

M/S. A & A SHELTERS PVT. LTD. & ANR. V. MR. ABHISHEK VYAS

1. M/S. A & A SHELTERS PVT. LTD. & ANR.

off/at:- B-202, Remi Bizcourt Plot No. 9, Shah Industrial Estate,

Off Veera Desai Road, Andheri (West),

Mumbai-400053

Maharashtra

2. MR. ABHISHEK VYAS

Managing Director- Off/at:- B-202, Remi Bizcourt, Plot No. 9
Shah Industrial Estate, Off Veera Desai Road, Andheri (West),

Mumbai-400053,

Maharashtra.

.....Appellant(s)

Versus

1. MANGILAL P. PARIHAR (HUF)

Through its Karta:- Mr. Mangilal P. Parihar, 554-E, Kanhaiya
Bhavan, Jss Road, Chira Bazar,

Mumbai-400002

Maharashtra

.....Respondent(s)

Case No: FIRST APPEAL NO. 256 OF 2012

Date of Judgement: 24.08.2022

Judges:

HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER

For the Appellant : Mr. Rajesh Rathod, Advocate

For the Respondent : MR. RAJESH BAWEJA

Facts:

The complainant (Mangilal Parihar HUF) filed a consumer complaint before the Maharashtra State Commission against the Appellants (A&A Shelters Pvt Ltd and its MD Abhishek Vyas). The complaint was regarding failure to handover possession of a 1305 sq ft flat in Azad Nagar Gem Cooperative Housing Society purchased for Rs 20 lakhs. The State Commission allowed the complaint ex-parte on 13.04.2012 and directed the appellants to handover vacant possession within 2 months of receiving balance amount while also paying compensation of Rs 50,000 and costs of Rs 10,000 to complainant. Aggrieved by the ex-parte order, the appellants have filed the present first appeal.

Court's Elaborate Opinion:

The appeal contends that there was no valid service of the consumer complaint on the appellants and hence proceeding ex-parte was incorrect. However, the State Commission order notes that complaint notice was duly served asking appellants to file written version by 24.01.2012. They failed to do so or appear on subsequent dates of proceedings. The complainant has placed certified copy of acknowledgement card on record showing due service on appellant company. In light of unrebutted evidence and documents filed by complainant, State Commission rightly proceeded ex-parte after affording sufficient opportunity to the appellants. There is no perversity or illegality in the impugned order. Appeal is thus dismissed.

Arguments by Appellants:

They were never served copy of the consumer complaint. State Commission should have effected service through court bailiff or paper publication. Ex-parte order passed without hearing appellants has caused grave prejudice. Sale of 1305 sq ft flat in Mumbai below market value should have been considered. Impugned order is liable to be set aside.

Arguments by Respondent/Complainant:

Certified copy of acknowledgement card showing due service on appellant company filed. State Commission proceeded ex-parte only after appellants failed to appear despite service. No infirmity in impugned order. Appeal should be dismissed.

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Court

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Full Text of Judgment:

1. The present Appeal has been filed by the Appellants against the order dated 13.04.2012 of the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai (for short "the State Commission") whereby the Complaint No.220 of 2011 filed by the Complainant had been allowed and following directions were issued:

"ORDER

Complaint is partly allowed.

Upon receipt of balance consideration amount of ₹16,00,000/- from the Complainant, the Opponents are jointly and severally directed to hand-over to the Complainant vacant and peaceful possession of a flat bearing No.902, admeasuring 1,305 sq. ft. in area, comprising of 03 bedrooms, hall and kitchen, situate on the ninth floor in the project known as Azad Nagar Gem Co-operative Housing Society Ltd., constructed by the Opponents on the land property situated at D-54, Azad Nagar, Veera Desai Road, Andheri (West), Mumbai – 400058 within a period of two months from the date of receipt of balance consideration amount from the Complainant.

At the time of handing over possession of the flat to the Complainant, as ordered here-in- above, the Opponents shall also pay to the Complainant an amount of ₹50,000/- by way of compensation towards mental agony

besides costs of ₹10,000/-."

2. The impugned order is an ex parte order. This order has been challenged by the Appellant on the ground that the Appellant was never served of the Complaint. It is contended in the Appeal that the State Commission ought to have served the Appellant through court bailiff and by publication in the newspapers. It is also contended that the flat of 1305 sq. ft. could not have been sold for ₹20 Lakhs in the city of Bombay and that part ought to have been kept in mind by the State Commission. It is submitted that the Appellant was proceeded ex parte due to misrepresentation and dishonest attitude of the Respondent/Complainant. It is argued by learned Counsel for the Appellant that since the Appellant did not have the opportunity to contest the Complaint on merits, they could not put up any defence and that has caused injustice to them and therefore, the impugned order is liable to be set aside. On these contentions, it is submitted that the impugned order, which is ex parte order, should be quashed.

3. It is argued by learned Counsel for the Respondent/Complainant that the Appellant was duly served of the Complaint. The certified copy of the acknowledgement card has been filed. It is argued that the State Commission had proceeded ex parte against the Appellant only after satisfying itself that the Appellant had been duly served of the Complaint. It is further argued that the acknowledgement card bears the signatures and stamp of the Appellant's Company. It is submitted that there is no perversity or illegality in the impugned order since the Appellant had been proceeded ex parte only when they had failed to attend the proceedings before the State Commission despite service. It is submitted that the Appeal has no merit and the same be dismissed.

4. I have heard the arguments and perused the relevant

record.

5. The major plea in the Appeal is that the Appellant had never been served of the Complaint. The State Commission has noted as under:

“[3] The complaint was admitted on 8/9/2011 and a notice was issued calling upon the Builder/Developer to file written version on 24/1/2012. In spite of due service of notice of appearance the Builder/Developer chose to remain absent and did not file its written version as called for by the State Commission. The complaint was adjourned to 22/2/2012. Even on 22/2/2010 the Builder/Developer was absent and did not file written version and, therefore, we proceeded with the complaint in absence of the written version....”

6. From this, it is quite apparent that a notice of the Complaint was duly served upon the Appellant and they were asked to file their written version on 24.01.2012. The State Commission did not immediately proceeded ex parte against the Appellant, rather adjourned the matter waiting for the Appellant to attend the proceedings on 22.02.2012 and it was on the subsequent date when neither the written version was filed nor anybody on behalf of the Appellant attended the proceedings before the State Commission, that the State Commission had proceeded ex parte against the Appellant. The issue is whether the State Commission had rightly proceeded ex parte against the Appellant or not and whether there was sufficient evidence on record before the State Commission to pass an ex parte order against the Appellant. The Respondent/Complainant has filed certified copy of the acknowledgement card and this acknowledgement card bears the stamp of the Appellant's Company and also the signatures of the recipient. There is no contention that the notice had been issued at the wrong address. In view of this clear evidence of due service upon the Appellant, the State Commission had

rightly proceeded ex parte against the Appellant.

7. Since there was no defence put up by the Appellant before the State Commission and since there was uncontradicted testimony which was duly supported by the documents placed on record by the Respondent/Complainant in support of his contentions, it cannot be said that the State Commission has acted in perversity. The relied upon documents on record also bear the signatures of the Appellant.

8. For the reasons stated above, I do not find any infirmity or perversity in the impugned order. The Appeal has no merit and the same is dismissed with no order as to costs.