

P. Narayanan Vs. N. Devarajalu

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC
Chennai

Decided On : Mar-30-2011

Judge : Honourable Thiru Justice M. Thanikachalam President, Thiru J. Jayaram,
M.a., M.L., Judicial Member & Thiru S. Sambandam, B.SC., Member II

Appeal No. : F.A.891 of 2008 [Against order in C.C.134 of 2005 on the file of the
DCDRF, Chennai (North)]

Appellant : P. Narayanan

Respondent : N. Devarajalu

Judgement :

(Prayer: The respondent as complainant filed a complaint before the District Forum against the appellant/opposite party praying for the direction to the opposite party to re-imburse the amount of Rs.1,89,251/- which was incurred by way re-work and payment of excess amount to the opposite party, to pay Rs.1 lakh for the damages, loss, mental agony and stress, to pay Rs.5,000/- towards cost. The District Forum allowed the complaint, against the said order, this appeal is preferred praying to set aside the order of the District Forum dt.20.08.2008 in C.C.134/2005.

This appeal coming before us for hearing finally on 11.03.2011, upon hearing the arguments of the appellant counsel and perused the documents, as well as the

order of the District Forum, this Commission made the following order.)

M. THANIKACHALAM J, PRESIDENT

1. The opposite party having suffered an adverse order, according to him, in the hands of the District Forum, dated 20.08.2008, has come before this Commission for redressal.

2. Brief facts:-

The respondent/complainant entrusted the construction work of first floor to the opposite party, who agreed to construct an area of 1735 sq.ft. at the rate of Rs.500/- per sq.ft., totaling a sum of Rs.8,67,500/-. After discussion, he had also agreed to put up extension in the ground floor, as well as in the second floor, totaling an area of 1896 sq.ft. As agreed, within the period stipulated, the opposite party failed to construct and hand over possession and still there are some rectification and minor jobs kept in abeyance.

3. The opposite party even before the completion of the entire work, had received a total sum of Rs.9,99,000/- for the area 1896 sq.ft. apart from, a sum of Rs.16,000/- for the construction of over head tank, in addition, a further sum of Rs.35,000/-. The opposite party has not put up the wall, as per the thickness agreed, failed to complete the works as detailed in terms of construction agreement, thereby committed negligent act, deficiency in service, compelling the complainant, to rectify the mistake, omission committed by the opposite party, for which, he had incurred an expenses of Rs.1,89,251/-, which should be directed to be paid by the opposite party, in addition to, sum of Rs.1 lakh as compensation for mental agony.

4. The opposite party/appellant admitting that as a builder, he had undertaken the job work entrusted to him by the complainant, resisted the case, contending that as agreed, he completed the building, handed over possession, that is why, there was no objection at all at the time of handing over, which would indicate, that there was no incompleteness or defective work as the case may. After discussion, possession was given, subject to final bill to be presented. As per the additional

work entrusted to the opposite party, he is entitled to additional expenses, since he had totally incurred a sum of Rs.10,40,995/-, whereas complainant had paid only a sum of Rs.9,99,000/- only. The opposite party has provided lighting facilities, as per the agreement, constructed the area also as per the agreement, and if any rework or remodeling had been done, the opposite party cannot be held responsible. The opposite party is not liable to pay any amount, whereas, he alone is entitled to recover the amount, from the complainant and this being the position, on the basis of the alleged deficiency in service or rework said to have been done by the complainant, he is not entitled to any compensation, praying for the dismissal of the complaint.

5. The District Forum considering the admitted construction work undertaken by the opposite party, mostly placing reliance upon the Surveyors Report, without any further proof, deduced a conclusion that the complainant has made out a case of deficiency of service, without recording, what is the deficiency of service, in this case, since it is not general deficiency whereas the deficiencies alleged are pertaining to various works. Thus, taking a general conclusion, as if, the opposite party had committed deficiency in service, directed him to pay a sum of Rs.1,89,251/- with compensation of Rs.50,000/- along with cost of Rs.5,000/-, as per the order dated 20.08.2008, which is impugned in this appeal, as said above.

6. The respondent/complainant though served in this appeal, remained absent, so as to say he has not come to contest the appeal.

7. The learned counsel for the appellant argued that when the complainant/respondent has not made out a case of any defects in the building or lesser measurement or any deficiency in the work, the order of the District Forum, directing to refund the amount along with compensation, should be held erroneous and in support of the same, he has also invited our attention to the various documents. It is the further submission of the learned counsel for the appellant that the matter was finally and mutually settled between the parties, satisfying the completion of the work and when the complainant had not raised his little finger, while taking over possession of the building, accusing any deficiency, later he is not entitled to claim any amount, for re-work, if assuming done, which was not

properly appreciated by the District Forum. A further submission was made, when the complainant itself is silent regarding deficiency in service and when the same was not made out by measurement, as per the specification, the conclusion of the District Forum, as if, the opposite party had collected excess amount or collected the amount for the work not done also, should be held as incorrect.

8. By going through the order of the District Forum, as well assessing the documents relied by the parties, we too feel, the District Forum has not properly assessed the case of the complainant, and it was carried out by the observation in the Surveyors Report, as if, that is correct, as if, it is not objected, which is not the case. In this context, we have to see, the agreement between the parties and the subsequent admitted discussions also.

9. The complainant/respondent entrusted a construction work to the opposite party, totally measuring an area of 1896 sq.ft. for which, the agreed rate per square foot was Rs.500/- as pleaded in Para 3 of the complaint, which is not very much challenged, as seen from the Written Version. Though originally, the ground floor area was fixed at 1,735, it appears, there was variations as pleaded in Para 7, finally the first floor area was fixed 1628 sq.ft. Whatever may be the area, whether in the first floor or second floor or extension in the ground floor, the complainant has admittedly paid a sum of Rs.9,99,000/-. According to the opposite party, even as per the estimated cost before construction, which does not include the additional work, the total sum payable is Rs.10,40,995/-. Thus, we find some dispute regarding the area of construction as well as the completion of the construction as well as the payment also.

10. An Advocate Commissioner appointed, that too, without notice to the opposite party, who inspected the premises has noted, that there is a difference in the area namely 185.17 sq.ft. less than the agreed area and therefore, he had worked out the cost at Rs.92,585/-. Subsequently a Licensed Engineer or Consulting Civil Engineer was appointed, and he has given the estimate, as seen from the documents, at Rs.1,78,533.50. Further, as seen from the report, as per the bill produced by the complainant, another sum of Rs.28,400/- was included, making the total as Rs.2,06,933.50. But, contrary to this report, there is another report also

prepared by one Prabhakar, dated 31.01.2005, which says, the total cost for the works, mentioned therein should be Rs.1,89,251/-. Thus, we are unable to see any uniformity, regarding the actual measurement, actual cost, actual expenses also. Unfortunately, the District Forum without giving any finding, which report is correct, how it is correct, taking Mr.Prabhakars report, directed the opposite party to pay a sum of Rs.1,89,251/-, which appears to be neither factually correct, nor legally sound.

11. As rightly submitted by the learned counsel for the appellant, in the top of the report, it is said that he had taken down the measurement, physically and arrived the quantities and its value, as stated by the owner of the house Mr.Devarajalu-the complainant herein, thereby showing, he has not measured the property with reference to the agreement, and he has not noted the deficiency, either in the work or in the area and this being the position, relying upon this document, the direction given by the District Forum cannot be accepted as correct.

12. It is the submission of the learned counsel for the appellant, that there was no deficiency pleaded in the complaint and the complainant had claimed amounts on various heads, as if, he had reworked, for that he is entitled to the amount, labeling the same as excess. If it is to be accepted, the complainant should explain what kind of rework he had undertaken, whether that was necessitated, by the incomplete work of the opposite party or, he wanted to change the construction work, according to his desire etc., for which, we find no materials at all. No evidence have been let in, what are the deficiency available in the work done by the opposite party, with reference to the construction agreement, item ware. Though there is a plea that the opposite party failed to complete the construction, and extended more than two months, than the original period agreed further contending, there are some more rectifications and minor job that are not catalogued. In Para 4, some deficiency of work is indicated and either in the Engineers Report or Surveyors Report, we are unable to find any correlation, with reference to the defect or deficiency. In the absence of detailed evidence, in a case of summary proceedings like this nature, it is not possible, to workout the cost of the construction or the deficiency alleged. In this case, even without going into detail about the unfinished work if any, we feel, as rightly urged on behalf of

the appellant, the case can be disposed of otherwise on merit, as not maintainable, even concluding, the complainant has not made out a case of deficiency.

13. In the construction agreement dated 17.08.2003, nature of building work, Wood work, Sanitation work, electrical and painting works are given, totaling a sum of Rs.8,67,500/-. Admittedly, after this agreement, there were changes. Since, even as per the pleadings in the complaint, the opposite party was entrusted with the work of extension in the ground floor, additional construction, in the second floor, for which, we do not have any particulars. Even in the communication sent by the opposite party, while fixing the area, we find a note extra will be charged for the extra items [or] quantities over than the agreement with the reasonable market rate, thereby giving a go by to the original written agreement, to some extent or allowing variations. In the complaint also, it is said, there was discussion between the parties and in the discussion, it was agreed for the extension of ground floor and second floor construction as per the document dated 03.11.2003, as seen from Ex.A5. After construction of first floor and other works, which should includes extension in the ground floor, as well as construction in the second floor, the payment of the work has been settled and the parties have mutually satisfied, as seen from the letter dated 03.04.2004 [Ex.A22], which is not under challenge. There is no reference about this communication in the complaint. There is no plea in the complaint also, that the possession was not taken or not, something like that. It is not the case of the complainant, that after 3.4.2004, the complainant came to know about the defects, deficiency etc., because of the bad construction or sub-standard materials or inherent defect something like that. This being the position, as rightly urged on behalf of the appellant, it should be held that the complainant himself had satisfied about the construction work of the opposite party and that is why they have not only satisfied the construction work, but also handed over possession. If really, there was incomplete work or the works have not been completed as per the specifications, given in the construction agreement, certainly the complainant should have agitated the same forthwith, which is not the case, whereas, after one year or so, probably when the opposite party attempted to claim payments, as seen from calculation, a consumer complaint came to be filed. There is no plea in detail in the complaint regarding deficiency in service or

negligent act, as the case may be.

14. In the clients account dated 31.1.2004 that is prior to handing over of the possession on 3.4.2004, the opposite party has given the statement, quantifying the total cost of Rs.10,03,920/- and if this is to be taken, it is clear that there is still balance payable by the complainant. As we have already indicated, for extra work, additional cost was fixed that is to be added and when such a claim was made or sought to be raised probably in order to avoid the payment, we feel, on false grounds, a consumer complaint came to be filed, which was unfortunately accepted by the District Forum. The Consumer Forum, though has jurisdiction in this kind of cases, the complainant has miserably failed to prove the alleged deficiency with reference to the work as well as with reference to cost, and therefore, the statement given by Engineer, which is objected, cannot be the basis for compensation, as incorrectly did by the District Forum. For the above said reasons, we conclude that the appeal is meritorious, to be accepted.

15. In the result, the appeal is allowed, the order of the District Forum in CC.134/2005, dt.20.08.2008 is set aside, and the complaint is dismissed. There will be no order as to cost throughout.

16. The Registry is directed to handover the Fixed Deposit Receipt, made towards the mandatory deposit, to the appellant/ opposite party duly discharged, since appellant succeeded, and there is no need to retain the FDR.

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