
(2006) 07 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

State Bank of India

APPELLANT

Vs

GOWRI RAMAKRISHNAN

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Citation : 2006 3 CPR 165 : 2007 1 CPJ 131

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Advocate : Jaidip Gupta , Rahul Roy , Vikrant Rohilla

Judgement

1. -THESE cross-appeals are filed against the judgment and order dated 14. 6. 2005 passed by the Tamil Nadu State Consumer Disputes redressal commission in O. P. No. 155 of 2001. Brief facts of the case are:

2. THE appellant in F. A. No. 289 of 2005, Mr. V. V. R. Choudary, is the original complainant. He is a reputed Director of cinematography. The respondent (opposite party) is M/s. Hyderabad Industries Ltd. This appeal is filed for enhancement of compensation. The first appeal No. 294 of 2005 is filed by the opposite party for dismissal of the complaint. The complainant purchased a site bearing plot No. 13, Bharani Colony, Saligramam, Chennai for construction of a house for residential purpose. After obtaining a valid sanctioned building plan from the corporation of Chennai on 10. 11. 1999 for a total of 2560 sq. ft. , he planned to construct his house with concrete blocks called "aerocon" in place of bricks which are very expensive. On being persuaded by the advertisement and brochure made by the opposite party, the complainant purchased Aerocon building blocks of different sizes for a total value of Rs. 1,33,745. It is alleged that these blocks were defective as the walls of his house developed cracks and that the blocks supplied to him were not duly processed and were of substandard quality. It is also submitted by the complainant that opposite party introduced these blocks without proper testing. When the opposite party realised their manufacturing defect they introduced later zig-zag pattern on the blocks for better bonding which itself is an admission of proof of defective blocks given to him. It is also alleged by the complainant that when the construction of ground

floor was completed and the construction in the first floor started he noticed several horizontal cracks started appearing on the walls of the ground floor where he used Aerocon blocks. He immediately brought it to the notice of the opposite party and the technicians of the opposite party visited the site and could not give satisfactory explanation. The opposite party collected one block for testing purpose but did not respond thereafter.

It is submitted by the complainant that he spent over Rs. 15 lakh towards the cost of construction of the building and the same is likely to collapse. This fear has caused much mental strain, agony and hardship to the complainant. Hence, he filed complaint before the State Commission and prayed for a compensation of Rs. 18 lakh and a cost of Rs. 25,000. The State Commission vide its order allowed the complaint and directed the opposite party to pay a sum of Rs. 6 lakh with a cost of Rs. 3,000 within two months. The State Commission further directed that if the said amount is not paid within two months, the same will carry interest at 12% p. a. from the date of complaint, i. e. , from 29. 10. 2001.

3. AGGRIEVED by the State Commission's order, complainant as well as opposite party filed cross-appeal before us, the former for enhancement of compensation and the latter for dismissal of the complaint. Learned Counsel for the opposite party, Hyderabad Industries Ltd. firstly submitted that the complainant had placed the order for purchase of "aerocon" blocks after satisfying himself about the technicalities, quality, standards, etc. It is further alleged that the complainant did not adhere to the instructions while carrying out the construction.

4. IT is submitted that the staff who visited the site were not the supervising staff but the marketing staff who were deputed for the purpose of customer. Learned Counsel for the opposite party submits that complainant while agitating with the opposite party about the quality of the "aerocon" blocks has taken up further construction of first floor by using the same blocks. He further submitted that a block was collected for sending for testing purpose and that if the blocks were defective complainant should have stopped further construction of the first floor immediately and should have waited for the result of the tests conducted on "aerocon" blocks. It is admitted that they collected one block from the constructed site for testing purposes and the result of the test was informed to the complainant over the phone that the blocks are of good quality and conform to the specified standards. Learned Counsel for the opposite party further submits that the samples from each batch of blocks manufactured by it are tested as per ISI specifications regularly. It is also submitted that large number of "aerocon" blocks manufactured by the opposite party are distributed to the dealers/stockists and they did not received any complaints.

5. LEARNED Counsel for the opposite party accepts that he received a letter dated 6. 11. 2000 from the complainant about the alleged horizontal cracks. In this regard, he submits that the opposite party vide its letter dated 30. 11. 2000 brought to the notice of the complainant about the omissions and commissions done by him while constructing the building with "aerocon" blocks. He further

submitted that one Mr. Vaduganathan also visited the site of the complainant and explained the reasons for development of cracks and suggested some remedial steps to be taken to rectify the defects.

6. REGARDING renting out the first floor, learned Counsel for the opposite party submits that the complainant is a reputed Director of cinematography and running a service centre called "choudary cine camera service" at Saligramam, i. e. , the site where the "aerocon" blocks are used, the word "letting out" means "commercial use" and under the provision of Consumer Protection Act the complainant forfeits his right as a "consumer" under Section 2 (1) (d) of the said Act. Hence, the complaint is liable to be dismissed in limini. We have considered the arguments of both the parties and gone through the records carefully. We do not see any justification for interfering with the well reasoned order of the State Commission for the following reasons: (1) It is an admitted fact that the construction using the "aerocon blocks" developed several horizontal cracks. It is the case of the complainant that the reason for this is that the blocks were not properly manufactured and were sub-standard; whereas it is the argument of the opposite party that the cracks developed because of improper use by complainant who has not followed the prescribed instructions while carrying out the construction. However, there is no dispute that cracks have developed. By letter dated 30. 11. 2000, A. G. M. Marketing of the opposite party accepted that the cracks have developed. Relevant part of the letter is as under: "we had pointed out during our visit to the site that the recommendations given in the instruction manual supplied for using AAC blocks were not followed which has resulted in cracks in the blocks due to shrinkage, expansion, contraction, etc. taking place on account of joining of two dissimilar materials. " further, nothing has been brought on record to show that any brochure prescribing the procedure to be followed while constructing, was issued to the complainant. The complainant denies that any such instructions were given. Although some alleged documents showing the instructions to be followed while constructing the house has been shown to us, it is not clear as to when these instructions were actually got printed. There is likelihood that it is printed post construction of the house. In other words, there is no evidence to show that these instructions were available when the supplies were made to the complainant. As stated earlier, there is no evidence to show that these instructions were given to the complainant. The opposite party has also not indicated as to how and in what manner there was a failure on the part of the complainant in following the instructions, if any.

(2) Secondly, the complainant was constructing the house for residential purposes. It is a single unit and is being built by an individual. Under the circumstances had the complainant known that there are special instructions to be followed, he would have taken care to follow those instructions. It is clear that no such instructions were given to him.

(3) The staff members of the opposite party visited the complainant's house

under construction at various points of time. It is clear from the record that they visited only because of complaint of horizontal cracks as claimed by the complainant. The argument of the opposite party that the visiting staff was not technical people but marketing people to be there for promotional activities sounds very hollow. The complainant had already booked the orders and also received the supplies. In such a case, where is the question of opposite party's marketing staff visiting the site under construction, for promotional activity?

(4) It is also admitted that a senior vice-president, Mr. Natarajan of the opposite party, who is a technical person had also visited the site and made suggestions. It is also admitted that one Shri Vadhugnathan, a Technician also visited the site. Further, if it was a failure on the part of the complainant, there was no necessity for a posse of personnel to visit the site. The fact a senior vice-president had to visit the site makes it clear that the matter was serious.

(5) There are three important documents which established clearly that there is a manufacturing defect. One is the letter from the Central Building Research Institute. The second is a report from IIT Chennai and the third is a letter from the Chennai Metropolitan Building Owners Association. All these clearly show that the "aerocon" blocks show considerable shrinkage. They further state that the horizontal cracks developed because of the smoothness of surface of the blocks on all sides which has resulted in poor bonding.

(6) The opposite party argued that the blocks have been manufactured to the specifications of the Bureau of Indian Standards. There is nothing on record to show the particular batch which was supplied to the complainant was tested and found to conform to the BIS specifications. On the contrary, it is admitted that the block from the construction site was taken by the manufacturer for testing (after the complaint) but nothing has been brought on record to show that the sample was tested and that it conformed to the standard. On the other hand complainant contended that only one sample block was taken for testing whereas opposite party was relying on some other report of two blocks and that such report cannot be relied upon. In any case no report has been given to the complainant. Had the test showed that the block conformed to the specification, the complainant would have been surely informed. When the sample that is to be tested itself is under doubt, no test report of opposite party can be relied upon.

There is also a letter from BIS that the application of opposite party for BIS certification was rejected.

7. ALL these reasons show that there is a manufacturing defect in the blocks supplied to the complainant and hence there is deficiency in service. However, we do not see any reason to enhance the compensation awarded by the State Commission. As a result, both the appeals fail and the same are dismissed. The order of the Tamil Nadu State Commission is confirmed. There shall be no order as to costs. Appeals dismissed.