

Rakkiappan Vs. Sekar

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC
Chennai

Decided On : Aug-23-2010

Judge : Honourable Thiru Justice M. Thanikachalam President, Tmt.Vasugi Ramanan, M.a., B.L., Member I & Thiru. S. Sambandam, B.SC., Member II

Appeal No. : F.A.487 of 2006 [Against order in C.C.No.33 of 2004 on the file of the DCDRF, Coimbatore]

Appellant : Rakkiappan

Respondent : Sekar

Judgement :

(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 pay Rs.49,350/- for completing the unfinished works done by the complainant, to pay Rs.50,000/- for the sub-standard and poor construction works done by the opposite party and to pay Rs.1 lakh towards damages for mental agony. 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.7.04.2006 in C.C.33/2004.)

M. THANIKACHALAM J, PRESIDENT

1. The opposite party is the appellant.

2. The respondent in this appeal, as complainant, filed a case, for the recovery of a sum of Rs.49,350/- being the value of, completing the unfinished work done by the complainant and for Rs.50,000/- for sub-standard and poor construction work done by the opposite party, as well for a sum of Rs.1 lakh towards damage for mental agony on the following grounds.

3. At the request of the complainant, the opposite party constructed his first floor house building, measuring 1200 sq.ft. at the rate of Rs.300/- per sq.ft., for which, totally a sum of Rs.4,47,000/- was paid to the opposite party. As agreed, the opposite party failed to construct the building, using good materials as well failed to complete the construction within six months, from the date of commencement of the work, thereby, causing deficiency in service, resulting mental agony to the complainant also. Abruptly on 1.3.2004, the opposite party stopped the work and for the unfinished work, estimate was prepared before the Panchayatdars, estimating at Rs.46,020/-. Despite request, the opposite party has not commenced and completed the unfinished work, whereas, demanding more money, threatened the complainant and his family members, for which, a criminal complaint has been given, against the opposite party. The complainant spending a sum of Rs.49,350/- completed the work, which ought to have been completed by the opposite party, as per the agreement. Issuance of notice, claiming recovery, failed to recover the amount, whereas, elicited only false reply, thereby, compelling the complainant to move the Consumer Forum, being a consumer.

4. This opposite party though originally agreed to construct 1,200 sq.ft. at the rate of Rs.300/-, at the request of the complainant, constructed more area and at the time of the completing the construction, it was 1725 sq.ft. It is not correct to say, that the sub-standard materials were used for the construction of the building. As agreed, for construction of the entire building, including the excess area, the opposite party is entitled to a sum of Rs.5,69,479/-, whereas, the complainant has paid only a sum of Rs.4,47,000/- leaving the balance of Rs.1,22,479/-. Therefore, the complainant alone has to pay the above amount to the opposite party, and the opposite party is not liable to pay any amount. The alleged deficiency and mental agony are all invented for the purpose of the case. Hence, the complainant is not entitled to claim any relief against this opposite party and it is prayed that the

complaint may be dismissed with cost.

5. The District Forum while assessing the rival contentions of the parties felt that the opposite party, having received the amount from the complainant, failed to complete the construction as agreed, which should be construed as deficiency in service, further concluding that the complainant was compelled to spend a sum of Rs.49,350/- to complete the unfinished construction, which he is entitled to get back. At the same time, it has also come to the conclusion, that the complainant has not proved that there were sub-standard materials and the construction work was very poor. Thus, negating the claim for sub-standard construction, awarded a sum of Rs.49,350/- representing the value of the unfinished work and a sum of Rs.50,000/- as damages for mental agony and other sufferings with cost, as per the order dated 7.4.2006, which is under challenge.

6. Heard, the learned counsel appearing for either side, perused the documents, written submissions as well as the order of the District Forum.

7. The learned counsel for the appellant argued, that when the complainant has not made out, by adducing sufficient evidence, the opposite party has not completed the work, awarding a sum of Rs.49,350/- is erroneous, which is liable to be set aside. A further submission was made, as if the opposite party was put into problems, resulting criminal case, thereby, causing mental agony, but unfortunately a sum of Rs.50,000/- was granted, as compensation for mental agony without any basis, which is also liable to be upset. Per contra, a submission was made, on behalf of the complainant, that by adducing satisfactory evidence, the complainant had not only established the incomplete work of the opposite party, but also established its cost and completion and therefore, in the award, there cannot be any infirmity, thereby, praying for the dismissal of the appeal, supporting the findings of the District Forum, in its entirety.

8. It is an admitted fact [as pleaded in the complaint, admitted in the Written Version] that there was an agreement between the parties for the construction, on the first floor, in the house of the complainant, measuring 1200 sq.ft., at the rate of Rs.300/-per sq.ft. It is not in dispute that pursuant to the understanding, a sum of Rs.4,47,000/- was paid by the complainant, to the opposite party. But according to

the complainant, though the opposite party had received more amount, than the amount agreed, he had not constructed the building, using standard materials, but also failed to finish the same within the agreed period, thereby, compelling him to finish the work, spending a sum of Rs.49,350/-, which should be reimbursed, further alleging deficiency, as well mental agony, claims were made, which was granted in part. For 1200 sq.ft. at the rate of Rs.300/- per sq.ft., the total cost would come to Rs.3,60,000/-. Admittedly, more than that amount, that is Rs.4,47,000/- has been given to the opposite party, thereby, indicating, the opposite party should have done more work than the work agreed. Therefore, the submission of the learned counsel for the appellant, that the opposite party should have constructed more area stands to reason to believe, which cannot be ignored totally. However, it is the case of the opposite party, that he had constructed a total area of 1735 sq.ft., for which, we do not have any materials. Since it is the case of the opposite party that he had constructed more area, than the agreed area, nothing would have prevented him from taking out a commission, to measure the actual construction done by him, which he failed. Therefore, it is not possible to say, that the opposite party should have constructed more area that is 1735 sq.ft. on which basis, he is entitled a sum of Rs.1,22,479/-. If really, he had constructed so much area, and if that amount is due to him, from the complainant, he ought to have taken appropriate steps, for recovery of the amount that too, when there was strained relationship between the parties, even lodging a Police case also. The inaction on the part of the opposite party in not taking any steps to recover Rs.1,22,479/- also in a way prove the case of the complainant, that the opposite party had not constructed the extent, as claimed by him though it appears, the opposite party had done not only the construction of the first floor measuring 1200 sq.ft., but also some extra work and that is why, we feel, Rs.4,49,000/- should have been given, to the opposite party.

9. The complainant in order to prove the actual area of construction, as well the unfinished work, relied on Ex.A1. Under Ex.A1, the opposite party had agreed to construct a hall, Bedroom, Dining, Kitchen etc., in addition to RC Roof in the ground floor, fixing the rate of Rs.300/- per sq.ft. Because of the construction of RC roof in the ground floor, though originally Rs.3,60,000/- was agreed to be paid, more payments has been paid admittedly. When there was a dispute, as sworn by

the complainant in the affidavit, which is also pleaded in the complaint, list was taken for unfinished work, estimating its cost at Rs.46,020/-. Because of the dispute and incomplete work, it seems, as well as difference in rate, the opposite party has not handed over the key, which was later handed over admittedly as evidenced by Ex.A4 on 13.4.2004. It is not the case of the opposite party, that the unfinished work as indicated in Ex.A3, were finished by him, at later point of time. The work was completed with the help of one Vetriselvan, as seen from Ex.A8, which was intimated to opposite party, under Ex.A9 also on 24.6.2004. Accepting the above documents, which is supported by the affidavit of the complainant, we are inclined to hold, that the opposite party had not completed the work as agreed, though he had received a sum of Rs.4,47,000/-. The District Forum considering the above facts and circumstances of the case, has correctly come to the conclusion that there was deficiency in service, in not completing the work and in this part of the order, we find no infirmity, not warranting our interference.

10. As far as the compensation of Rs.50,000/- is concerned, we feel, there is no material to support this finding. There was dispute between the parties regarding the area of construction, rate etc., resulting criminal case also, thereby, opposite party was compel to face criminal proceedings. The dispute had arisen, because of the rate and area of construction. Therefore, the case of the complainant, that he was put to mental agony, for which, he should be compensated, by ordering Rs.1 lakh is unreasonable and unwarranted, which was not properly considered, by the District Forum and in this view, the grant of compensation towards mental agony should be set aside.

11. In the result, the appeal is allowed in part, order of the District Forum is modified, setting aside the award of compensation of Rs.50,000/- alone, otherwise confirming the order of the District Forum. There is no order as to costs in this appeal.