

Sebastian M.D Vs. M.J. Devadas

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Court : Maharashtra State Consumer Disputes Redressal Commission SCDRC
Mumbai

Decided On : Jul-13-2012

Judge : Honourable Mr. Justice K.S. Chaudhari, Presiding Member & Amp;
Honourable Mr. Justice Suresh Chandra, Member

Appeal No. : Revision Petition No. 26 of 2012 (From the Order dated 30.09.2011
in Appeal No. 101/2011 of Kerala State Consumer Disputes Redressal
Commission, Thiruvananthapuram)

Appellant : Sebastian M.D

Respondent : M.J. Devadas

Advocate for Pet/Ap. : Mr. Jogy Scaria

Judgement :

PER SURESH CHANDRA, MEMBER

1. The limited legal issue which has arisen in this revision petition for our consideration is as to whether the complaint in question was barred by limitation.
2. Briefly stated, Sebastian M.D. who is petitioner herein entrusted the work of construction of a residential building to the opposite party, respondent herein, by executing an agreement with the opposite party. Later, he entrusted the construction of two other rooms also to the opposite party. It is the case of the

petitioner that the construction was defective and there appeared leakage in the roof of the residential building. Alleging deficiency in service, he filed a complaint before the District Forum praying for direction to the opposite party to pay a sum of Rs.3 lakhs for patching of the leakage and strengthening the building along with compensation of Rs.1 lakh for the suffering caused to him due to defective construction. Resisting the complaint, the opposite party filed its written statement in which it raised the question of maintainability of the complaint on the ground of limitation. On merits, it was submitted that after construction of the residential building, the complainant had entrusted him to do the work of two rooms also and the present allegation of leakage was by way of an afterthought on the part of the complainant which is not true. Denying any deficiency in service in the matter of construction work which was done with utmost care and expertise, the opposite party prayed for dismissal of the complaint with cost. After hearing the parties, the District Forum vide its order dated 30.10.2010 accepted the complaint and directed the opposite party to pay a sum of Rs.1,02,748/- along with cost of Rs.3,000/- within one month from the date of the order. Aggrieved by the order of the District Forum, the opposite party/respondent filed an appeal before the State Commission which was allowed by the State Commission vide its order dated 30.9.2011. It is against this order of the State Commission that the present revision petition has been filed by the complainant.

3. We have heard Mr. Vishnu Sankar, Advocate appearing for Mr. Jogy Scaria counsel for the petitioner and perused the record. It is seen from the impugned order that the State Commission has allowed the appeal of the respondent, set aside the order of the District Forum and dismissed the complaint on the ground of limitation. Admittedly, the main grievance of the complainant is in regard to the leakage in the roof of the residential building that was constructed in 1999 whereas the complaint in question came to be filed in the year 2008. In spite of the fact that the complaint was hopelessly barred by limitation and no application for condonation of delay was filed by the complainant, the District Forum accepted the complaint ignoring the plea of limitation taken by the opposite party in its written statement. Learned counsel for the petitioner has contended that even though the year of construction of the building was 1999, the defects in the building were noticed after the work for the shop was completed in the year 2003. The leakages

in question were brought to the notice of the opposite party who had occasionally attended to the defects and kept on assuring to cure the defects permanently. In view of this, he argued that the State Commission ought to have held that the cause of action in respect of the complaint was continuing and hence the complaint was within limitation.

4. We are not impressed by the argument of learned counsel. Pursuing the matter with the opposite party time and again and sending of representations repeatedly do not extend the period of limitation which is a mandatory requirement. The law is well-settled on this question and we have no manner of doubt that the complaint of the petitioner in the given facts and circumstances which are not in dispute was hopelessly barred by limitation. The State Commission, therefore, was right in setting aside the order of the District Forum and dismissing the complaint. No fault could be found with the impugned order and there is no case for our interference with the same. Revision petition stands dismissed in limine with no order as to costs.

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