

Subhash Vs. Ajith

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Jul-17-2010

Judge : The Honourable Smt. Valsala Sarangadharan Member, the Honourable Shri. M.V. Viswanathan Judicial Member & the Honourable Shri. M.K. Abdulla Sona Member

Appeal No. : First Appeal No. 193/2006 (Arisen out of order dated 24/11/2005 in Case No. A.56/2004 of District Alappuzha)

Appellant : Subhash

Respondent : Ajith

Judgement :

SRI.M.V.VISWANATHAN,JUDICIAL MEMBER

The above appeal is directed against the order dated 24th November 2005 of the CDRF, Alappuzha in OP.No.A.56/04. The complaint therein was filed by the respondent herein as complainant against the appellant/opposite party alleging deficiency in service on the part of the opposite party in constructing the house for the complainant. It was alleged that the opposite party agreed to construct the house for the complainant at a cost of Rs.4,95,000/-. But the complainant abanded the work after obtaining an amount of Rs.3,92,500/- and that the opposite party has not done the work for the amount of Rs.3,92,500/- received from the

complainant. It was also alleged that the work executed by the opposite party is also defective and the materials used for executing the work are of inferior quality. Thus, the complainant prayed to compensate him for deficiency in service and also for the financial loss and mental agony. The opposite party entered appearance and filed written version denying the alleged deficiency in service on his part. He contended that the complainant is liable to pay a sum of Rs.1,87,500/- towards the cost of work executed by the opposite party that the complainant has only paid Rs.3,92,500/- by instalments that the opposite party has incurred an excess amount over and above Rs.20,000/- paid to the workers for bringing the construction materials from the main road to the work site. It is also contended that the opposite party has constructed an additional bathroom and an outside staircase for the said building as additional works and that the complainant has agreed to pay the amounts incurred for the aforesaid additional works. Thus, the opposite party claimed the balance of Rs.1,87,500/- from the complainant. It is also contended that the present complaint is filed to avoid payment of the said sum of Rs.1,87,500/-. It is also categorically contended that the opposite party has completed the entire construction of the house building and that the workmanship and the materials used for executing the construction works are of high quality. Thus, the opposite party prayed for dismissal of the complaint with cost.

2. Before the Forum below, the complainant was examined as PW1 and 2 witnesses on his side as PWs 2 and 3. Exts. A1 to A6 documents were also marked on the side of the complainant. An expert commissioner was deputed and he filed his report. The expert commissioner was examined as CW1 and his report was marked as Ext.X1. The opposite party was examined as RW1 and 2 witnesses on his side were examined as RWs 2 and 3. On an appreciation of the evidence on record, the Forum below passed the impugned order directing the opposite party to pay an amount of Rs.59,500/- towards the financial loss suffered by the complainant. The opposite party is also directed to pay compensation of Rs.15,000/- for the mental pain and sufferings of the complainant with cost of Rs. 2,500/-. Thus, the opposite party is directed to pay a total of Rs. 74,500/- with interest at the rate of 9% per annum from the date of the impugned order with cost of Rs. 2,500/-. Aggrieved by the said order, the present appeal is filed by the opposite party therein.

3. We heard both sides. The learned Counsel for the appellant/opposite party submitted his arguments based on the grounds urged in the memorandum of the present appeal. He disputed the correctness of Ext. X1 report submitted by the expert Commissioner and the oral testimony of the expert Commissioner as CW1. It is submitted that the expert Commissioner has assessed the cost of construction without any basis and no sufficient data are provided to support his calculation. It is also submitted that the Forum below has not considered the case of the opposite party regarding the additional work of constructing additional bathroom and outside staircase by the opposite party. He also disputed the finding of the Forum below regarding the defective nature of the work executed by the opposite party. Thus, the appellant/opposite party prayed for setting aside the impugned order passed by the Forum below. On the other hand, the learned Counsel for the respondent/complainant supported the impugned order passed by the Forum below and prayed for dismissal of the present appeal.

4. The points that arise for consideration are:

1. Whether the respondent/complainant can be considered as a consumer as defined u/s 2(1)(d) of the Consumer Protection Act, 1986?

2. Whether there was any deficiency in service on the part of the appellant/opposite party in executing the construction work by virtue of Ext.A1 agreement with the work schedule attached to the said agreement?

3. Whether the Forum below can be justified in relying on the testimony of CW1, the expert Commissioner and his X1 expert report?

4. Is there any sustainable ground to interfere with the impugned order dated 24th November, 2005 passed by CDRF, Alappuzha in OP No. A 56/2004?

5. Point No. 1: The definite case of the respondent/complainant is that he entrusted the construction work for constructing a house building for him and the work was entrusted with the appellant/opposite party by virtue of A1 agreement with a work schedule. It is also the case of the complainant that he paid a total of Rs. 3,92,500/- towards the cost of construction. But the appellant/opposite party

abandoned the work without completing construction of the house building. It is the case of the respondent/complainant that there was deficiency in service on the part of the appellant/opposite party in executing the construction work and that the work executed by the appellant/opposite party was of inferior quality.

6. The appellant/opposite party admitted execution of A1 agreement dated 15-03-2003. Ext.A2 is the work schedule attached to A1 agreement. The appellant/opposite party is also admitted the agreement for completing the construction of the house building having a plinth area of 1100 Sq.ft. at a total cost of Rs. 4,95,000/-. The appellant opposite party agreed to complete the said work at the rate of Rs. 450/- per sq.ft. and that a total of Rs. 3,92,500/- was received by the appellant/opposite party towards the cost of construction. The aforesaid admissions made by the complainant and opposite party would make it clear that the complainant availed the services of the opposite party on consideration and that the opposite party/service provider had also received consideration for the same. The case of the complainant is that the opposite party was deficient in rendering service as agreed by A1 agreement. It can very safely be concluded that there was a consumer-service provider relationship between the complainant and the opposite party. Therefore, the complainant can be considered as consumer as defined u/s 2(1)(d) of the Consumer Protection Act. Then, the complaint in OP No. A-56/2004 alleging deficiency in service on the part of the opposite party can be treated as maintainable. The Forum below is perfectly justified in entertaining the complaint in OP No. A-56/2004. Hence this point is answered accordingly.

7. Point Nos. 2 to 4: Execution of A1 agreement and A2 work schedule are admitted by both parties. It is also admitted that the appellant/opposite party received a total of Rs. 3,92,500/- towards the consideration for doing the construction work. Admittedly, the appellant/opposite party agreed to construct on a house building for the respondent/complainant having a plinth area of 1100 sq.ft. at a total cost of Rs. 4,95,000/-. The cost of construction was agreed at the rate of Rs. 450/- per sq. ft. The nature of the construction works are stated in A2 work schedule. The respondent/complainant in his written complaint in OP. No. A-56/2004 categorically averred that the opposite party/service provider (contractor) abandoned the construction work by violating the terms and conditions

incorporated in A1 agreement and A2 work schedule. On the other hand, the appellant/opposite party in his written version very emphatically contended that he completed the construction of the house building for the complainant and that the entire construction work was completed.

(TAMIL)

The aforesaid recitals in the written version would show that the appellant/opposite party had completed the construction of the work as agreed by A1 agreement and A2 work schedule.

8. The opposite party was examined before the Forum below as RW1. In his oral testimony, the opposite party categorically admitted the fact that he had not completed the construction of the house building. RW1 has also got a case that the construction of the house can be completed by incurring a further sum of Rs. 50,000/-. It is also deposed by RW1 that a sum of Rs. 1,87,500/- is due to him from the complainant and on getting the said amount he is prepared to complete the construction of the house building

(TAMIL)

The aforesaid oral testimony of the opposite party as RW1 would make it crystal clear that what is stated in his written version regarding completion of the construction of the house building is only an utter falsehood. This circumstance would tell upon the nature and approach of the appellant/opposite party as a contractor. It would also show that the appellant/opposite party has no reluctance in submitting a false pleading before a legally constituted authority like the Consumer Forum.

9. The evidence on record would show that the appellant/opposite party failed to complete the construction of the building as agreed by A1 agreement and A2 work schedule. As per A1 agreement, the appellant/opposite party had agreed to do the construction of house building for the respondent/complainant at the rate of Rs. 450 per sq.ft. and that he also agreed to complete the construction of the house building within five months from the date of (15-03-2003) A1 agreement.

Admittedly, the appellant/opposite party could not complete the work as agreed. On the other hand, the appellant/opposite party abandoned the construction works without assigning any valid and acceptable reason. Appellant/opposite party has got a case that he abandoned the work because of non-payment of amount by the respondent/complainant. But, there is no acceptable evidence to show that the respondent/complainant was not ready to pay the amount for completing the construction of the building. It is to be noted that the appellant/opposite party had received a total of Rs. 3,92,500/- from the respondent/complainant towards the cost of construction. There is nothing on record to show that the appellant/opposite party had incurred the aforesaid sum of Rs. 3,92,500/- for the purpose of doing the construction work. The appellant/opposite party has not adduced any evidence to substantiate his case that he had done extra work and had spent additional sum of Rs. 1,87,500/- which was due from the respondent/complainant.

10. An expert Commissioner was deputed by the Forum below. The expert Commissioner was appointed at the instance of the respondent/complainant. Ext.X1 is the expert report submitted by the expert Commissioner. The expert Commissioner was examined as CW1 before the Forum below. The competency and the expertise of the expert Commissioner to assess the nature of the work and cost of construction cannot be doubted or disputed. It is to be noted that the expert Commissioner is an experienced Civil Engineer who worked as Assistant Engineer (Public Works), Local Self Government, Edathuva Grama Panchayath. The expert Commissioner as CW1 has deposed in support of Ext.X1 expert report submitted by him. The Forum below has considered the oral evidence of CW1 and X1 expert report in the correct perspective. It may be correct to say that some guess works are done by the expert Commissioner in assessing the cost of construction. It is to be noted that the nature of the work done would suggest that some guess work is to be done for assessing the cost of the work done and also to assess the cost required for completing construction of the building. The mere fact that meticulous details are not furnished by the expert in his X1 report cannot be taken as a ground to discard the report. The oral testimony of CW1 and X1 report would show that there is nothing to doubt the genuineness and correctness of X1 report. The evidence of CW1 can be treated as independent and impartial. There is nothing on record to doubt the testimony of CW1 and his expert report which was marked as

Ext.X1. Thus, the Forum below can be justified in placing reliance on the testimony of CW1 and Ext.X1 expert report.

11. The expert Commissioner has categorically reported that the carpentry work done for the said residential building is having defects and the said carpentry work requires rectification. It is to be noted that as per A2 work schedule the doors and windows except the front door are to be made by using Anjili wood. Admittedly, appellant/opposite party has not used Anjili wood for making the doors and windows. But, he used some other wood known as Pagoda violet. The case of the appellant/opposite party that the respondent/complainant agreed for using such a wood cannot be accepted. There is no such additional agreement or endorsement made by the complainant permitting use of any other wood instead of Anjili wood. It was agreed that the front door will be constructed in teakwood. The expert Commissioner on inspection noticed the failure to construct the front door with teakwood. So, the assessment of the expense of Rs. 10,000/- for rectifying the defects in the competency work is to be accepted. It would also speak about the deficiency in service on the part of the appellant/opposite party.

12. The expert Commissioner on inspection could notice cracks on the wall and sagging of the roof slab and also about the leakage in the roof. The expert estimated the approximate cost required to rectify those defects at Rs. 10,000/-. Considering the nature of the defects, the said sum of Rs.10,000/- assessed by the expert can be accepted. The aforesaid defects noticed by the expert would also tell upon the deficiency in service on the part of the appellant/opposite party in executing the construction work.

13. The expert Commissioner has also noticed one major crack on the wall of the bedroom at the South-Western side. He also noticed some minor plastering cracks. The aforesaid defects reported in X1 report would also give a clear indication about the inferior quality of work done by the appellant/opposite party. The assessment of cost of Rs. 5,000/- for rectifying the aforesaid defects can also be accepted.

14. The expert has also noticed the use of bricks for construction of basement. It is to be noted that in R2 work schedule the foundation and basement are to be done

in RR masonry in cement mortar. The use of bricks for construction of basement is also against the provisions of the A2 work schedule. The expert Commissioner has also enumerated the balance of works which are to be done for completing the construction of the house. The expert has also assessed the cost for completing those balance works. Thus, the X1 report submitted by the expert Commissioner estimating the cost of construction for doing the balance works is to be accepted. The Forum below cannot be found fault with in relying on X1 expert report.

15. Admittedly, the total cost of construction for completing the construction of the house building was Rs. 4,95,000/-. The appellant/opposite party contractor accepted a total of Rs. 3,92,500/- towards the consideration for constructing the house building for the respondent/complainant. As per A1 agreement only a sum of Rs. 1,02,500/- alone is due to the appellant/opposite party contractor for completing the construction of the building. The case of the appellant/opposite party that he had already incurred a sum of Rs. 1,87,500/- cannot be believed or accepted. The appellant/opposite party could not substantiate his case regarding the amount of Rs. 1,80,000/- spent by him. There is also nothing on record to show that a sum of Rs. 1,87,500/- is due to the appellant/opposite party from the complainant. The expert Commissioner has assessed the total cost of Rs. 1,35,000/- for completion of construction by doing the required rectification works. This would show that the appellant/opposite party had received excess amount from the respondent/complainant.

16. The Forum below has also considered the labour charge required for laying the tiles. A2 work schedule would show that the appellant/opposite party contractor had agreed to lay floor tiles with first quality Mangalore tiles for flooring. Admittedly, the appellant/opposite party has not done the flooring works. The respondent/complainant purchased flooring tiles and laid the tiles. The Forum below has also considered all the works to be done for completing construction of the house building. The entire calculation is done at Para 8 of the impugned order. The Forum below has also considered the additional work of constructing an outside staircase by the appellant/opposite party and valued the cost of construction for that additional work at Rs. 20,000/-. The Forum below has rightly rejected the case of the appellant/opposite party regarding construction of

additional bathroom. Thus, the total amount of Rs. 59,500/- due to the complainant is to be accepted. We do not find any acceptable reason or ground to interfere with the aforesaid calculation of the amount. Therefore, the finding of the Forum below that the respondent/complainant suffered financial loss of Rs. 59,500/- is to be upheld. Hence we do so.

17. Evidence of the complainant as PW1 would also establish the fact that the respondent/complainant suffered mental agony, inconvenience on account of the deficiency in service on the part of the appellant/opposite party. So, the compensation of Rs. 15,000/- awarded by the Forum below for the mental agony and inconveniences suffered by the respondent/complainant can be treated as reasonable. We have no hesitation to uphold the compensation of Rs. 15,000/- awarded by the Forum below. The Forum below has also rightly ordered cost of Rs. 2,500/-. The same is also very reasonable. Hence the same is confirmed. The Forum below has also awarded interest at the rate of 9% per annum from the date of the impugned order. The Forum below has taken a lenient view in awarding interest from the date of the impugned order. Thus in all respects, the impugned order passed by the Forum below is to be accepted. The evaluation of the entire evidence would show that the appellant/opposite party was deficient in rendering service to the respondent/complainant. The appellant/opposite party alone is responsible for compelling the respondent/complainant to move the consumer complaint before the Forum below. So, the appellant/opposite party is to be made liable for the negligence and lapse on his part. So, the impugned order passed by the Forum below is to be confirmed. Hence we do so. These points are answered accordingly.

In the result, the appeal is dismissed. The impugned order passed by the Forum below is confirmed. The parties to this appeal are directed to suffer their respective costs.

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