

(2004) 04 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

SHIVASHAKTI CO.-OP. HOUSING SOCIETY MEMBERS'
ASSOCIATION

APPELLANT

Vs

RAKESHKUMAR RANJITSINH CHAUHAN

RESPONDENT

Date of Decision : 12-04-2004

Acts Referred:

Citation : 2004 3 CPJ 727

Hon'ble Judges : M.S.Parikh , M.K.Joshi , Leenaben P.Desai J.

Final Decision : Application dismissed

Judgement

1. IT would appear that 29 complainants filed complaint against the opponents for directions to the opponents to obtain the Society registration from the Registrar of Societies, to issue allotment letter, possession letter, Pukka receipts for payments and other title deeds to the complainants, to make level of the common plot properly and to fill up the underground water tank with the brickbats and sand and/or earth or to pay compensation in lieu thereof in the sum of Rs. 3,610/- to the complainants, to construct Community Hall or to pay Rs. 1,05,000/- to the complainants for the same, to pay Rs. 16,000/- for repairs and improvement of the soakpit, to pay Rs. 66,780/- to the complainants for construction of the roads of the society, to pay Rs. 8,400/- for fixing sliding M.S. Steel Gate with Oil Paint at the main gate of the society, to pay Rs. 1,500/- for filling in the pit near the main waterline, to pay to each of the complainants Rs. 3,825/- for getting done cement plaster in the row houses, to pay Rs. 2,477/- to each of the complainants for constructing Parapet wall between two row houses, to pay to each of the complainants Rs. 3,925/- for providing IPS finishing on terrace, to pay Rs. 995/- to each of the complainants for repairs and replacements of the defective mosaic tiles and fixing Kota stones in bathrooms to pay to each of the complainants Rs. 1,125/- for replacement of defective pipelines with necessary fittings, to pay Rs. 625/- to each of the complainants for removing defective electric wiring and fixing new good quality wiring, to pay Rs. 640/- to each of the complainants for the difference in measurement of doors, Rs. 320/- for the difference in measurement of windows, Rs. 224/- for the

difference in measurement of kitchen platform and Rs. 574/- for difference in measurement of Parapet wall, to pay to each of the complainants Rs. 2,236/- for providing R.C.C. Coping at plinth level on 9" brick walls, to pay to each of the complainants Rs. 300/- for fixing water tapes in kitchen, toilet, bathroom and Chowkidi, to pay to each of the complainants Rs. 2,032/- for repairing defective doors and windows, to pay Rs. 650/- to each of the complainants providing whitewash and plaster, etc. as required, to pay Rs. 10,000/- by way of compensation towards mental tension, harassment and inconvenience to each of the complainants, to pay Rs. 1,00,000/- by way of unfair trade practice to the complainants, to pay Rs. 10,000/- by way of cost of the complaint to the complainants and to hold all the opponents jointly and severally liable for all these payments.

2. IT would appear that by order dated 19th July, 1999 (Coram: Mr. Justice C.V. Jani, President and Dr. Jatin P. Vaidya, Member) this Commission dismissed the complaint inter alia on the ground that the opponents were prepared to refund the amount paid by the complainants if they would hand over back possession of the respective flats occupied by them, that some of the complainants compromised the matter with the opponents, that some of the complainants were satisfied with the construction work and were not interested to proceed with the complaint and that the complainants did not even remain present to throw any light in respect of the aforesaid grounds. An application was moved for restoration of the complaint to file on 29th July, 1999. That application appears to have been given number as Restoration Application No. 52/1999. The matter of that application went on adjourning from time-to-time. The opponents went on placing on record Xerox copies of the compromises entered with one or the other members and ultimately reply was filed at Exhibit-28 denying the allegations contained in the application and setting out the particulars of the compromise agreement with the complainant Nos. 3, 6, 12, 13 and 18. Ultimately Mr. Uday Bhatt, learned Advocate for the complainants and his presence was recorded by order dated January 20, 2003. It appears from that order that the learned Advocate appeared for the complainants who appeared earlier was no more. Once again the matter was adjourned from time-to-time at the request of the complainant's learned Advocate. By order dated 19th November, 2003 it was noted that the complainant's learned Advocate was present and opponent's Power of Attorney Holder was present. No one from the complainants was present. Presence of some of the complainants was necessary for ascertaining the facts with regard to whatever was noted in the dismissal order. For that purpose the complaint/restoration application was adjourned, for enabling the learned Advocate of the complainants to keep present some of the complainants, to 8th January, 2004. Once again the matter went on getting adjourned during which period no one from the complainants remained present. That went on happening till 9th April, 2004 when also none of the complainants was located and the matter was kept for orders.

Mr. Uday Bhatt, learned Advocate for the complainants submitted before this

Commission that he had informed his briefing Advocate from time-to-time for keeping one or the other complainant present before this Commission. However, even today at 4.30 p.m. when the matter has proceeded for dictation of this order no one has remained present for the complainants except Mr. Uday Bhatt, learned Advocate. No affidavit in rejoinder has been filed.

3. IN the background of what is stated above we have considered the merits of this application. It has been submitted by Mr. Uday Bhatt, learned Advocate for the complainants that there was no power with the Commission to dismiss the complaint at the relevant point of time, that there was the application for restoring the complaint to file and that the complaint has not been decided on merits. We are not in agreement with this submission of Mr. Uday Bhatt, learned Advocate for the complainants. Power of dismissal of a complaint for default of the complainant clearly appears to be inbuilt in the provision of Section 13 of the Consumer Protection Act, 1986. It may be noted that under Section 13 of the Consumer Protection Act, 1986 it is the primary duty of the consumer/complainant to produce prima facie evidence in support of his complaint. If he fails to do so the complaint can be dismissed. IN that case also his appearance is necessary. IN the facts of the present case it transpired that the presence of the consumer/complainant for adjudication of the matter was necessary. Under such circumstances the submissions made by the learned Advocate for the complainants, even when none of the complainants is present before this Commission in spite of the caution given to the complainant's learned Advocate, cannot be accepted. In above view of the matter and considering the facts of the cases we do not find this to be a fit case for restoration of the complaint to file as in spite of the fact that very liberal view was taken in adjourning the matter from time-to-time and in spite of the fact that indulgence had been shown even after the matter was postponed for dictation of order, no one remained present for the complainant. We, therefore, propose to dismiss the application with cost quantified at Rs. 2,000/- payable by the complainants to the opponents. Following order is, therefore, passed : This application is dismissed. The complainants are hereby ordered to pay Rs. 2,000/- as cost in favour of the opponents. Application dismissed.