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**Court** : Andhra Pradesh State Consumer Disputes Redressal Commission  
SCDRC Hyderabad

**Decided On** : Aug-31-2009

**Judge** : Sri K. Satyanand, Honâ€™ble Member & Sri R. Lakshminarasimha Rao, Honâ€™ble Member

**Appeal No.** : FA.No.362 of 2006 against CD.No.146 of 2001 District Forum-II, Hyderabad

**Appellant** : Manoj Jain

**Respondent** : Vamsi Constructions Pvt. Ltd.Rep. by Its M.D. V.V. Durga Prasad

**Advocate for Pet/Ap.** : Counsel for the Appellant: Smt.Anitha Ahuja. Counsel for the Respondent: Mr.L. Sudhakar Reddy

**Judgement** :

Oral Order (Per Honble Sri K. SATYANAND, MEMBER)

This is an appeal filed by the unsuccessful complainant before the District Forum-II, Hyderabad in C.D.No.146/2001 filed on 29-1-2001.

The facts that led to filing this appeal are briefly as follows;

The complainant purchased a flat from the opposite party, developer, by virtue of an agreement of sale dated 2-6-1997 with a plinth area of 1897 sq. ft. along with 1000 sq. ft. of open area presently flat No.607 ( at that time flat No.509) for a consideration of Rs.16,12,450/- along with an undivided share of land admeasuring 64 sq. yds as also a car parking lot in the project called Vamsi Paradise developed by the opposite party. The opposite party agreed to hand over possession of the said flat on or before 30-10-1998. Accordingly opposite party received advance amount or part of sale consideration but eventually violated the conditions under the agreement. He did not hand over the flat to the complainant within the stipulated time. The complainant also pointed out several defects in the construction including the flooring as the opposite party used very bad and cheap quality material etc., According to him, he himself brought the marble and the opposite party deducted the amount. He also pointed out various other deficiencies in the execution of the work agreed for by the opposite party. He did not deliver the flat till 10-3-2000. For the delayed period he was obliged to pay rent at the rate of Rs.2/- per sq. ft. per month amounting to Rs.61,400/-. He delivered open area of 300 sq. ft. only as against 1000 sq. ft. as agreed. Though he agreed to compensate by installing 3 air conditions, he backed out. He altered the flat. He made illegal constructions. He demanded Rs.10,000/- to pay to M.C.H. people for regularization and made the complainant pay the same. The complainant sought from the opposite party the execution of sale deed for flat No.607 and parking lot No.42. Ultimately his grievances came to be given a collective shape by way of prayer set out as under:

- a) That the opposite party be directed to pay a sum of Rs.82,400/- towards interest, arrears of rent, excessive payments received by opposite party, BRS fees etc.
- b) To deliver 1000 sq. ft. open area as stipulated in agreement dated 2-6-1997 and to register the same along with flat No.607, parking lot no.42 and undivided share of land admn. 63 sq. yds.
- c) To pay interest @ 24% p.a. on Rs.82,400/- from 15-10-2000 till realization
- d) Affix 3 air conditioners in flat no.607

- e) To pay Rs.20,000/- towards deficiency of services and compensation for mental torture
- f) To award costs and
- g) Any other relief as this Honble Forum may deem fit and proper

The opposite party filed a counter broadly denying the complainant allegations. According to the opposite party, this litigation was a ruse to avoid payment of balance due to the builder and an alternative maneuver to the unsuccessful orders in his suit. The agreement dated 2-6-1997 was arrived at after due deliberation and in subsidence and supercession of all the bargaining that preceded it. The opposite party maintained that the construction was made in accordance with the same. The request for marble flooring was conceded and duly adjusted. The complainant opted to lay marble flooring himself. It was the reason for delay. The complainant failed to pay the consideration as stipulated and so he had no right to insist on possession on time and also rent during the so called delayed period. He was estopped by clause 10 having taken possession. The complainant had taken a flat with plinth area enhanced by 300 sq. ft. in lieu of open area of 1000 sq. ft. so he cannot turn round and claim 1000 sq. ft. again. The complainant was estopped in his pleadings in his pleadings in O.S.No.5005/2000 to the effect that he had compromised and settled for the flat and taken delivery of possession. Now he cannot be allowed to make allegations in respect of non-existing rights. Finally the opposite party called the allegation of deficiency was merely a naked lie. This complaint came to be resisted by the opposite party also on the ground that the complainant had already invoked the jurisdiction of the civil court in respect of bulk of the grievances set out here arising out of the same cause of action and such resort to two fora simultaneously is a clear case of abuse of process of law. The opposite party also urged that each of the grievances set out as above have come to be satisfied and settled and in fact the complainant himself was guilty of not performing his part of the agreement in certain aspects. The opposite party ultimately submitted that it was ready and willing to perform his part of the contract provided the complainant too discharges his obligations under the agreement which are basically mutual; far from being unilateral.

In support of his case, the complainant filed his own affidavit and also relied upon documentary evidence marked as Exs.A1 to A24. On the other hand, opposite party too got filed an affidavit on its behalf and relied upon Exs.B1 to B4.

On a consideration of the evidence adduced, the District Forum had come to the conclusion that these grievances in this Consumer Forum have come to be agitated in a complaint that was filed subsequent to the civil suit already filed by the complainant on the same cause of action in respect of some of the grievances arising out of the same transaction. In other words, the District Forum pointed out that the course of filing the complaint suppressing the factum of earlier suit though cast in a different language nevertheless stemming out of the same transaction amounts to simultaneously approaching two jurisdictions and was impermissible in law. The District Forum also found that some of the grievances were merely illusory in the sense that they have come to be adjusted or remedied by the opposite party as cogently explained in its counter, Ex.A17, before the civil court. On the basis of these two findings, the District Forum dismissed the complaint as untenable.

Aggrieved by the said order, the present appeal is filed by the complainant contending inter alia that the District Forum failed to see that the evidence adduced clearly established the claim of the appellant. It is contended by the appellant that the civil court had no jurisdiction to address some of the issues raised here and therefore the reluctance of the District Forum to adjudicate the issues raised in the complaint was impermissible and rather abdication of jurisdiction. The District Forum erred in dismissing the review by way of I.A. in the light of the fact that it was brought to its notice the fact that Exs.B1 to B4 were not given to the appellant.

Though the matter was posted finally, there was no representation on either side, however, we perused the record and in the light of the material available the following points arise for consideration.

- 1) whether the complaint is maintainable in view of the supposed identity of the cause of action in this complaint and in the suit before the civil court?

2) Whether the complainant could establish his charge of deficiency in service against the opposite party?

3) To what relief?

However, subsequently the matter was duly reopened at the instance of the appellant under notice to the respondent. The counsel for the appellant filed six documents which are ex facie, copies of public documents the reception and reliance upon which is being decided presently keeping in view their strict probative value in the just adjudication of the matter as a whole.

The first and foremost point that weighed with the District Forum is admissibility of a litigation invoking two jurisdictions simultaneously or one after the other while earlier one was pending. This is exactly what had happened in this case. The complainant had filed a civil suit in the year 2003 as is evident from Ex.B4. The prayers in Ex.B4 are as follows:

a) That the judgement and decree for permanent injunction be passed in favour of the plaintiff and against the defendant, his agents, occupants or owners of Vamsi Paradise, thus restraining the defendant and third parties from occupying the parking lot No.42 (207) at Vamsi Paradise bearing Municipal no.7-1-69, situated at Dharam Karan road, Ameerpet, Hyderabad.

b) to grant mandatory injunction directing the defendant to issue a allotment letter for the parking lot No.42(207) of Vamsi Paradise bearing M.No.7-1-69, situated at Dharam Karan road, Ameerpet, Hyderabad in favour of the plaintiff.

c) costs of the suit be awarded.

d) any other relief or reliefs which this Honble court deems fit and proper.

A close comparison of the averments in Ex.B4 and averments in the present complaint would unmistakably show that the causes of action in both the matters are not identical though slightly overlapping. This aspect is made abundantly clear by the new documents which for that reason can be conveniently marked as Exs.A25 to A30 which are useful equally to both parties and thus, therefore, serve

the interests of justice. Even according to Section 3 of Consumer Protection Act, the jurisdiction of the Consumer Forum is in addition to and surely not in derogation of other laws including the procedural laws as C.P.C. Under Section 9 of the Civil Procedure Code, the jurisdiction of civil court is very wide and obviously the complainant opted to invoke such jurisdiction for a very very limited purpose of agitating his urgent right in respect of car parking lot which formed an insignificant part of the line under prayer no. (b) of the complaint. As a matter of fact the dispute in regard to car parking has been once for all settled as per Ex.A26. Ex.A27, 28 and Ex.A29. It is no doubt impossible for him to fragment the reliefs arising out of the same cause of action without running the risk of coming under the teeth of Order 2 Rule 2 of C.P.C. if the theatre of his legal battle remains a civil court through and through. We are more directly concerned with the question whether the complainant attracts the view of Order 2 Rule 2 of C.P.C. The conditions necessary to apply the guillotine of Order 2 Rule 2 C.P.C. against the present complaint, it has to be shown by the opposite party that

i) Order 2 Rule 2 C.P.C., presupposes for its applicability or constitutes an interface to a civil suit and a consumer complaint. The internal evidence in Section 13(4) of the Consumer Protection Act and Regulation 26(1) of the Consumer Protection Regulations, 2005 suggest otherwise.

2) On facts there was the unity of proximate cause of action common to both the litigations.

3) Though the suit for a special purpose ended in full and final settlement its effect lingers on to adversely affect the maintainability of the consumer complaint especially in the face of Section 3 of the Consumer Protection Act.

We may at once say that the opposite party could not give any convincing answer to the above interrogatories.

It is abundantly clear from the statement of objections and reasons and Section 13(4) (6) and (7) of the C.P.Act and Regulation 26(1) of the Consumer Protection Regulations that the C.P.Act seeks to debar the applicability of C.P.C. including Order 2 Rule 2 except to the extent it is expressly made applicable to the

proceedings under the C.P.Act. The District Forum did not spell out why the law in the present case the suit and the consumer complaint are at loggerheads.

Strictly speaking the cause of action for the suit was some perceptible or presumptive threat of imminence to the allotment of car parking while the cause of action for the consumer complaint was multifaceted deficiency in service. So the apprehension of common cause of action is not only far fetched but also misconceived.

Section 3 of the Consumer Protection Act, 1986, is designed to

Supplement but not supplant the other laws as observed by the Honble Supreme Court. So long as it remains in the role of supplementing the operation of other laws without turning against those laws except where those laws are sought to be misinterpreted the concurrent cognizance of subjects or facets of a litigation which look alike but amenable to valid balkanization cannot be faulted. That is exactly the situation were as is evident from a close look at the prayers in both cases placed in juxtaposition. So we are firmly of the opinion that there is no justification for the District Forum to decline to exercise its jurisdiction though it was not the main ground on which it dismissed the complaint. In these circumstances, we have no doubt in our minds that this complaint is maintainable.

2. This pertains to the charge of deficiency in service leveled against the opposite party. The complainant agitated various facets of the said charge. But the final profile of the long list of accusations will have to be taken naturally as subsided or subsumed in the prayer. In other words only the allegations that are germane to the items of prayer only have to be taken up for consideration:

a) The first and foremost prayer as per para 15 of the complaint in regards to Registration, is three fold.

i) Registration of flat No.607;

ii) Registration of parking place No.42;

iii) Registration of open area of 1000 sq. ft.

In the matter of (i) the stand of the opposite party is consistent all along. Its latest version in this regard as found in the counter is as under:

16. The opposite party reiterates that he is ready and willing to convey the flat and also to allot the parking lot which is available provided the complainant pays the balance sale consideration amount and bears the necessary stamp duty and registration charges. The opp.party has not avoided any liability. In fact he is ready to discharge his obligations provided the complainant fulfills his obligation.

His readiness is not unconditional. According to him the complainant himself fell in arrears of consideration and an amount of Rs.1,72,361/- minus Rs.1,58,130/- was outstanding due from him. But there is absolutely no independent proof of such dues from the complainant. Curiously he relied upon his own letter Ex.B2 which cannot be accepted as cogent proof in that regard. Therefore the opposite party is under an obligation to execute and register a sale deed in respect of the flat No.607 in favour of the complainant without any pre-conditions.

Coming to registration of parking lot No.42, this Forum is entitled to strike out the pleading and prayer in that respect in view of the developments marked by Exs.A25 to A29 evidencing the adjudication of that particular dispute by the civil court.

Regarding the additional claim of the complainant to have yet another 1000 sq. ft. of vacant place tagged on to his flat No.607 is simply untenable as he himself squared up the dispute in that behalf as revealed in his own words found in para 7 of his plaint in O.S., the copy of which is marked as Ex.B4. The said paragraph 7 reads as follows:

7. The plaintiff submits that the defendant also agreed to deliver an open area of 1000 sq. ft. as per the sale agreement to the plaintiff, he illegally constructed 5 flats on the top floor i.e. 6th floor inspite of protests by all the agreement holders and thus delivered the open area of only 300 sq. ft. to the plaintiff. In fact the defendant had also agreed to compensate the plaintiff by providing 3 air conditioners for the 3 bed rooms but did not do the needful. The plaintiff having ported with substantial sale consideration and efflux of time had no other choice

but to compromise in the given situation. Further the defendant had booked a pent house but the plaintiff had to settle for a flat due to the increasing expenditure spent by him on rents amounting to Rs.6,600/- p.m. The defendant subsequently altered the flat numbers and allotted no. 607 to the plaintiff for his flat no.509. the above said flat has been assessed to municipal tax, and the plaintiff had paid the tax amount, receipt of which is filed herewith.

Now, we move to item No.2 of the prayer pertains to a money claim of Rs.82,400/- comprising various amounts:

- a) Rs.61,400/- representing rent for delayed delivery of possession of the flat 607;
- b) Rs.10,000/- he was allegedly made to pay to MCH authorities for regularization of building plan deviations and
- c) An amount of Rs.7,000/- the balance of interest payable to the complainant on a loan of Rs.3,000/- allegedly advanced to the opposite party, unabashedly claimed in a consumer complaint.

The claim in (a) above is untenable as the date for delivery of possession was fixed as 30-10-1998 but by then the complainant himself did not pay the entire consideration as is evident from his own documents especially Ex.A13 which demonstrates that the complainant did not abide by the payment time schedule. So he cannot complain about the delay and reparations for such delay. The claim as to the amount in (b) supra is equally devoid of cogent evidence as no such receipt for Rs.10,000/- paid to M.C.H. at the behest of opposite party for regularization etc. was ever filed. The claim in (c) is absurd on the face of it for even on his own showing, it pertains to a loan deal between the parties lying outside their consumer dispute.

As a sequel to the failure of the claim of Rs.82,400/- the claim for interest on that amount has no legs either to stand.

The complainant claimed the provision of three air conditioners by the opposite party constituting a part of the consideration for giving up claim to 1000 sq. ft. as borne out from para 7 of the plaint (excerpted supra). But there is nothing in the

evidence in support of it. Moreover that claim too submerged in the package of compromise alluded to in the above para. Therefore this claim too is untenable.

The complainant filed a complaint which clearly appeared to be a mixed baggage of true facts and false facts. So he does not deserve any compensation for mental suffering as claimed.

For the reasons stated above, we fell that this is a fit case to allow the appeal in part only. Consequently the order of the District Forum is set aside and the complaint is allowed in part without costs throughout directing the opposite party to execute a registered sale deed duly conveying the flat No.607 to the complainant within six weeks without pre-conditions of any sort.

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