
(1998) 07 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

State of Punjab

APPELLANT

Vs

KASTURI LAL

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Citation : 1998 2 CLT 437 : 1999 1 CPJ 436 : 1999 1 CPR 148

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal allowed

Judgement

1. APPLICATION for condoning delay as well as main appeal are for disposal. We have heard Counsel for the parties. Taking up application for condoning delay, it may be observed that since, we are of the opinion that the District Forum lacked inherent jurisdiction to entertain the complaint and the final order passed, which is impugned in this appeal is without jurisdiction and void, the delay in filing the appeal deserves to be condoned on that ground alone.

2. ALTHOUGH the allegations made in the application are vague and general, it is considered appropriate to observe about the casual manner in which the entire case as a whole in the Administrative Deptt, and particularly conduct of the case before District Forum and filing of the appeal by officers and officials of New Mandi Township Punjab, Chandigarh deserves to be commented upon. At this stage, suffice it to say that certified copy of the order was made available to the appellant on May 7, 1997 and appeal was filed on June 23, 1997. In para 5 thereof, it is stated that the concerned officer was on medical leave due to operation of his ear and he remained on medical leave up to June 16, 1997. Affidavit of Shri J.C. Sabherwal, PCS, Administrator, New Mandi Township, Punjab was filed in support of the allegations made in the application. In para 6 thereof, again the contents of para 5 of the application were reiterated that the concerned officer was on medical leave, therefore, the requisite affidavit could not be filed. Factually, this affidavit does not appear to be signed by J.C. Sabherwal, PCS, Administrator but by somebody else and got attested. Thus, who was the officer whose affidavit was supposed to be filed and who was the officer whose ear was

operated upon and remained on medical leave, is left to be guessed. Since no reply was filed to the application, it is taken that the person competent to decide about filing of the appeal was on medical leave, delay in filing the appeal is condoned. Before the question of jurisdiction of the District Forum to entertain the complaint is taken up, it deserves to be noticed that in spite of three opportunities having been afforded by the District Forum after filing of the replication by the complainant, none of the parties chose to produce evidence in the form of affidavits and documents. It was expected of the State of Punjab who was represented through Administrator, New Mandi Township, Punjab to support their case as taken up in the version submitted in response to the complaint in the form of affidavit of a person conversant with the facts of the case as well as copies of the documents from the official file. At this stage, such disputed facts can only be summarised on which State was expected to file reply and produce evidence : (i) Confirmation of the bid or cancellation thereof; (ii) Receipt of Bank Draft by the Board towards balance amount of the auction money amounting to Rs. 11,250/- and encashment thereof, if any; (iii) How possession was taken by the complainant and how he was allowed to raise construction without knowledge of the Board for years together; (iv) As to why no action was taken by the Board to object to the raising of construction by the complainant and to take steps to recover possession of the Government land for years together.

Now, the case is ripe for decision on merits with regard to the question of jurisdiction. Kasturi Lal approached the District Forum with a complaint that the opposite parties - State of Punjab through the Administrator, New Mandi Township, Punjab and Director, Colonization, Punjab had acquired land at Sullar Gharat, Distt. Sangrur for setting up New Mandi Township, Punjab. Plots of various categories for sale were carved out and on February 16, 1976 auction of various plots at the site was held. The complainant, participated in the auction. In respect of Shop- cum-Flat No. 1, his highest bid was for Rs. 15,000/-. On the fall of the hammer, he deposited Rs. 3,750/-, 1 /4th share of the bid money against a receipt. The opposite parties were to issue regular allotment letter but they failed to do so in spite of several requests being made from time-to- time. Particular reference has been made to written applications filed in August 1982, May 1985, July 1989 and January 1994. A Bank Draft dated March 21, 1994 for Rs. 11,250/- was sent to the Administration, New Mandi Township, Punjab towards the remaining price of the Shop-cum- Flat. Thus claiming himself to be a consumer as defined under the Consumer Protection Act, he claimed issuance of allotment letter from the opposite parties.

3. A version was submitted on behalf of the State of Punjab by the Administrator New Mandi Township, Punjab. Preliminary objections were taken that the complaint was not maintainable; the complainant was not a consumer as defined under the Consumer Protection Act. On merits, it was admitted that auction was held on February 16, 1976 and the complainant was the highest bidder, who had deposited Rs. 3,750/- however, the auction was subject to confirmation, which was not done. The receipt of draft for the amount of Rs. 11,250/- in 1994 was

denied. According to them, there was no question of acceptance of the aforesaid draft since bid was not confirmed. The complaint was belated. The complainant filed replication reiterating his stand as taken up in the complaint. As already stated above, on merits, no evidence was produced by the parties on affidavits and documents. Otherwise some documents were produced on the file alongwith list of documents on behalf of the complainant. Apart from the fact that there were disputed questions of fact raised in the pleadings of the parties particularly with respect to payment of the remaining amount of the auction, taking over possession by the complainant unauthorisedly or under the contract of auction as stated above and that whether there was confirmation or not of the bid, the case has to be disposed of only on the pleadings, which stand admitted.

4. THE only fact which stands admitted is that there was auction of Shop-cum-Flat and the highest bid was of the complainant who had deposited th of the sale consideration Rs. 3,750/-. On that account, it cannot be held that the complainant had either purchased the Shop-cum- Flat or that there was any defect in the Shop-cum- Flat that the District Forum could entertain the complaint. Furthermore, the Shop-cum-Flat was to be used for commercial activities. At the same time, it cannot be held that the complainant had hired the services of the opposite parties by payment of th of the auction money and thereafter alleged deficiency in rendering service in not issuing the allotment letter. At the most, it will be a case of breach of contract entitling the complainant to approach the Civil Court. Such a matter is covered by the decision of the National Commission in Allied (Garments) Export Industries Pvt. Ltd. v. DDA, II (1992) CPJ 505 (NC). THE entire judgment is short one and is as under : "This is a case where the petitioner purchased in auction a commercial plot which was put to auction by the Delhi Development Authority. Though the petitioner is justified in pulling forward the grievance that the Delhi Development Authority after accepting the bid amount in full has failed to give him the delivery of possession of the plot since some other persons encroached the plot, we do not find it possible to grant any relief to him since the transaction was not one of allotment of plots as part of a scheme for providing housing facilities to the public but one of straight sale of immovable property at an auction. THE original petition accordingly fails and is dismissed."

7. THE District Forum had no jurisdiction to entertain the complaint on the pleadings as stated above and the order passed is without jurisdiction. Before parting with the judgment, it may also be observed that the complaint was otherwise barred by time. The auction having taken place in February, 1976, right, if any of the complainants to the Shop-cum-Flat accrued on that day. Other terms and conditions of the auction are not available on the record and the cause of action having accrued on that day, the civil suit could be filed within three years thereof. The Consumer Protection Act came into force in 1986. By merely sending a Bank Draft of the remaining amount of the auction money in March, 1994 it cannot be held that any fresh cause of action had accrued to the complainant that the complaint could be entertained by the District Forum under

the provisions of the Consumer Protection Act taking the aforesaid date as accrual of cause of action. For the reasons recorded above, this appeal is allowed. Order of the District Forum is set aside, with the result, the complaint filed stands dismissed, leaving the complainant to approach the Civil Court for the remedy, if any. It may be observed that simultaneously after filing the present complaint challenging notice issued by the Board for taking possession of the site, possession of which was illegally taken by the complainant. It is left to the complainant to approach the Civil Court either by getting plaint of that suit amended or by filing fresh suit according to law. Appeal allowed.