
(1993) 05 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

N.RAVIKIRAN

APPELLANT

Vs

S.Ramanathan

RESPONDENT

Date of Decision : 06-05-1993

Acts Referred:

Citation : 1993 3 CPJ 1522

Hon'ble Judges : S.A.Kader , R.N.Manickam , Ramani Mathuranayagam J.

Final Decision : Complaint dismissed

Judgement

1. THIS is a complaint under Section 17 read with Section 12 of the Consumer Protection Act.

2. THE Complainant entered into an agreement with the Opposite Party who is carrying on business in real estate and construction of houses, for the purchase of an extent of 1800 sq. ft. in Survey No. 250/2 in Kottivakkam Village at the rate of Rs. 1,95,000/- per ground and for construction house therein. THE Complainant's relative Miss Saraswathi also entered into a similar agreement with the Opposite Party. THE Complainant paid Rs. 75,000/- in pursuance of the said agreement. But the Opposite Party did not execute the Deed of Sale in respect of the land, and it was subsequently found-out that the land itself did not belong to the Opposite Party. After several requests the Opposite Party agreed to refund the amounts and a cheque for Rs. 1,50,000/- was issued towards the amounts paid by the Complainant and her relation Miss G. Saraswathy. THE cheque was however dishonoured and the Complainant has filed a criminal prosecution. This complaint filed for the refund of his amount of Rs. 75,000/- with interest at 24% per annum, and for compensation. The Opposite Party contented an inter-alia that he had already filed a suit in the City Civil Court, Madras in O.S. No. 5222 of 1992 for the issue of the mandatory injunction against the Complainant and his relation G. Saraswathy for the return of the cheque for Rs. 1,50,000/- issued by him on the ground that the Complainant and his relation G. Saraswathy committed breach of the agreement and for feited the advances paid by them and that in view of the pendency of the suit, the present

complaint based on the same cause of action is not maintainable.

Exhibits A1 to A5 and B1 to B3 are marked.

3. ACCORDING to the Complainant, he entered into an agreement with the Opposite Party for the purchase of a plot measuring 1800 sq. ft. in Survey No. 250/2 in Kottivakkam Village and for the construction of house therein at Rs. 200/- per sq. ft. and paid an advance of Rs. 75,000/- therefor. The Opposite Party failed to execute the Deed of Sale for the land which was subsequently found to be not the property of the Opposite Party. The Opposite Party agreed to refund the amount of Rs. 75,000/- paid by the Complainant and the another sum of Rs. 75,000/- paid by his relative G. Saraswathy and issued a cheque for the whole amount of Rs. 1,50,000/- which was dishonoured. The Complainant has now filed this complaint for the refund of his amount of Rs. 75,000/- with interest while his relation Saraswathy filed O.P. No. 330 of 1992 for the refund of her sum of Rs. 75,000/- with interest. The Opposite Party has filed a suit in O.S. No. 5222 of 1992 on the file of the City Civil Court, Madras on the same set of facts alleging that the Complainant and his relation G. Saraswathy committed breach of the contract and therefore forfeited the advance amounts and for a mandatory injunction for the return of the cheque. The subject-matter of this complaint and the suit in the City Civil Court is the same and the suit is earlier in point of time. The National Commission has pointed-out in *Special Machines Karnal v. Punjab National Bank I* (1991) CPJ 78 (NC), that as a matter of policy and principle where the subject-matter of the complaint is subjudice before the ordinary Civil Court, a concurrent adjudication in respect of the same will not be taken by the Forums under this Act. We-hold therefore that this complaint is not maintainable as the matter is sub-judice in O.S. No. 5222 of 1992 on the file of the City Civil Court Madras. It is on the same ground in O.P. 330 of 1992 filed by the Complainant's relation G. Saraswathy was also dismissed by this Commission by its order dated 23-11-1992. It is urged by the Learned Counsel for the Complainant that the civil suit may take several years for disposal and by that time, the Complainant's claim may be barred by time. The apprehension is unfounded. It is only after the disposal of the suit, the right of the Complainant to recover the amount will arise if the suit ends in favour of the Complainant.

4. IN the result, the Complaint fails and is dismissed but without costs. Complaint dismissed.