

(1999) 11 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

P.S.MATHEW

APPELLANT

Vs

K.M.Varghese

RESPONDENT

Date of Decision : 08-11-1999

Acts Referred:

Citation : 2000 3 CPJ 501 : 2001 1 CPC 111

Hon'ble Judges : L.Manoharan , K.M.Latha J.

Final Decision : Appeal dismissed

Judgement

1. THE complainant in O.P. 361/97 on the file of the CDRF, Pathanamthitta is the appellant. He alleged before the District Forum that the opposite party agreed to construct an additional floor and re-modelling work of the complainant's building in accordance with the plan as well as the specifications in the agreement executed by the parties. THE complainant further alleged that the construction was not in accordance with the agreement thereby he sustained huge loss which would amount to deficiency of service, therefore, he wanted direction in that regard. In the version the opposite party maintained that he attended construction as per the instruction and supervision of the complainant's engineer. Though there was a complaint of certain defects, when the opposite party inspected the site he could find only dampness in the ceiling of the first floor etc. He was ready and willing to rectify the dampness. THE complainant refused to permit the opposite party to attend to the said repair. THE complainant owes an amount of Rs. 13,624.50 paise to the opposite party. He denied the claim of compensation and wanted dismissal of the complaint. It is seen that before the District Forum complainant gave evidence as P.W. 1 and had produced Exts. A1 to A11 opposite party produced Exts. B1 and B2, Commissioner filed Exts. C1 to C3, no oral evidence was tendered by the opposite party. THE District Forum dismissed the complaint observing that the complainant is at liberty to approach Civil Court for redressal of his grievance. Aggrieved by the same the complainant had filed this appeal.

2. IT is urged by the learned Counsel for the appellant that the very basis of the

decision of the District Forum cannot be supported. The District Forum dismissed the complaint with liberty to the complainant to approach the Civil Court as the District Forum felt that since O.S. 85/98 is pending before the Munsiff Court, Pathanamthitta, it would be proper to direct the parties to approach the Civil Court. It is pointed out by the learned Counsel for the appellant, that the suit was filed after the institution of the complaint. There is no dispute about him. The same is only for recovery of the alleged balance amount due to the opposite party towards the construction of the building; whereas this complaint is for compensation for deficiency of service on the basis of the allegation of the complainant that the construction is defective. The learned Counsel maintained that in such circumstance the pendency of the said civil suit cannot affect the adjudication of the complaint and be relied on the decision of the Supreme Court in *Satpal Mohindra v. Surindra Timber Stores*, III (1999) CPJ 33 (SC)=IX (1999) SLT 449=(1999) 5 SCC 696. The learned Counsel for the respondent on the other hand sought to support the view of the District Forum and urged, since the subject-matter in both proceedings is the same, it would be in the interest of justice that both matters considered by a Civil Court. Admittedly the civil suit was filed after the institution of the complaint and the civil suit is for recovery of balance amount, alleged to be due to the complainant towards the construction of the building. This complaint, as already noticed, is on the basis of alleged deficiency of service on account of the defect in the construction of the building, evidently the causes of action of the suit as well as this complaint are different. Not only that the suit was filed after the institution of the complaint, in the decision in *Satpal Mohindra v. Surindra Timber Stores* (supra), the Supreme Court that the filing of suit by the opposite party for different type of relief that too after the institution of the complaint since cannot oust the jurisdiction of the Consumer Forum, the Forum is bound to adjudicate the points involved in the complaint. In that view the impugned order is liable to be set aside and the matter has to be remitted to the District Forum for adjudication.

In the result the impugned order is set aside, the District Forum shall restore the complaint to file and then dispose of the matter in accordance with law. The parties will appear before the District Forum on 22.12.1999. In this appeal there will be no order as to costs. Appeal dismissed.