

(2013) 10 NCDRC CK 0066

In the National Consumer Disputes Redressal Commission

Rajpipla Co-Operative Housing Society Ltd

APPELLANT

Vs

Jagdish Bhagwandas Ahuja , Magic Properties Pvt. Ltd

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : 2013 0 NCDRC 706 : 2013 4 CPR 33 : 2014 4 CPJ 347

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Advocate : SUKUMAR PATTJOSHI , VIKAS NAUTIYAL , UDAY WAVIKAR ,
S.K.DUBEY , KAILASH VASDEV , B.P.Pathak , ASHWANI KUMAR

Judgement

1. IT is settled law that preliminary objection relating to jurisdiction of this Commission has to be decided, first of all. The preliminary objection should form part of the written version or written version should be filed within the time prescribed, under Section 13 of the C.P. Act or the written version should be accompanied by a separate application raising the preliminary objection. The litigant is not directed to dodge the provision of the C.P. Act, on the ground that, without filing the written version, his preliminary objection should be decided, first of all. Section 13 of the C.P. Act, clearly provides that the written version must be filed within 30 days, from the date of service and if there is some genuine "sufficient " ground, this Commission can further extend the time to 15 days ", meaning thereby, that written version has to be filed within 45 days, from the date of service. This is a mandate given by the Apex Court, by three Judges " Bench, reported in the case of Dr. J.J. Merchant and Ors. Vs. Srinath Chaturvedi -III (2002) CPJ 8 (SC), where it was unambiguously laid down: " From the aforesaid section, it is apparent that receipt of the complaint, the opposite party is required to be given notice directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum or the Commission. For having speedy trial, this legislative mandate of not giving more than 45 days in submitting the written statement or the version of the case is required to be adhered to. If this is not adhered, the legislative mandate of disposing of the cases within three or five months would be defeated ".

2. IN case, if the preliminary objection is filed, first of all and that too, in the absence of written version, the very object of the scheme of C.P. Act, 1986, shall stand defeated. The requirement of Law is that the case must be decided within 180 days. In this case, the service was effected on the OPs on 01.10.2012. Vide order dated 12.04.2013, the contention of the counsel for the OPs was invited towards Section 13 (1)(a) of the Consumer Protection Act, 1986. It was stated that the written statement must be filed within the prescribed period, otherwise, law will take its own course. The OPs has failed to file the written version, within 45 days and, till today.

3. ON the other hand, counsel for the OP has moved an application seeking leave to take on record the written statement on behalf of the opposite party. It has been prayed that the OP should be allowed to file written statement due to the following reasons because Section 13(1)(a) are similar to the provisions of Order 8, Rule 1 of CPC. The Opposite Party has also moved an application under Section 8 of the Arbitration and Conciliation Act. It is stated that the Supreme Court has mentioned in *Rashtriya Ispat Nigam Vs. Verma Transport Company*, 2006(7) SCC 275, dealing with the Section 8 of the Arbitration and Conciliation Act , stated that the application under Section 8 has to be filed before considering the jurisdiction, i.e., by filing reply on merits. Reference has been made in *Topline Show Limited Vs. Corporation Bank Limited*, 2002(6) SCC 33, which is a case, decided by two Hon "ble Judges, which says that Section 13 is not mandatory. The attention of this Commission was also invited towards the authority reported in the case of *Kailash Vs. Nanku* [AIR 2005 SC 2441], that, that case is supported by judgment of Three Judges " Bench, pertains to Order 8, Rule 1 of the CPC, therein the Apex Court held that Order 8, Rule 1, though, is mandatory, is directly being the provision in domain of procedural law. In the written arguments too, the same submissions have been reiterated.

4. BY a separate order, we have already dismissed the contention that pendency before the arbitration does not bar the jurisdiction of this Commission. *Topline Shoe Limited* (supra) stands over ruled by the authority *Dr. J.J. Merchant and Ors. Vs. Srinath Chaturvedi -III* (2002) CPJ 8 (SC). *Kailash Vs Nanku* (supra) is not applicable to this case. The observations made by the Apex Court are simply obiter dicta. We are of the considered view, that C.P. Act and CPC envisage two different procedures. Under the C.P.C., there is no time frame. Under C.P. Act, a Consumer Complaint has to be decided, within 180 days and Revision Petitions and First Appeals are to be decided, within 90 days. Moreover, C.P.C. provides a long procedure, but Consumer Protection Act, 1986, provides a summary procedure. Order 8, Rule 1 cannot be equated with Section 13 of the C.P. Act.

5. WE took similar view in *Sanjay Goyal Vs. Unitech Ltd., & Ors.*, in Consumer Case No.344 of 2012, decided on 29th May, 2013. Civil Appeal No.6042 of 2013 was preferred before the Hon "ble Supreme Court, by Opposite party, Unitech Ltd., which ordered, "The appeal is dismissed as withdrawn, in terms of the signed order ", as on 08.08.2013 ". The order, further reads : "This appeal is

directed against order dated 29.05.2013, passed by the National Consumer Disputes Redressal Commission, New Delhi, in Consumer Complaint No.344 of 2012. After arguing the case for some time, Shri Abhimanyu Bhandari, learned counsel for the appellant made a request that his client may be permitted to withdraw the appeal. The request of the learned counsel is accepted and the appeal is dismissed as withdrawn. It is needless to say that the appellant shall have to implement the directions contained in the impugned order, within the time specified therein. A copy of this order be sent to the respondents by registered post at the address mentioned in the Memo of Appeal. Sd/ G.S.Singhvi, J Sd/ J.Mukhopadhaya, J ".

6. CONSEQUENTLY , the application (IA No. 6217 of 2013) is dismissed. Case to come up for Complainant 's evidence by way of affidavit, on 16.12.2013, the date already fixed.