
(2007) 11 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

RASHMI GUHA NIRMAN LTD

APPELLANT

Vs

KANTILAL G SHAH

RESPONDENT

Date of Decision : 29-11-2007

Acts Referred:

Citation : 2008 3 CPJ 501

Hon'ble Judges : P.N.Kashalkar , S.P.Lale J.

Advocate : A.V.Patvardhan , C.V.Golwala , U.B.Wavikar

Judgement

1. BEING aggrieved by the orders passed by District Consumer Forum, Thane, in Consumer Complaint Nos. 109/2003 and 110/2003 dated 20. 9. 2003, whereby the complaints were allowed and OP Nos. 1 to 3 have been directed to deliver flat Nos. 219 and 224, admeasuring about 850 sq mts of built up area on the ground floor of C. Wing in Rashmi Enclave, Mira Road, District Thane, within 3 months from the date of receipt of order and even further directed to pay interest per month from 11. 8. 2001 till the date of handing over possession and have been also directed to pay compensation of Rs. 10,000 and cost of Rs. 5,000 respectively. Aggrieved thereby original O. P. Nos. 1 and 2 have filed this appeal, challenging the awards passed by the District Consumer Forum. Facts to the extent material may be stated as under:

2. SHRI Kantilal G. Shah and Smt. Damyanti K. Shah had filed consumer complaints in the Forum below alleging deficiency in service on the part of OP Nos. 1 to 3. Complainants in their complaint alleged that they had booked flat Nos. 219 and 224, admeasuring about 850 sq. ft. of built up area on the second floor of C Wing in Rashmi Enclave, Mira Road, District Thane for total consideration of Rs. 6,80,000 respectively with OP No. 1 company and its two directors. OPs. executed agreement of sale on 24. 4. 99 and registered the same. Clause 4 of the said agreement did not mention the date of possession, but on the same day one letter was issued on the letter-head of OPs whereby OPs agreed to hand over possession of the flat to the complainant on 11. 8. 2001. But OPs failed to hand over possession or failed to return the amount paid

to OPs. Complainants sent notice through their advocate. Despite notice, complainants could not get possession of premises booked by them with the OPs and therefore, they filed consumer complaints seeking possession of flats with all amenities in terms of agreement dated 24. 4. 1999 with interest @ 2% p. a. from 11. 8. 2001 in terms of letter dated 24. 4. 1999 and claimed compensation of Rs. 2,50,000 for mental harassment and agony and Rs. 15,000 towards cost. Op No. 3 was proceeded ex parte as he did not put in appearance, despite service of summons, but Op Nos. 1 and 2 appeared through their Advocate and defended the complaints by filing written statement. They took up the plea that Forum had no territorial jurisdiction and complaints were barred by limitation. They also pleaded that in the complaints, nowhere there was word deficiency in service pleaded by the complainants have filed Civil Suit Nos. 368/2002 and 369/2002 on 24. 5. 2002 for possession and therefore, the instant proceedings would amount to double jeopardy. They pleaded that no payment was made as per agreement and agreements or letter were not signed by Op Nos. 1 and 2. They pleaded that Op No. 3 had no authority to sign any letter or document on behalf of Op No. 1 company or Op No. 2 Director and therefore, they pleaded that complaint should be dismissed with cost.

Parties filed affidavits and documents in support of their respective pleadings and on hearing arguments of both the parties, the learned District Consumer Forum held that there was deficiency in service on the part of OP Nos. 1 to 3. Complaints were filed within limitation and Forum further held that there was sufficient proof about payment of full consideration made by the complainants to the OPs. Forum relied upon receipts filed on record, Annexure B and held that total consideration was passed on to the OPs by complainants for the flats they booked and the defence raised by OP Nos. 1 and 2, that OP No. 3 had no authority to sign any letter or agreement on behalf of OP Nos. 1 and 2 was turned down by the Forum below. Forum below also held that filing of civil suits by plaintiffs in the Court of Civil Judge, Senior Division, Thane was pertaining to injunction and not regarding possession of the flats booked and, therefore, even if suits are filed, the Forum below can look into deficiency in service as alleged by the complainants and therefore, Forum below was pleased to allow the complaints partly and directed OPs to give possession of flat Nos. 219 and 224 and to pay interest @ 2% p. a. on the amount of Rs. 6,80,000 paid by the complainants respectively to the OPs from 11. 8. 2001 till the date of handing over possession. Forum below also directed payment of compensation of Rs. 10,000 and cost of Rs. 5,000 to each of the complainants. Aggrieved thereby, original OP Nos. 1 and 2 have filed these appeals.

3. AT the stage of admission itself, we heard Mr. C. V. Golwala Advocate for the appellants, Mr. U. B. Wavikar Advocate for respondent Nos. 1 and 2 and Mr. A. V. Patwardhan Advocate for respondent No. 3. We are finding that the orders passed by the Forum below in favour of the complainants are totally bad in law and cannot be allowed to sustain in law. Inasmuch as the Forum below lost sight of the provisions contained in Section 3 of Consumer Protection Act, 1986.

Section 3 of Consumer Protection Act, 1986 lays down that the provisions of this Act shall be in addition to and not in derogation of are provisions of any other law for the time being in force. This Act is necessarily applicable, where complainant is in a position to establish that there has been deficiency in service or there has been unfair trade practice on the part of OP or there has been manufacturing defect and various others things which are incorporated in Section 2 of Consumer Protection Act, 1986. But what is to be borne in mind is that if the person has already invoked jurisdiction of the Civil Court, he cannot approach subsequently before the Consumer Forum relying on Section 3 of Consumer Protection Act, 1986. Any dispute of civil nature can be filed in Civil Court under Code of Civil Procedure. Civil Court has unlimited all pervasive jurisdiction to decide any matter involving civil dispute. But if a person has already approached Civil Court by filing civil suit he cannot at the same time invoke jurisdiction of Consumer Forum taking benefit of Section 3 of Consumer Protection Act, 1986. Provisions of Section 3 are mutually exclusive, in the sense that if a person has invoked jurisdiction of Civil Court pertaining to any subject matter of civil nature, he is precluded from approaching Consumer Forum for the same subject-matter; simply alleging deficiency in service. When he is already pursuing his civil suit for the same reliefs against the same party, the sort of double jeopardy rule comes into play in such matters and proceeding filed at a later point of time will have to be held not maintainable, if for the same relief complainant has already filed civil suit in the competent Civil Court.

4. IN the instant case as has been made clear in para 7 of the appeal memos, before filing of the complaints, complainants had filed and instituted regular civil suit Nos. 368/2002 and 369/2003 in the Court of Civil Judge, Senior Division, Thane. Said suits were filed on 24. 5. 2002, copies of which are annexed and marked as Exhibit E in the appeal proceedings. After obtaining of the orders from Forum below in the year 2003, complainants withdraw the civil suits in the year 2004. It appears from the record that initially both the complainants had filed consumer complaint Nos. 193 and 194/2002 in the District Consumer Forum, Thane. The said complaints were allowed by the District Consumer Forum by its order dated 1. 1. 2003. Therefore, both the complainants, filed Appeal Nos. 452 and 4523 of 2003 and at the stage of admission itself both the appeals were allowed and leave was granted to the complainants flat purchasers to withdraw the complaints in the light of request made and to file fresh complaints with the District Consumer Forum based on same cause of action and District Consumer Forum was directed to dispose of complaints as expeditiously as possible and thereafter after hearing both the parties, complaint of Kantilal G. Shah in consumer complaint No. 109/03 freshly filed on 10. 6. 2003 was allowed by the impugned judgment on 20. 9. 2003. In the like manner complaint of Mrs. Damyanti K. Shah was also allowed and order was passed in favour of Mrs. Damyanti Shah in the like manner for the reliefs claimed by her in her complaint. We have carefully gone through the complaints filed by the plaintiffs in regular civil suit Nos. 368 of 2002 and 369/2002, which were filed on 24. 5. 2005. In the said

civil suits, plaintiffs Kantilal G. Shah and Mrs. Daymanti K. Shah mentioned following prayers: " (a) The defendants be ordered, decreed and directed to specifically perform the obligations, terms and conditions of the agreement dated 24th April, 1999 and to complete transaction of sale of the suit premises by completing the same with all amenities and handing over the possession of the suit premises in favour of the plaintiff. (b) The defendants, their agents, servants, partners, directors, assignees, etc. be restrained by a decree and order of perpetual injunction from selling, transferring or alienating the suit premises in any manner whatsoever. (c) Add interim reliefs in terms of prayer Cause (a) be granted. (d) Any other relief which the Hon'ble Court deems fit and proper be granted to the plaintiff. "

5. PRAYER No. (a) would clearly go to show that they wanted decree against Rashmi Guha Nirman Ltd. and its two Directors Mr. Ashwin T. Shah and Mr. Chandravadan Thakkar for specifically directing to perform their obligations in terms of agreements dated 24. 4. 1999 and to complete the transaction of sale of the suit premises by completing the same with all amenities and handing over possession of the suit premises in favour of plaintiffs and second prayer was for injunction restraining OPs from selling, transferring or alienating the suit premises in any manner whatsoever. Prayer in the complaints filed before the Forum against Rashmi Guha Nirman Ltd. and its two Directors Mr. Ashwin T. Shah and Mr. Chandravadan Thakkar also included prayer that opponents be ordered, decreed and directed to specifically to perform the obligations, terms and conditions of the agreements dated 24. 4. 99 and to complete the transaction of sale of the suit premises by completing the same with all amenities and handing over possession of the suit flats in favour of the complainants. Prayer Nos. 2 and 3 are however slightly different. Main prayer in suits as well as in the complaints filed before the Forum are same.

6. AT the cost of repetition, we may again mention that civil suits were filed by the complainants in the Court of Civil Judge, Senior division, Thane on 24. 5. 02 and during the pendency of suits, these complaints were filed in the Forum below at Thane bearing Nos 109/03 and 110/2003 filed on 10. 6. 2003. Thus it would mean that earlier in point of time, complainants had already filed regular civil suit Nos. 368 and 369/2002 against appellant Nos. 1 and 2 and respondent No. 2 with the same prayer so far as main prayer Clause (a) is concerned and it is this prayer which induced us to allow this appeal on the solitary ground of double jeopardy. Normally plea of double jeopardy is not available in the civil proceedings. It is primarily rule incorporated in Section 300 of Cr. P. C. But it is obvious that if a person has two remedies, one by filing civil suit and another by filing consumer complaint, he has to decide which authority should approach and at his option, he can choose to file civil suit or he can approach Consumer Forum by filing consumer complaint, but he cannot choose both the Forums simultaneously. In the instant cases, Mr. Kantilal Shah and Mrs. Damyanti K. Shah filed regular civil suit Nos. 368/2002 and 369/2002 in the Court of Civil Judge, Senior Division, Thane with the prayer that the defendants should be

ordered or decreed to specifically perform their obligations, terms and conditions or agreements dated 24. 4. 1999 and to deliver the suit premises by completing the same with all the amenities and handing over possession of the suit premises in favour of the complainants and then during the pendency of these suits, the same plaintiffs filed consumer complaints bearing Nos. 109/03 and 110/03 in District Consumer Forum, Thane on 10. 6. 1993 and made the same prayer in terms of which reliefs they had sought in the civil suit against the same parties. This conduct on the part of Mr. Kantilal G. Shah and Mrs. Damyanti K. Shah is highly deprecatory. They did so by suppressing the fact that they had already filed civil suits against original OPs in the Court of Civil Judge, Senior Division, District Thane. It is this suppression, that is very material and clinches to the issue involved in the appeals. We reiterate that when two three authorities are available to any person to file judicial proceeding for the redressal of his grievance, propriety demand that he has to choose one and pursue the remedy to the hilt or to the logical end, but he cannot be permitted to file civil suit in the Civil Court and for the same relief file consumer complaint in the District Consumer Forum. This is nothing but a blatant misuse of provisions of Consumer Protection Act, 1986 and the Code of Civil Procedure. We have already mentioned above that jurisdiction of the Consumer Forum is in addition to the jurisdiction of other authorities particularly, Civil Courts functioning in the State of Maharashtra or for that matter all over India. But once party choose to approach Civil Court for the same relief, he cannot be permitted to file consumer complaint pending the civil suit, he had already filed for the same relief. It is for this reason we cannot allow the orders passed by District Consumer Forum in favour of complainants to sustain in law. Complainants Mr. Kantilal Shah and Mrs. Damyanti K. Shah having already approached Civil Court in the year 2002 were not permitted in law to file consumer complaints in the year 2003 for the same relief, which they had claimed by filing civil suits in the Court of Civil Judge, Senior Division, Thane. Observation of learned District Consumer Forum that even if Mr. Kantilal Shah and Mrs. Damyanti K. Shah had filed civil suits Forum was entitled to entertain the complaints alleging deficiency in service, unfair trade practice against OPs is erroneous finding given on the misconception and misunderstanding of provisions of law. In the circumstances, at the stage of admission itself, we are inclined to allow these appeals and quash the orders passed by the District Consumer Forum allowing the complaints and granting all the reliefs to the complainants by its impugned orders. Hence the following order: ORDER 1. Both the appeals are allowed. 2. Impugned order passed by the District Consumer Forum are quashed and set aside. 3. Complaint Nos. 109 and 110/2003 stand dismissed. 4. Parties are left to bear their own cost. 5. Copies of the order herein be furnished to the parties.

Appeals allowed.