy and creation of fake settlement deed etc. So, to decide all these alleged criminal acts, the Consumer Forum has no jurisdiction to deal with such matters. Therefore, both fora below, rightly refused to entertain the complaint of the petitioners. Even otherwise, the consumer complaint filed by the petitioners is barred by limitation as provided under Section 24A of the Act. Petitioners in its complaint have nowhere mentioned as to on which date, cause of action arose in their favour. Be that as it may, petitioners in their complaint have categorically stated that respondent No. 2 got completed Row Duplex

House and delivered the same to them (Petitioners) during 3rd week of July, 2002 and they (Petitioners) performed house warming ceremony on 14.8.2002. Thus, possession of house was received by the petitioners in July, 2002. Whereas, consumer complaint was filed before the District Forum only in the year 2007. Therefore, on the face of it, consumer complaint is barred by limitation.

11. SECTION 24 -A of the Consumer Protection Act, 1986, deals with this situation which is reproduced as under; "24 -A. Limitation period: - - (1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub -section (1) a complaint may be entertained after the period specified in sub -section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period.

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay."

12. THE above provision is clearly peremptory in nature requiring the Consumer Fora to see at the time of entertaining the complaint, whether it has been filed within the stipulated period of two years from the date of cause of action. Hon''ble Apex Court in case of Kandimalla Raghavaiah & Co. versus National Insurance Co. Ltd. and another, : 2009 CTJ 951 (Supreme Court) (CP) took view of the observations made in case State Bank of India v. B.S. Agricultural Industries, : 2009 CTJ 481 (SC) (CP) : JT 2009 (4) SC 191, as under: - - "12. Recently, in State Bank of India v. B.S. Agricultural Industries, : 2009 CTJ 481 (SC) (CP) : JT 2009 (4) SC 191, this Court, while dealing with the same provision, has held;

8. It would be seen from the aforesaid provision that it is peremptory in nature and requires consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The consumer forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. The expression, ''shall not admit a complaint'' occurring in Section 24A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within limitation period prescribed thereunder. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24A and give effect to it. If the

complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside."

In para No. 13, it has been held by the Hon''ble Supreme Court that;

"The term "cause of action" is neither defined in the Act nor in the Code of Civil Procedure, 1908 but is of wide import. It has different meanings in different contexts, that is when used in the context of territorial jurisdiction or limitation or the accrual of right to sue. Generally, it is described as "bundle of facts"., which if proved or admitted entitle the plaintiff to the relief prayed for. Pithily stated, "cause of action" means the cause of action for which the suit is brought. "Cause of action" is cause of action which gives occasion for and forms the foundation of the suit. In the context of limitation with reference to a fire insurance policy, undoubtedly, the date of accrual of cause of action has to be the date on which the fire breaks out."

13. IT is well settled that by serving the legal notice or by making representation, the period of limitation cannot be extended by the respondent. In this context, reference can be made to Kandimalla Raghavaiah & Co. (supra), in which it has been held; "By no stretch of imagination, it can be said that Insurance Company''s reply dated 21st March, 1996 to the legal notice dated 4 January, 1996, declining to issue the forms for preferring a claim after a lapse of more than four years of the date of fire, resulted in extending the period of limitation for the purpose of Section 24A of the Act. We have no hesitation in holding that the complaint filed on 24 October, 1997 and that too without an application for condonation of delay was manifestly barred by limitation and the Commission was justified in dismissing it on that short ground."

14. THEREFORE , consumer complaint is barred by limitation and is liable to be dismissed on this ground alone. Lastly, it is well settled that under Section 21(b) of the Act, scope of revisional jurisdiction is very limited. Under Section 21 of the Act, this Commission can interfere with the order of the State Commission where such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

15. HON ''ble Supreme Court in Mrs. Rubi (Chandra) Dutta v. United India Insurance Company, : 2011 (3) Scale 654 has observed; "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view that what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different

(and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken, by setting aside the concurrent finding of two fora.

16. NONE of the judgements (supra) relied by learned counsel are applicable to the facts of present case. In view of the aforesaid discussion, no infirmity or illegality can be found in the impugned order. Hence, present petition stand dismissed being barred by limitation as well as on merits, subject to cost of Rs. 10,000/ - (Rupees Ten Thousand only).

17. PETITIONERS are directed to deposit the cost by way of demand draft in the name ''Consumer Legal Aid Account'' of this Commission, within four weeks from today.

18. IN case, petitioners fail to deposit the cost within the prescribed period, then they shall be liable to pay interest @ 9% p.a., till realization. List for compliance on 24.9.2015.