

Mr.A. Krishnudu Vs. M/S.Madhu Nirman, Rep. by Its Managing Partner and Another

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Nov-30-2009

Judge : Smt.M. Shreesha, Member & Sri K. Satyanand, Member

Appeal No. : FA.No.648 of 2008 AGAINST C.C.No.114 of 2005 DISTRICT FORUM, RANGA REDDY DISTRICT.

Appellant : Mr.A. Krishnudu

Respondent : M/S.Madhu Nirman, Rep. by Its Managing Partner and Another

Advocate for Pet/Ap. : Counsel for the Appellant: Mr.N.A. Jairaj, Counsel for the Respondents: Mr.S. Raj Kumar for R1 and R2

Judgement :

Oral Order (K. Satyanand, Honble Member).

This is an appeal filed by the unsuccessful complainant questioning the order of the District Forum consigning the proceedings to the civil court on the ground of inadequacy of evidence.

The facts as stated are briefly as follows:

Obviously, the complainant is the land owner, who entered into an agreement for development of his vacant land with the opposite parties, who are developers in the market for the purpose of constructing apartments meant to be apportioned between the land owner and the developer as per the agreement terms. Aggrieved by the inaction or alleged deficiency on the part of the developer to stick to the terms of the contract, the complainant filed this consumer dispute seeking compensation for the delayed execution of the project as also consequential damages and other deficiencies quantified at a total amount of Rs.14,00,000/- and odd with concomitant reliefs as interest and costs.

The complaint came to be resisted by the opposite parties mainly harping upon the contention that the dispute as between the land owner and the developer, it would clearly fall within the ambit of civil court jurisdiction like in a case of specific performance and the consumer fora are shut out from entering the realm that more properly pertains to the jurisdiction of a civil court.

In support of their respective cases, they adduced evidence by way of evidence as also documents. On the side of the complainant, he got marked Exs.A1 to A9 and on the side of the opposite parties Exs.B1 and B2.

On a consideration of the evidence adduced on either side, the District Forum came to an equivocal decision to the effect that the evidence on record was not sufficient and in any case directed the parties to approach a civil court.

Aggrieved by the said order, the present appeal is filed contending that the dispensation of the District Forum rather amounts to abdication and there is absolutely no doubt that even as between the developer and the land owner the dispute nevertheless was in the nature of a consumer dispute and therefore the order of the District Forum is untenable.

Heard.

This is a clear case in which the District Forum inhibited itself from adjudicating the matter and taking it to its logical conclusion by two imaginary propositions that there was no adequate evidence and that the matter is one that should go to the

realm of civil court in as much as it is an agreement between the land owner and the developer. Both these propositions are totally incorrect. In the first place if there is any inadequacy in the evidence, nothing inhibits the District Forum to call upon the parties to supplement the evidence and adduce evidence to the full extent.

The next ground on which the District Forum expressed its unwillingness appears to be that this is not a case where the complainant can be characterized as a consumer. This is equally wrong, in view of the two obvious legal propositions both held by the Honble Supreme Court one in *FAQIR CHAND GULATI v. M/S.UPPAL AGENCIES PVT. LTD.*, (C.A.No.3302/2005) and the latest in 2008(5) SCJ 957 *SUJIT KUMAR BANERJEE v. M/S.RAMESHWARAN AND OTHERS*. Thus this is a clear case in which the District Forum did not exercise the jurisdiction vested in it. In other words, the District Forum declined to exercise jurisdiction that was already vested in it. Therefore, this is not an order that can be upheld. In other words, the appeal deserves to be allowed but naturally for the limited purpose of remanding the matter and directing the District Forum to make a fresh enquiry by affording fullest opportunity to both sides and adjudicate the matter on merits.

Accordingly the appeal is allowed directing the District Forum to adjudicate the matter without being influenced by the two propositions that it erroneously apprehended and the parties shall be given full opportunity. The District Forum shall adjudicate the matter within three months after the receipt of this order after issuing notices to both sides. There shall be no order as to costs in the circumstances of the case.

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