

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1747 OF 2015

(Against the Order dated 27/09/2013 in Appeal No. 140/2013 of the State Commission Kerala)

1. SURESH BABU THROUGH LRS.

S/O ACHUTHAKURUP, CHERIYOTTRI HOUSE,
GREENVALLY VILLAGE, SULTHAN BATHERY TALUK,
DISTRICT : WAYANAD
KERALA

.....Petitioner(s)

Versus

1. ARULAPPAN

MOOLAYAZHATHIL @ THOTTAVILAYIL HOUSE,
PADICHIRA PULPALLY-673597,

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MS. SREEPRIYA K., PROXY COUNSEL
AUTHORIZED BY THE MAIN COUNSEL
MR. A. KARTHIK, ADVOCATE

FOR THE RESPONDENT : EX-PARTE VIDE ORDER DATED 30.03.2017

Dated : 01 November 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 21 of Consumer Protection Act 1986, against the order dated 27.09.2013 of the State Consumer Disputes Redressal Commission, Kerala (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No.140/13 in which order dated 30.05.2012 of Wayanad District Consumer Disputes Redressal Forum (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 90/2011 was challenged, inter alia praying for setting aside the order dated 27.09.2013 passed by the State Commission in Appeal No. 140/13.

2. While the Revision Petitioner (hereinafter also referred to as Complainant) was Respondent and the Respondent (hereinafter also referred to as OP) was Appellant in the said Appeal No. 140/13 before the State Commission, the Revision Petitioner was Complainant and Respondent was OP before the District Forum in the CC No. 90/2011. Notice was issued to the Respondent on 28.07.2016. As per Registry's report, the notice was returned back with postal remarks 'Refused'. Hence, the respondent was proceeded ex- parte.

3. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that: -

(i) On 15.03.2010, the petitioner/complainant (Late Mr. Suresh Babu) entrusted the construction work regarding the extension of the house to the Respondent/OP. Subsequently, the petitioner noted gross negligence in the construction of the house wherein the supporting structure of the building, the drainage, the electrical, toilets, plumbing, courtyard, bathrooms, kitchen and the compound wall etc. were incomplete and were done in an unscientific manner. The complainant expressed his displeasure over the Respondent's work and both parties agreed to mediate over the dispute. On 03.08.2010, both the parties entered into an agreement whereby the Respondent, in the presence of mediators for both the parties, agreed to complete the construction work that was not performed by him earlier. As per terms of the agreement, the total cost of materials required for construction was fixed at Rs.3,10,000/- out of which the complainant agreed to render Rs.2,00,000/- to the Respondent on the date of agreement itself. Again, the Respondent repeated his negligence in conducting the work and upon enquiry, it came to light that the Respondent was not a qualified mason and neither did he possess a contractor's license to undertake construction work. As the Respondent used low quality raw material for the construction of the house and the courtyard, the house was not fit for the purpose of habitation. The terrace, wall drainage, electricity, toilet, plumbing, courtyard, bathrooms, kitchen & compound wall etc. were not completed.

(ii) On 18.09.2010, the Petitioner lodged a complaint with the Pulpally police station, pursuant to an unsatisfactory construction job carried out by the Respondent under the terms of the agreement. The police authorities appointed an expert commissioner. The commissioner, in his report categorically submitted defects in the construction. After admitting to the defects as per the report of the expert commissioner, the Respondent offered for rectification of the same and also promised to return the excess amount earlier paid by the complainant. The respondent continued to delay the work on one pretext or the other.

(iii) Instead of returning the excess amount, the Respondent served a notice upon the complainant. The petitioner replied to the notice, yet again the Respondent assured necessary work and return of balance amount on or before 31.03.2011. But he did not do so.

(iv) On 12.01.2010, the Respondent filed OS No. 85/2011 before the Munsiff Court, Barhery alleging that the complainant was willfully not permitting the Respondent to complete the construction in order to avoid the balance payment of Rs.80,000/- to the

Respondent (out of a total of Rs.3,17,000/- the petitioner had rendered payment of Rs.2.00 lakhs on 03.08.2010 itself i.e. date of the agreement) The said suit was dismissed due to non-payment of balance court fee.

(v) On 12.04.2011, the complainant/petitioner herein filed complaint before the District Forum.

4. Vide Order dated 30.05.2012, in the CC No. 90/2011, the District Forum has partly allowed the complaint and passed the following order:

“In the result Complaint is partly allowed. The opposite party is directed to pay the complainant Rs. 84,000/- (Rupees eighty four thousand only) towards the defective construction and cost of work abandoned by the opposite party and towards hardships and losses Rs. 10,000/- (Rupees ten thousand only) also to be paid to the complainant including cost by the opposite party. This is to be complied within one month from the date of receipt of this order.”

5. Aggrieved by the said Order dated 30.05.2012 of District Forum, Respondent/OP appealed in State Commission and the State Commission vide order dated 27.09.2013 in FA No. 140/13 allowed the appeal in part and directed the OP to pay Rs.25,000/- towards compensation for the mental agony caused by the appellant and directed to comply with the order within 30 dazys on receipt of copy of the order and the non compliance will entitle the complainant to realize @9% interest for the amount.

6. Petitioners have challenged the said Order dated 27.09.2013 of the State Commission mainly on following grounds:

(i) The State Commission erred in dismissing the appeal. The impugned order is contrary to the facts and circumstances of the case besides being contrary to law. The State Commission failed to consider the liability of Rs.84,000/- towards defective construction, which was the loss suffered by the petitioners, scientifically arrived at, by the Court appointed expert commissioner. However, this amount does not include the total loss suffered by the petitioners as the commissioner could not quantify the cost involved in the rectification of the faulty drainage system since the same was completely covered.

(ii) The State Commission erred in holding that the petitioner had to pay Rs.1,10,000/- to the Respondent, however, the Respondent's counter claim did not amount to that sum. The State Commission failed to consider that the amount awarded by the District Forum was in tandem with the scientific report based on the study conducted by the expert commissioner. The State Commission failed to appreciate that the original petitioner was a school teacher by profession and had invested his life savings on rebuilding the house only to be left with an inhabitable building as a result of clear cut negligence of the Respondent. The State Commission failed to appreciate that the Respondent has clearly not adhered to his contractual obligations with respect to the construction of the house. The State Commission also failed to appreciate that there was gross negligence in the construction of the supporting structure of the building, the drainage, the electricals, toilets, plumbing, courtyard, bathrooms, kitchen and the compound wall etc. were incomplete and were done in an unscientific manner.

7. Heard proxy counsel (authorized by the main Counsel) on behalf of the Petitioners. The Respondent was proceeded ex parte vide order 30.03.2017. Contentions/pleas of the parties, on various issues raised in the RP, Oral Arguments advanced during the hearing on behalf of the Petitioners and written synopsis by the petitioners, are summed up below.

Petitioner in addition to repeating what has been stated in para 6 under the grounds, has contended that the building constructed by the Respondent is not fit for living. The petitioner had entrusted work for the extension of his house to the Respondent. Entire materials were supplied by the Petitioner. However, the work was not completed to his satisfaction, even after multiple attempts. The same was confirmed by an Expert Committee Report. The same amounted to unfair trade practice and negligence. The work of terrace wall, drainage, electrification, toilet, plumbing, courtyard, bathroom, kitchen and compound wall are not completed and the work which were done by the Respondent were also defective. As per the terms and conditions of the contract some of the works were yet to be done by the OP. The District Forum awarded amount of Rs.84,000/-, which did not include the total loss suffered as the Commissioner could not quantify the cost involved in the rectification of the faulty drainage system, since it was completely covered. The State Commission passed the erroneous order.

8. We have carefully gone through the orders of the State Commission, District Forum and other relevant records. The State Commission has given a well-reasoned order and considered at length the amounts which were payable by the Petitioners herein to the Respondent herein for the works in question. Although the State Commission has agreed

that the Appellant (Respondent herein) had not fulfilled the agreement and stopped the work for the one or the other reason, it has observed that the Forum below ignored Ex. A-6 and A-7 which is not proved and nothing has come out in evidence with regard to A-6 & A-7. Regarding commissioner's Report C1, the State Commission has observed that the defects in the terrace does not come under the agreement executed between the parties on 08.08.2010. Hence the report filed by the commissioner under this head cannot be considered. The State Commission further observed that nothing was brought out in evidence that the respondents (petitioners herein) paid the entire agreed amount. The State Commission agreed that the respondent has incurred some loss and damages which paved the way for mental agony, it is to be compensated and in the result allowed the Appeal filed by the respondent herein in part and directed the respondent herein to pay Rs.25,000/- towards compensation for mental agony caused by the appellant (respondent herein).

9. Keeping in view the above said observations of the State Commission and the fact that the State Commission has held that the respondent herein was responsible for deficiency in service due to which the petitioners herein have incurred certain loss and damages, we uphold the order of the State Commission with modification with respect to quantum of compensation, by enhancing the compensation amount from Rs.25,000/- to Rs.50,000/-, which is to be paid by the respondent herein to the petitioners herein with interest @9% p.a. w.e.f. 27.10.2012 (i.e. one month from the date of judgment of the State Commission). In addition, the petitioners herein are entitled to litigation costs of Rs.5,000/- to be paid by the respondent herein. The entire amount should be paid within one month from the date of this order, failing which, interest shall be payable @12% p.a.

10. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER