



2022 INSC 334

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2382-2383 OF 2022
(Arising out of SLP (C) Nos. 20768-20769 of 2019)

BHARATI BHATTACHARJEEAPPELLANT(S)

VERSUS

QUAZI MD. MAKSUDUZZAMAN & ORS.RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 2384-2385 OF 2022
(Arising out of SLP(C) Nos. 23401-23402 of 2019)

JUDGMENT

Dinesh Maheshwari, J.

Leave granted.

2. By way of these appeals, the appellant has essentially questioned the common judgment and order dated 23.08.2018 in Revision Petition Nos. 1468-1469 of 2015 whereby the National Consumer Disputes Redressal Commission, New Delhi¹ has reversed the order passed by the State Consumer Disputes Redressal Commission, Kolkata²; and has restored the order passed by the District Consumer Disputes Redressal Forum, South 24-Parganas District Court, Alipore³ granting relief to the complainants (respondents herein) on their grievances against the appellant for execution of the Deed of Conveyance in terms of the agreement for sale. The appellant has also challenged the common order dated 27.09.2018, whereby the National Commission has rejected the review

1 Hereinafter referred to as 'the National Commission'

2 Hereinafter referred to as 'the State Commission'

3 Hereinafter referred to as 'the District Forum'.

applications bearing Nos. 338 and 344 of 2018.

3. Shorn of unnecessary details, the relevant background aspects of the matter are as follows: -

3.1. The contesting respondents herein had preferred respective complaint cases before the District Forum with the grievance that the present appellant and the respondent No. 3, in spite of having received substantial sum of money against total consideration in terms of respective agreements for sale, had not executed and registered the Deed of Conveyance in relation to the property in question.

3.2. In Complaint Case No. 111 of 2013, the complainants [contesting respondents of SLP(C) Nos. 20768-69 of 2019] asserted that the total sale consideration had been Rs. 9,00,000/- and they had paid a sum of Rs. 5,79,000/-. In Complaint Case No. 112 of 2013, the complainants [contesting respondents of SLP(C) Nos. 23401-02 of 2019] asserted that the total sale consideration had been Rs. 7,00,000/- and they had made payment of a sum of Rs. 4,92,000/-. In Complaint Case No. 111 of 2013, the present appellant attempted to suggest before the District Forum that there had been two separate agreements for sale, one for the consideration of Rs. 7,00,000/- and another for the consideration of Rs. 9,00,000/-; and the flat was agreed to be sold for a total consideration of Rs. 16,00,000/-. In relation to Complaint Case No. 112 of 2013, the appellant alleged that there had been two agreements of Rs. 7,00,000/- each, leading to total sale consideration of Rs.14,00,000/-.

4. The District Forum rejected the aforesaid suggestions of

the appellant about existence of two agreements in each case; and while finding that there was no misrepresentation by the complainants, directed the appellant to execute and register the Deed of Conveyance after receiving payment of the balance consideration. Of course, the District Forum did not discuss the matter in necessary details but, in substance, found it justified to issue the directions in terms of the case of the complainants.

5. In appeal, however, the State Commission agreed with the submissions of the present appellant with reference to the fact that the complainant of Complaint Case No. 111 of 2013 had shown the sale consideration as Rs.7,00,000/- in the Government Department as also in the Bank while seeking loan. In relation to Complaint Case No. 112 of 2013, the State Commission observed that there were two agreements of even date without any explanation and it indicated a foul play. On these considerations, the State Commission dismissed both the complaint cases.

6. The National Commission, on the other hand, meticulously examined the material on record and disagreed with the observations of the State Commission.

6.1. The National Commission took note of the stand of the parties and found that in Complaint Case No. 111 of 2013, the present appellant had not been able to produce the alleged second agreement. The National Commission further observed that though in Complaint Case No. 112 of 2013, two agreements for Rs. 7,00,000/- each were filed but, both the agreements were of the same date and the first one carried many corrections with ink whereas in the second agreement, those corrections had been typed out. The

National Commission, *inter alia*, observed as under: -

"14. This clearly goes on to show that OP-1 is considering the mistake in signing the two agreements whereas the complainant is not accepting the signing of the two agreements. The complainants are accepting only one agreement for Rs.9 lakhs in CC No.111/2013 and for Rs.7 lakhs in CC No.112/2013. It is also to be considered that there are no document available on the case file to show that the OP-1 demanded further amount from the complainants nor made any communication for refund of the amount as mentioned in the written statement of OP-1. In the first Complaint Case No.111/2013, respondent/OP-1 has not been able to produce the second agreement which could have been a direct evidence to support the claim of the respondent. Though in the second case i.e., CC No. 112/2013 two agreements have been filed for Rs.7 lakhs each, both the agreements have same date, however, with different numbers of Rs.10/- stamp papers. The First Agreement has many corrections which have been done with the ink, however in the second agreement those corrections have been typed out. Therefore, this possibility cannot be ruled out that the second agreement was typed out because there were many corrections in the first agreement. Then obviously the second stamp paper of Rs.10/- was used."

6.2. Further, with reference to Section 54 of the Transfer of Property Act, 1882 and the material placed on record, the National Commission observed that there could not have been two agreements for sale between the same parties relating to the same property and hence, while accepting the case of the complainants and disapproving the approach of the State Commission, held as follows: -

"16. From the above definition, it is clear that sale is to take place as per the terms and conditions given in the agreement. As the Contract of Sale dated 21.06.2010 for Rs.9 lakhs in CC No. 111/2013 is already on record, then as per this definition of contract of sale, it should have been mentioned in this contract that there would be some other agreement for Rs.7 lakhs. However, there is nothing mentioned in this contract, therefore it is difficult to believe that there would be any other

agreement for sale of the same property. In fact, the implication of this section is that there would be only one Contract of sale for one property between the same parties. Similarly, same argument applies in the second complaint case i.e. CC No.112/2013 as well.

17. From the above discussion it is brought out that legally there cannot be two agreements to sell between the same parties. As complainants are accepting only one agreement which is also duly signed by the OP and is in respect of the total property i.e. for the full flat, the assertion of the opposite party that there were two agreements of sale in both these complaints is not sustainable. However, when the direct evidence can be made available, the circumstantial evidence cannot be relied upon in derogation to the direct evidence. This is true at least in CC No.111/2013 where the agreement is available for Rs.9 lakhs. However, in respect of other Complaint No.112/2013 the two sale agreements are available for Rs.7 lakhs each, but as they are identical with same date, it cannot be believed that they are two agreements only on the basis of two different number of the stamp papers of Rs.10/-. The possibility is that the second one is the fair typed copy of the first one which may had correction with ink.

18. The State Commission has mainly relied upon the order of the State Government of West Bengal giving possession to the complainants to apply and obtain loan from the bank and the sanction letter of bank loan where the costs of the flats have been shown to be only Rs.7 lakhs. These are only circumstantial and incidental evidence which cannot take precedence over the direct evidence and the legal position."

6.3 The National Commission, therefore, set aside the order of the State Commission and restored the order of the District Forum with modifications that the appellant was held entitled to receive the amount of sale consideration from the complainants, as per the order of the District Forum, with interest at the rate of 10% per annum from the date of filing of the complaint till actual payment. The National Commission directed as under: -

"19. Based on the above explanation, I find that the order of the State Commission dated 27.3.2015 is not based on the correct application of facts and law and

therefore it cannot be sustained. Accordingly, the Revision Petition Nos. 1468/2015 and 1469 of 2015 are allowed and the order of the State Commission dated 27.3.2015 in F.A. Nos. 135/2014 and 136/2014 are set aside. The order of the District Forum dated 24.12.2013 in CC Nos111/2013 and 112/2013 is upheld with modification that OPs will be entitled to receive the remaining amounts from the complainants as per the order of the District Forum with interest @ 10% p.a. from the date of filing of the complaint till actual payment."

7. The appellant sought review of the order so passed by the National Commission but the review applications were rejected by the order dated 27.09.2018 for being devoid of substance and the order impugned not disclosing any error apparent on the face of the record.

8. Seeking to question the orders aforesaid, in relation to Complaint Case No. 111 of 2013, the learned senior counsel for the appellant has referred to Section 24A of the Consumer Protection Act, 1986 ('the Act of 1986') and has submitted that the complaint could have been filed only within two years from the date of accrual of cause of action. While referring to the terms of agreement, learned counsel for the appellant would submit that as per Clause 3 thereof, the Deed of Conveyance was to be registered within 90 days from the date of execution of the agreement. According to the learned counsel, the Deed of Conveyance having not been executed within 90 days of the date of agreement i.e., within 90 days from 21.06.2010, the complaint could have been filed within two years commencing from the end of those 90 days i.e., from 21.11.2010; and hence, the complaint filed on 21.03.2013 was clearly barred by limitation.

8.1. The learned counsel would submit with reference to the

decision of this Court in the case of *State Bank of India v. B.S. Agriculture Industries (I)*: (2009) 5 SCC 121 that the question of limitation goes to the root of the matter and deserves consideration even if not raised before the three fora. Learned counsel would further submit that the relief as prayed in the complaint was essentially of the nature of specific performance of an agreement for sale; and for seeking such a relief, the personal bars in terms of Section 16 of the Specific Relief Act, 1963 would apply and thereby, it was incumbent for the complainant to aver and prove that he was always ready and willing to perform his part of the contract. This having not been done, the National Commission has been in error in granting relief to the complainant. In the third limb of submissions, learned senior counsel has referred to the questionnaire served on the complainants and has particularly referred to question No. 4 therein, whereby the complainant No. 1 was asked if he would be ready to call for the records from his office as well as from the concerned Bank and the answer thereto was in the affirmative. Learned counsel would submit that such a record, having material bearing on the case, having not been called, adverse inference per Section 114 of the Evidence Act ought to have been drawn. Learned counsel for the appellant has lastly and in the alternative has submitted that in any case, interest ought to have been awarded to the appellant from the date when the amount was due and not only from the date of complaint and, therefore, that part of the order impugned deserves to be modified.

8.2. In relation to Complaint Case No. 112 of 2013, apart from

the above, the learned senior counsel has particularly referred to the observations and findings of the State Commission on the question of existence of two agreements and has submitted that it had been a bona fide defence raised by the appellant and when the existence of two separate documents disclosing two separate agreements remains indisputable, bona fide defence of the appellant ought to have been accepted, as rightly done so by the State Commission.

9. *Per contra*, learned counsel for the contesting respondents (complainants) has duly supported the judgment and order passed by the National Commission and has submitted that the suggestions about existence of two agreements in each of these cases remain entirely baseless and have rightly been rejected by the National Commission.

9.1. The learned counsel has also referred to the averments by the complainants about serving of notice on 09.11.2012 for executing the Deed of Conveyance and has submitted that the cause of action accrued to the complainants when the deed was not executed despite notice and, therefore, the complaints in question could not have been considered barred by limitation. This was the reason, according to the learned counsel, that such a plea of limitation was not even raised before the three fora by the appellant.

9.2. The learned counsel would further submit that there would arise no question of drawing any adverse inference in this matter because the complainants-respondents had not withheld any evidence in their power or possession. Learned counsel would submit that

answer to a vague question in the interrogatories cannot result in an adverse inference against the complainant when the proposition of existence of two agreements itself remains baseless and has been rejected by the District Forum as also by the National Commission.

10. Having given thoughtful consideration to the rival submissions and having examined the material placed on record with reference to the law applicable, we are satisfied that these appeals remain totally bereft of substance and deserve to be dismissed; and the appellant, for having dragged the matters with pretentious propositions, deserves to be saddled with costs.

11. The suggestion on behalf of the appellant about existence of two agreements is required to be rejected in relation to Complaint Case No. 111 of 2013 altogether for want of any such second agreement on record. The sale price shown by the complainant in the Bank for the purpose of loan or in the Government department does not lead to any inference about existence of any other agreement.

11.1. Moreover, when we look at the agreement between the parties disclosing total sale consideration of Rs. 9,00,000/-, the material terms are found in the following form and expression: -

"3. That the consideration price shall be payable by the Purchasers to the Vendor as consideration of the said complete flat be Rs.9,00,000/- (Rupees Nine lacs) only and the mode of such payment is to be as follows:-

a) At the time of booking/agreement Rs.50,000/- (Rupees Fifty thousand) only.

b) At the time of Rs.6,50,000/- (Rupees Six Lakh fifty thousand) only will be payable by the Purchasers to the Vendor at the time of Registration

i.e. within 90 (Ninety) days from the date of execution of this agreement.

c) Rs.2,00,000/- (Rupees two lacs) only will be payable within 60 months (sic) from the date of registration of the conveyance."

11.2. Obviously, the third component of the sale consideration of Rs. 2,00,000/- was payable only after registration of the Deed of Conveyance. Hence, while applying for loan, the complainant could have only stated the consideration payable for registration of the sale consideration until then. In any case, the difference in sale consideration, as stated before the Bank vis-à-vis that stated in agreement does not lead to even a remote inference that there were two separate agreements.

12. As regards Complaint Case No. 112 of 2013, though there are shown to be existing two documents of the same date but, they do not appear to be separate agreements for different properties or for different parts of the same property or for segregating the total amount of sale consideration. They could only be read as one being a copy or draft of the other. In any case, it would be rather preposterous to assume that because of the alleged two documents of the same date, the sale consideration would be arrived at by adding up the consideration amount stated therein. The State Commission seems to have approached the entire case from an altogether wrong angle and has acted illegally in accepting the baseless propositions of the appellant. Thus, we are satisfied that the National Commission has rightly disapproved the orders so passed by the State Commission. 13. The other submissions as made for the first time before this Court also do not make out any case for interference.

13.1. There is no, and there cannot be any, quarrel with the proposition stated in the case of *State Bank of India* (supra) that if the complaint is barred by time and yet the Consumer Forum decides the same on merits, it would be a case of illegality on the part of the Forum. However, the question is as to whether the bar of limitation was at all operating in relation to the present complainants? In our view, the answer is in the negative.

13.2. So far the question of limitation is concerned, Section 24A of the Act of 1986 reads as under: -

"24A. Limitation period.-(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay."

13.3. This Court, in the case of *V.N. Shrikhande v. Anita Sena Fernandes*:(2011) 1 SCC 53 has pointed out that the term 'cause of action' has not been defined in the Act of 1986 and the same has to be interpreted keeping in view the context in which it has been used in Section 24A(1) and the object of the legislation. In that case, relating to the question of medical negligence, this Court held that no strait-jacket formula could be applied for determining as to when the cause of action had accrued to the consumer and each case has to be decided on its own facts.

Applying the principles with necessary modulations in relation to the subject-matter before us, in the case of the dispute relating to the agreement for sale, where the appellant is standing in the capacity of a seller qua the complainants who stand in the capacity of consumer, the term "consumer dispute" shall have to be understood in terms of the definition provided by Section 2(e) of Act of 1986 that reads as under: -

"2(e)"consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;"

13.4. In the case at hand, relating to Complaint Case No. 111 of 2013, the relevant facts had been pleaded by the complainant in the following terms: -

"11. That thereafter the Complainant made several representations to the Opposite Party and asked her to perform her duties and obligations as stipulated in the said Agreement however the Opposite Parties always gave assurance that the flat will be completed by shortly but neither the same was completed nor the Deed of Conveyance in respect of the said flat was executed in his favour and the Complainant had also sent a Registered Letter with A/D dated 9th November, 2012 requesting the Opposite Party to execute the Deed of Conveyance in respect of the flat in their favour."

13.5. In the matters relating to the sale of immovable property where the appellant had received a substantial part of sale consideration and had failed to perform her duties and obligations, even for the relief of specific performance, the period of limitation would have begun, if the complainants were to file a suit for specific performance of contract, only from the period of expiry of notice dated 09.11.2012, when they would have had the notice that the performance was being refused. In any

case, so far the consumer dispute is concerned, when the appellant failed to execute the Deed of Conveyance despite receiving notice from the complainant, it could safely be taken that the cause of action accrued for the purpose of the complaint only after the expiry of period of notice dated 09.11.2012. Thus, the complaints as filed on 21.03.2013 had been well within limitation.

14. As regards other submissions about the proof of readiness and willingness for performing the part of contract by the complainants, the averments taken by the parties and totality of the facts and circumstances of the case leave nothing to doubt that nothing substantial was to be performed on the part of the complainants. Rather, the essential part of performance was only the burden of the appellant which the appellant failed to discharge. Noteworthy it is that as against the agreements in question, the appellant had received major part of the sale consideration inasmuch as in Complaint Case No. 111 of 2013, the appellant had received a sum of Rs. 5,79,000/- as against the sale consideration of Rs. 9,00,000/-; whereas in Complaint Case No. 112 of 2013, the appellant had received a sum of Rs. 4,92,000/- against the sale consideration of Rs. 7,00,000/-. The payments made to the appellant included substantial amount of loan taken by the respective complainants. It has been pointed out that after obtaining such loan, the complainants had been regularly making payment of EMIs to the lender institutions. There does not appear any personal bar operating against the complainants even in terms of the Specific Relief Act, 1963.

15. The submission as regards drawing adverse inference remains

totally baseless because it has not been shown if the complainants withheld any material evidence that was in their power or possession. The vague question put in the questionnaire to the effect as to whether the complainant would call for the record from his office and Bank and its answer in the affirmative, do not lead to any adverse inference because, the record in question is not shown to be in power or possession of the complainant. Rather, we have reservations, if such a question was at all permissible by way of a questionnaire on the principles of Order XI of the Code of Civil Procedure, 1908. Be that as it may, no case of drawing any adverse inference is made out.

16. The other submission in the alternative for allowing interest starting from 90 days from the date of agreement is also of no substance. Contrary to this suggestion, when we notice that the appellant had received a substantial part of sale consideration in both the cases and had yet not executed the requisite deed and had not carried out performance of other parts of the contract due on her part, even the interest as allowed by the National Commission appears to be excessive. Having said so, we would leave the matter at that because the complainants have not questioned that part of the order of the National Commission allowing interest to the appellant at the rate of 10% per annum from the date of filing of complaint.

17. Therefore, these appeals are required to be dismissed. However, we have taken note of the fact that these appeals were entertained on 26.08.2019 and 23.09.2019 with interim relief in favour of the appellant. This has only delayed the execution of

the Deed of Conveyance in favour of the respondents. For this unnecessary litigation and delay, the appellant deserves to be saddled with costs.

18. Therefore, these appeals are dismissed with costs quantified at Rs. 50,000/- (Rupees Fifty Thousand) each.

19. All pending applications also stand disposed of.

.....J.
(DINESH MAHESHWARI)

.....J.
(ANIRUDDHA BOSE)

New Delhi;
March 23, 2022.