
(2013) 08 CAL CK 0055
In the Calcutta High Court
Case No : C.O. No. 25 of 2013

Smt. Bithi Das and Others

APPELLANT

Vs

Sri Debabrata Majumdar and Others

RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Consumer Protection Act, 1986 — Section 25
West Bengal Building (regulation Of Promotion Of Construction And Transfer By Promoters) Act, 1993 — Section 12A, 5, 6

Citation : AIR 2014 Cal 141 : (2014) 1 CHN 50

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Samiran Giri, for the Appellant; S.P. Roy Chowdhury and Mr. Debasish Roy, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This application is at the instance of the appellants and is directed against the judgment and order dated November 27, 2012 passed by the Hon'ble State Consumer Disputes Redressal Commission, West Bengal in S.C. Case No. FA/386/2011 thereby allowing the appeal in part and affirming the rest portion of the judgment and order passed by the learned District Consumer Disputes Redressal Forum, North 24 parganas in C.C. Case No. 341 of 2008 thereby granting the reliefs sought for by the complainants directing upon the opposite parties to execute and register the deed of conveyance in respect of the subject flat within 30 days from the date and other consequential reliefs. The complainants/opposite parties herein instituted the aforesaid complaint against the appellants/petitioners herein and another Khagendranath Das, since deceased, before the District Consumer Disputes Redressal Forum, South 24 Parganas (henceforth shall be described as District Forum) contending, inter alia, that pursuant to an agreement of development of land between the owner of the land and the developer, the developer constructed a multi-storied building and as

per agreement between the complainant and the developer, who had the Power of Attorney from the land owner to sell the developer's allocation to the intending purchaser, the complainant paid the entire consideration money to the developer for purchase of the flat in question. The complainants got the possession of the flat in question. They had no knowledge of subsequent revocation of the Power of Attorney and as such the complainants were not bound by the deed of revocation and so, the opposite parties were bound to execute the deed of conveyance in favour of the complainants. Since the execution of a deed of sale and registration thereof had not been done, the District Forum granted the reliefs as prayed for in the petition of complaint. Being aggrieved, the owners/appellants preferred the aforesaid appeal before the Hon'ble State Consumer Disputes Redressal Commission, West Bengal (henceforth shall be described as State Commission in short) and while disposing of the appeal, the Hon'ble State Commission allowed the appeal on contests in part but set aside the payment of penalty at the rate of Rs. 100 per day. The other directions i.e. execution and registration of the deed of conveyance in favour of the complainants etc., were maintained. Being aggrieved, this application has been preferred.

2. Now, the question is whether the impugned orders should be sustained.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the complainants/opposite parties herein instituted the aforesaid complaint before the District Forum for execution and registration of the flat in question pursuant to the agreement between the complainants and the developer of the land. There is no dispute that the developer had constructed flats on the basis of a Power of Attorney executed by the landowners. It is not also in dispute that the complainants had paid the entire consideration money in respect of the flat in question to the developer. Now, the execution of a sale deed and registration of the same are to be completed as per agreement but not yet done. Under such circumstances the complainants had to file the said petition of complaint before the District Forum.

4. The judgment and order of the learned District Forum has been affirmed by the Hon'ble State Commission save and except, the penalty measures as described above.

5. Mr. Samiran Giri, learned Advocate appearing for the appellants/petitioners herein has contended that the said petition of complaint before the District Forum and in consequence, the appeal before the State Commission from the District Forum are not maintainable in view of the provisions of the West Bengal Building (Regulation of Promotion of Construction and Transferred by Promoters) Act, 1993. He has contended that Section 12A bars the jurisdiction of the Civil Court to entertain any matter which falls under the provisions of the said 1993 Act. The District Forum as well as the State Commission have no jurisdiction to entertain the petition of complaint and the appeal thereon respectively when the dispute comes within four corners of the said 1993 Act. Thus, he has submitted

that both the District Forum and State Commission have committed illegality and material irregularity in respect of the matter and those are required to be set aside. In support of his contention, Mr. Giri has referred to the decision of Narayan Chandra Ghosh and Another Vs. Biswajit Lahiri, and thus, he has submitted that according to this decision, Section 12A of the Act of 1993 has taken away the jurisdiction of the Civil Court to entertain the dispute raised by the complainants. The bar created u/s 12A of the Act is not an implied one but an explicit bar. Mr. Giri has also referred to the decision of Rita Das Vs. Jayashri Ghosh, and thus, he has submitted that if any dispute covering under the provisions of the said 1993 Act is ventilated under the provisions of the Consumer Protection Act, 1986 before the authorities mentioned therein, such District Forum or the Appellate Authority is not competent to pass orders for specific performance of an agreement for sale. Thus, Mr. Giri has contended that the impugned judgment and orders needs to be set aside.

6. On the other hand, Mr. S.P. Roy Chowdhury, learned senior Advocate appearing for the opposite parties has contended that according to the provisions of Section 12A of the said Act 1993 Civil Court has no jurisdiction to entertain a dispute covered under the provisions of the said 1993 Act. But, in the case of Ethiopian Airlines Vs. Ganesh Narain Saboo, the terms "Court" in the C.P.C. exclusively refers to Civil Courts hence, quasi-judicial bodies like consumer redressal bodies fall outside purview of the term "Court" in Section 2 of the C.P.C. Therefore, there is no bar to proceed for the complainants under the provisions of the Consumer Protection Act, 1986. Thus, Mr. Roy Chowdhury has contended that the complaint before the District Forum is quite maintainable and so, the Appellate Authority under the said Act of 1986 is empowered to deal with the appeal preferred against the order of the District Forum and as such there is no illegality in the impugned order. Thus, he has supported the impugned order.

7. Having due regard to the submissions of the learned Advocates of both the sides and the relevant provisions of the said Act, I think it will be fit and proper to set out the provisions of Section 12A of the said Act of 1993. Accordingly, the said section is quoted below:-

12A. Bar on jurisdiction of Court.-(1) No Civil Court shall have any jurisdiction to entertain or decide any question relating to matters arising under any provision of this Act or the rules made thereunder.

(2) Every order passed by the authorised officer which is subject to appeal or revision, every order passed by the authority referred to in sub-section (1) of Section 5, and every order passed by the officer referred to in Section 6, which is subject to revision, and every order passed by the State Government in revision, shall be final and shall not be questioned in any Court of law.

8. The West Bengal Building (Regulation of Promotion of Construction and Transferred by Promoters) Act, 1993 is a special statute and this Act has the overriding effect in respect of other Acts and this will appear from the said

Section 12A of the Act. The dispute in the instant case has come to a narrow compass as to the execution of a sale deed in favour of the complainants and the registration of the same and, that is why, the petition of complaint was filed before the District Forum along with other consequential reliefs.

9. Therefore, there is no dispute that the present problem in the complaint case is fully covered by the special Act of 1993 referred to above and such Act has an overriding effect indicating clearly that the civil court has no jurisdiction to entertain or decide any question relating to matters arising under any provisions of the Act or the Rules made thereunder.

10. So far as the District Forum and the Appellate Authority under the provisions of the Consumer Protection Act are concerned, now, the question is whether they come within the definition of Court. In deciding the Case of Rita Das (Supra) the learned Single Judge has relied on the 7th Judge Bench decision in the case of General Manager, Telecom Vs. M. Krishnan and Another, , which has been held that the special law overrides the general law and the Consumer Forum cannot usurp power and jurisdiction to decide a matter if the same is conferred upon the special forum. Therefore, the judgment of the said Constitution Bench is binding on us and, in my view, when the said Act of 1993 having overriding effect of other laws and the present case having fallen within the four corners of the said Act, the appropriate remedy of the complainants lies under the provisions of the said Act of 1993. In consequence, the District Forum as well as the State Commission have, therefore, acted without jurisdiction in dealing with the matter.

11. Mr. Giri, in my view has rightly argued before this Bench that in view of the provision of Section 25 of the Consumer Protection Act, 1986 the said District Forum has no authority to pass orders for execution and registration of the deed in favour of the complainants.

For convenience, Section 25 of the Consumer Protection Act, 1986 is quoted below:-

Sec. 25. Enforcement of orders of the District Forum, the State Commission or the National Commission.-(1) Where an interim order made under this Act, is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the

person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

12. The Court or a Forum shall not pass a decree which cannot be executed at all. From that angle also the said complaint before the District Forum and its appeal before the Appellate Authority, in my view are not maintainable at all. So, both the District Forum and the State Commission have acted without jurisdiction. In such a situation, this Hon"ble Court can well interfere with the judgment and orders passed in the provisions of the 1986 Act.

13. In that view of the matter, the impugned judgment and order cannot be supported. In consequence, the judgment and order passed by the District Forum and the State Commission cannot be sustained. Both the judgments and orders are liable to be set aside.

14. The application succeeds and is, therefore, allowed. The impugned judgments and orders are hereby set aside.

15. However, it is recorded that the complainants/opposite parties herein are at liberty to take appropriate recourses under the provisions of the West Bengal Building (Regulation of Promotion of Construction and Transferred by Promoters) Act, 1993 in accordance with law.

16. Considering the circumstances, there will be no order as to costs. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.