

M/S. L.P. ENTERPRISE & 2 ORS. V. KANAILAL MONDAL

1. M/S. L.P. ENTERPRISE & 2 ORS.

THROUGH SRI SUBRATA PAUL, (PROPRIETOR)S/O. LT.
RANJIT KUMAR PAUL, 21, BAIKUNTHA SAHA ROAD, P.S.
PURBA JADAVPUR NOW SURVEY PARK,
KOLKATA-700075

WEST BENGAL

2. SMT. ELKA SINHA

D/O. LT. PRADYOT KUMAR SINHA, R/O. 31/2, MIDDLE
ROAD, SANTOSH PUR, P.S. PURBA JADAVPUR, NOW
SURVERY PARK,
KOLKATA-700075

WEST BENGAL

3. SRI SEMON SINHA

S/O. LT. PRADYOT KUMAR SINHA, R/O. 31/2, MIDDLE
ROAD, SANTOSH PUR, P.S. PURBA JADAVPUR, NOW
SURVERY PARK,
KOLKATA-700075

WEST BENGAL

.....Petitioner(s)

Versus

1. KANAILAL MONDAL

S/O. LT. A.K. MONDAL, R/O. E-25, NEW GARIA HOUSING
CO-OPERATIVE LTD. P.O. PANCHASAYAR, P.S. PURBA
JADAVPUR,
KOLKATA-700094

WEST BENGAL

.....Respondent(s)

Case No: REVISION PETITION NO. 2691 OF 2018

Date of Judgement: 19 Jan 2023

Judges:

HON'BLE MR. JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER

For the Petitioner : Mr. Sanjoy Kumar Ghosh, Advocate

Ms. Rupali S. Ghosh, Advocate

Mr. Ardhendu Bikas Sengupta, Advocate.

For the Respondent : Ms. Bhawani Gupta, Advocate.

Facts:

Complainant purchased a flat from developer (OP1) by entering into registered agreement for sale and allegedly paid full consideration. Construction not completed by OP1 within agreed timeline. Complaint filed seeking possession. OP1 denied receiving consideration amount and said construction was continuing based on assurance of payment by complainant. Parallel civil suit filed by OP1 in 2013 seeking cancellation of agreement on ground of non-payment which was suppressed by complainant.

Forum: Dismissed complaint on ground that complainant failed to prove payment and suppressed civil suit facts.

State Commission: Allowed appeal citing agreement terms as binding; payment made must be assumed.

Revision Petition:

Strange approach by State Commission in brushing aside its own order in identical matter. Forum order justified in dismissing complaint considering:

- 1. Peculiar circumstances like original land owner supporting OP1's version.*
- 2. Civil suit pending prior to complaint where similar issue involved.*

3. *Complainant unable to show details of cash payment or income tax returns for proof.*
4. *Apprehension of complainant not approaching forum with clean hands.*
5. *Dispute already under consideration in civil suit hence left for its determination.*

State Commission order set aside. Complaint dismissed.

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Full Text of Judgment:

1.This Revision Petition has been filed by the Petitioners against the Respondent/Complainant challenging the impugned Order dated 09.08.2018 passed by the State Consumer Disputes Redressal Commission, West Bengal in First Appeal No. A/628/2016. Vide the said Order, the State Commission had allowed the Appeal and set aside the Order dated 03.06.2016 passed by the Consumer Dispute Redressal Forum, Kolkata Unit-III(South), West Bengal, in Complaint Case No. RBT/CC/124/2016.

2. The brief facts of the case are that the Complainant was the purchaser of a flat who had entered into an Agreement for sale, with the then owner and developer, which was executed on 05.03.2012 and registered before the District Sub Registrar III at Alipore. It was alleged that the entire consideration was paid by the Complainant to the Opposite Party on the same day and Opposite Party No.1 received the money and acknowledged the same at Page 9 of the above registered Agreement. It was further averred that Sri Pradyut Kumar Sinha was the original owner of the land, who entered into a Development Agreement with the Opposite Party No.1, a sole proprietorship firm represented by its proprietor Sri Subrata Paul on 18.04.2010. On 16.04.2010, Pradyut Kumar had already executed a registered Power of Attorney authorising the

Opposite Party No.1 to construct the building in terms of Development Agreement. Pradyut Kumar Sinha passed away on 07.04.2012 and on his death, the property devolved on Opposite Party Nos. 2 and 3. On 21.08.2012, Opposite Party Nos. 2 and 3 executed a supplementary joint venture agreement with the Opposite Party No.1 and a Power of Attorney in its favour.

3. The case of the Complainant was that it had been agreed between the parties that the building would be completed within 10 months. However, the Developer completed some portion of the said flat, and did not complete it. It was further averred that the total consideration i.e. Rs.15,36,720/- was paid by the Complainant at the time of entering into the agreement for sale. However, the Opposite Party No.1 issued a letter after a lapse of 15 months alleging that the consideration money was not paid and the agreement is not a valid one. Consequently, the Complainant replied to the said letter on 17.06.2013. It was further submitted by the Complainant that the Opposite Party No.1 neglected completing construction, due to which the Complainant was denied possession of the flat, despite the Deed of Conveyance in his favour. Therefore, Complainant filed the Complaint before the District Forum being aggrieved by the act of the Opposite Parties.

4. The Opposite Parties appeared before the District Forum and resisted the Complaint and denied all the allegations. It was contended by the Opposite Party No.1 that the Complainant had assured him that the consideration money would be paid. However, the Complainant somehow managed the Opposite Party No.1 and got the agreement for sale executed and registered in his favour without paying a single paisa. It was further contended that the Opposite Party No.1 carried on the construction work relying upon the verbal assurances of the Complainant for payment. However, on not receiving any positive reply from the Complainant, the Opposite Party issued a Legal Notice dated 03.06.2013 asking for payment of the total consideration price. It was further contended that the Complainant replied to the Legal Notice stating that the money

had already been paid. Consequently, the Opposite Party No.1 filed a suit before the Ld. 5th Civil Judge, Senior Division at Alipore. Hence, the Opposite Party No.1 prayed for dismissal of the complaint. The Opposite Party Nos. 2 and 3 supported the contentions of Opposite Party No.1.

5. The District Forum vide its order dated 03.06.2016 dismissed the Complaint after observing that Complainant did not prove the allegations and was therefore not entitled to any relief.

6. Aggrieved by such Order, First Appeal bearing No. A/628/2016 was filed by the Complainant/Appellant against the Opposite Parties/Respondents before the State Consumer Disputes Redressal Commission, West Bengal challenging the order of the District Forum.

7. The State Commission vide the impugned Order dated 09.08.2018 allowed the Appeal while setting aside the Order of District Forum and observed inter alia –

“It is trite law that the parties are bound by the terms of agreement. A person who signs a document contains certain contractual terms is normally bound by them even though he is ignorant of their precise legal effect. When a party to the contract disputes the binding nature of the signed document, it is for him to prove the terms in the contract or circumstances in which he came to sign the documents needs to be established...In the Agreement for Sale, the respondent No.1/developer has categorically mentioned that he acknowledge the receipt of Rs.15,36,720/- and undertook to complete the construction within 10 months and to grant transfer, certainly it has binding effect upon the parties and the respondents cannot absolve their responsibilities simply on the ground that no amount has been paid as consideration amount... Ld. District Forum has proceeded in a wrong way without considering the fact that a consumer forum is primarily meant for disposal of a complaint in a summary way for limited purpose and when there was specific terms of the agreement, the parties are bound to obey the same...appeal is allowed.”

8. Hence, this Revision Petition has been filed by the Petitioners/ Opposite Parties against the above mentioned impugned Order of the State Commission on the grounds that:

a. It was incumbent upon the Respondent to prove the factum of payment of Rs.15,36,720/-;

b. The Respondent failed to produce any receipt issued by the Petitioner for payment of Rs.15,36,720/-;

c. No prudent person would pay the entire consideration money for the purchase of flat at the time of execution of agreement to sale;

d. The Respondent failed to give satisfactory answers to questions put to Petitioner No.1 in the cross examination with regards payment of full consideration;

e. No reasonable person would deal in cash transaction of Rs.15,36,720/- and the Respondent could not produce any document to show such huge amount of money paid through banking transaction;

f. The Ld. State Commission had dismissed an appeal having identical allegations;

g. The respondent did not claim the amount of Rs.5,000/- per day as per clause 27 of the Agreement, which itself showed that his complaint was not bonafide.

9. Hence, the present Revision Petition has been preferred by the Petitioners/Opposite Parties.

10. After having perused the available material on record and having carefully considered the arguments and submissions raised on behalf of contesting sides, it would appear necessary to consider the reasons for which the complaint had been first dismissed by the District Forum, which decision was subsequently set aside by the State Commission.

11. The District Forum in dismissing the Complaint did so since it was not convinced with the veracity of the averments made by the Complainant. The Forum held that notwithstanding the fact that full payment of the consideration price for the Apartment in question was shown to have been noted in the Agreement for sale, yet the version of the Opposite Party/Petitioner was not altogether unbelievable. The Opposite

Party in its Written Version had claimed that the Agreement for sale had been completely drafted and prepared by the Complainant's side on account of the long standing friendly relations between the parties, and in good faith, he had signed on such Agreement on being assured that the consideration price would be paid to him by the Complainant later on.

12. During the course of hearing, Ld. Counsel for the Petitioners drew our attention to a separate judgment passed by the Ld. State Commission which was ironically presided over by Hon'ble Mr. Samaresh Prasad Chowdhury, Presiding Member in the State Commission, the said FA No. A/707/2016, which had been dismissed by the same Presiding Member, and which had arisen out of the decision going against the Complainant in that particular case who happened to be another purchaser of a different flat in the self-same premises, from the same Opposite Parties, on the basis of identical allegations as made in the present complaint, which has also been similarly dismissed by the District Forum. But the Ld. State Commission dismissed such appeal of the other Complainant whose allegation in the complaint were virtually identical with those of the present Complainant/Respondent by observing inter alia –

“On a question on behalf of O.P. No. 1 as to –‘if you have paid the entire consideration to the O.P. No. 1/ developer at the time of execution of agreement for sale, can you give details of denomination of your payment of consideration and your source of income and Tax returns for such period in respect to your payment? To which it was replied the question of filing income tax return does not arise as I have paid money by selling gold ornament and taking loan from different sources and own source.

Having heard the Ld. Advocates appearing for the parties and on perusal of the pleadings and evidence on record it appears to me that several disputed questions of facts and law are involved in this case.

Therefore, it would be quite difficult to decide the lis in a

summary way. In AIR 1996 SC 2508 (Bharti Knitting Co. Vs. DHL Worldwide Express Courier Division of Airfreight Ltd.) the Hon'ble Supreme Court has observed thus in an appropriate case where there is an acute dispute of facts necessarily the Tribunal has to refer the parties to original Civil Court established under the CPC or appropriate State Law to have the claims decided between the parties. But when there is a specific term in the contra, the parties are bound by the terms in the contract'. When the O.P. No. 1 has already instituted a civil suit before a competent civil court challenging its authenticity and the complainants suppress the same in the petition of complaint, I think Ld. District Forum was quite justified in dismissing the complaint. Consequently, the appeal is dismissed on contest. However, there will be no order as to costs.

The impugned judgment/ final order is hereby affirmed.”

13. However, when the decision of the same Hon'ble Presiding Member in FA No. A/707/2016 was brought to the attention of the State Commission, it without considering the similarity of the identical background of the allegations merely brushed it aside in a cryptic manner by observing inter alia –

“Each case has its own merit. The facts and circumstances of the present case cannot be said to be a total match with the case in connection with FA/707/2016. In the instant case, when there is specific terms in the agreement and as per clause 1 of the agreement, the respondent no. 1 has put his signature after knowing its contents, he cannot shirk of his responsibility to fulfil his part of obligations.”

14. In the opinion of this Commission, such approach of the State Commission in not considering its own previous decision in an identical matter pertaining to the same premises, and not even seeking to explain how the merits of the present case were different from those in FA No. A/707/2016, ex facie appears to be baffling and surprising.

15. On the contrary, the District Forum in coming to its conclusion that the Complainant/Respondent could not be granted any relief since he had failed to prove the

allegations made in the complaint, had come to such decision, after having carefully considered certain very extra-ordinary surrounding circumstances in the case which can be summarised as follows-

(i) That nowhere in the complaint, the Complainant had made any whisper that he was originally a tenant under Late Pradyot Kumar Sinha who was the owner of the premises, and who had entered into the Development Agreement with the Petitioner/Opposite Party in pursuance of which the Apartment after its completion would be purchased by the Complainant. The Legal Representatives of the said Pradyot Kumar Sinha were arraigned as Opposite Party Nos. 2 &3 in the Complaint, and before the District Forum, they had substantially supported the version of the Opposite party/Petitioner;

(ii) That the Petitioner/Opposite Party No. 1 had as far back as in the year 2013, already filed a Civil Suit in the Competent Court seeking cancellation of the Agreement ostensibly on account of non- payment of the consideration price, while having the payment made over to him had been wrongly written in the Agreement itself. That Suit happens to be 'Title Suit 151 of 2013 of the Court of the concerned Civil Judge';

(iii) That prior to institution of the Suit, the Opposite Party/Petitioner from its side had issued a Legal Notice upon the Complainant on 3.6.2013, which was answered on behalf of the Complainant 14 days later. The Complainant had entered the appearance in the Civil Suit after being summoned long back, but again made no whisper of these facts in his Complaint, thereby indicating that he had not approached the Forum with clean hands. In fact, the Complainant filed his complaint as late as in the year 2016 at a stage when the matter in the Civil Court was virtually ripe for hearing since the issues were slated to be framed on the 24th November, 2015, and the Ld. District Forum also noted that delay in trial of the Suit also appeared to have been largely caused by the conduct of the defendant i.e. the Complainant himself;

(iv) That the District Forum also found the Complainant's

version of having made the full payment to be not very credible since the Complainant could not show any separate receipt for having delivered the consideration money as claimed by him, and inspite of specific questioning could not show any financial transactions just prior to the alleged payment made by him, as to how all of a sudden, he could muster up the huge amount of Rs. 15,36,720/- to be paid in cash. In fact, the question was put to him on behalf of the Opposite Party/Petitioner, to which the Complainant had given a vague answer. The question on behalf of the Petitioner and its answer by the Complainant are reproduced verbatim below for clearer appreciation:-

“Ques.30) If you have paid the entire consideration to the O.P. No. 1/Developer, at the time of execution of Agreement For Sale, can you give details of denomination of your payment of consideration and your source income and Tax returns for such period in respect to your payment?

Ans. The question of filing Income Tax Return does not arise as I have paid money by selling gold ornament and taking loan from different sources and own sources.”

16. It defies logic and understanding as to how these circumstances which were also applicable in the other complaint which was dismissed by the District Forum, were not considered at all by the State Commission even when its own previous judgment had been brought to its notice, and were merely brushed aside by the very cryptic remarks “each case has its own merit. The facts and circumstances of the present case cannot be said to be a total match with the case in connection with FA No. A/707/2016.....”

17. Considering the overall factual background and circumstances of the present case, this Commission is of the opinion that the District Forum in dismissing the complaint was justified in doing so, considering the very peculiar facts and circumstances in as much as the decision on the very disputed question of fact as to whether or not the Complainant had not paid the consideration price to the

Petitioners/Opposite Party, notwithstanding that such payment had been acknowledged in the Sale Agreement, when the Complainant from his side failed to substantiate factually how he could have arranged such a huge amount of money in cash for such payment, and not even disclosed the same in his Income Tax return. Further, the fact that a regular Civil Suit to decide this disputed question of fact had already remained pending for 03 years prior to filing of the complaint in 2016 and even after having entered appearance in the Civil Court long ago, the Complainant had totally suppressed this factual background in his complaint, would fairly give rise to a supposition that he was not approaching the Consumer Forum with clean hands. The District Forum therefore finding very substantial preponderance of possibilities in favour of the Opposite Party/Petitioner in the given facts and circumstances rightly left it to the decision of the Civil Court which was already seized of the matter in issue for a long time. In this manner, the Complainant at such belated stage could not have been permitted to negate any regular findings of the Civil Court on the factual dispute on the basis of the detailed evidence to be led in the Civil Suit, had the same actually gone against the Complainant, by pre-emptively seeking to have a decision in his favour in a summary manner.

18. For the aforesaid reasons, this Commission is of the opinion that the decision of the State Commission in setting aside the well-reasoned Order of the District Forum and without, in any manner, discussing as to how the merits of the present case were different from those in its own decision in the other complaint and its consequent FA No. A/707/2016, was not proper.

19. Consequently, the Revision Petition is allowed after setting aside the impugned Order of the State Commission, and the decision of the District Forum in Complaint Case No. CC/124/2016 is sustained. Accordingly, the complaint stands dismissed, and the rights and obligations of the parties are left to be governed by the decision of the Civil Court in

title Suit No. 151 of 2013, which was already pending against the Complainant since three years prior to filing of the complaint.

Parties to bear their own costs.

Pending applications, if any, also stand disposed off.