

D. Mathialagan Vs. N. Mathivanan, Managing Director, Erode and Another

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC
Chennai

Decided On : Mar-25-2008

Judge : Hon'ble Thiru Justice K.Sampath President Thiru Pon.Gunasekaran,
B.a.Bl., Member-I

Appeal No. : A.P. No.376 of 2004 [Against OP No.88 of 2003 on the file of the
DCDRF, ERODE]

Appellant : D. Mathialagan

Respondent : N. Mathivanan, Managing Director, Erode and Another

Judgement :

K.SAMPATH J.

1. The complainant in C.O.P. No. 88 of 2003 on the file of the District Forum, Erode is the appellant herein.

2. His case was as follows: - The complainant and his wife applied for a loan to the second opposite party for construction of a house by the first opposite party. The loan papers were signed by the complainant and his wife. They also gave a promissory note and mortgaged the undivided share of land with OP2. The first opposite party, however, never started any construction work even after the stipulated time as agreed to. The second opposite party sanctioned full loan amount of Rs.5 lakhs directly to Matrix Housing Private Limited, the Managing

Director of which Company was the first opposite party in one cheque without verifying the progress in the building. After several letter correspondences OP1 assured the complainant that he would complete the flat soon. This was not done. The complainant wrote a letter to OP2 to recover the loan from OP1. There was default committed in paying the monthly instalments and when demanded, the complainant represented to OP2 that the amount had to be repaid only by OP1. The second opposite party had acted highhandedly and had effected publication of photos in dailies about the non-repayment of the loan amount by the complainant. In these circumstances, the complaint came to be filed for a direction to OP2 to recover the entire loan amount from OP1 and release the complainant from the obligation to repay the amount and also direct OP1 to pay Rs.1,25,000/- representing the advance paid to OP1 and for a further direction to pay Rs.1 lakh towards compensation for pain and suffering and Rs.2000/- towards expenses.

3. OP1 took a stand denying the case of the complainant and further stating that the complainant and one Mr. Arivudai Nambi, Managing Director of Matrix Housing had entered into an agreement and the complaint was bad for non-joinder of the said Arivudai Nambi as a party.

4. OP2 took a stand that the complainant executed the loan and signed in the promissory note along with his wife. For default in the repayment of the loan, the opposite party would act as per the rules. The publication of the photographs in the dailies was effected as per the terms and conditions relating to the defaulters. The complainant and OP1 had colluded and tried to evade the payment to OP2. The complaint was liable to be dismissed.

5. Before the District Forum on the side of the complainant, Ex.A1 to Ex.A12 were marked while on the side of the second opposite party Ex.B1 to Ex.B8 were marked.

6. The District Forum accepted the case of the opposite parties and by order dated 22/06/2004 dismissed the complaint.

7. It is as against that the present appeal has been filed.

8. Learned counsel for the complainant/appellant submitted as follows:- The District Forum ought to have held that OP1 had committed deficiency, having received the amount and not acting as per the terms of the agreement. The District Forum ought to have seen that there was no work done to the knowledge of the complainant, who visited the place very often. All the documents filed by the complainant would prove that there was deficiency in service and there was breach of the terms of the contract. The District Forum erred in dismissing the complaint.

9. On behalf of the second opposite party, the learned counsel made the following submissions: On the basis of the documents, the cheque was issued in the name of the builders. The complainant and his wife received the cheque and acknowledged receipt on 27/03/1999. They committed default in making repayment. Before the District Forum both the complainant and OP1 admitted that the loan amount was disbursed. But the complainant took a stand that OP1 received the cheque while OP1 represented that the complainant received the cheque. This clearly showed the malafide intention of the complainant. Since the complainant and his wife availed loan in their names, both of them were liable to pay EMI regularly and since they defaulted in such payments, OP2 was entitled to pursue legal action against them. If there was any breach of the construction agreement, the complainant ought to have proceeded against the builder and not against OP2. In fact, no specific relief was asked for against OP2. The appeal itself had been filed with a view to prolong the matter and delay repaying the loan amount. The District Forum had rightly found that the allegation made against OP2 in respect of disbursement of the loan amount to OP1 was untrue and that amount was disbursed only on the letter issued by the complainant and his wife and the same was also acknowledged by them. The District Forum had rightly held that there was no deficiency in service on the part of the opposite parties.

10. In our view, absolutely no merits are found in the case of the complainant. The complaint itself had not been filed in time. As per the agreement between the parties, the building should have been completed and handed over to the complainant by December, 1999. The complainant should have raised a dispute by December, 2001. However, he came to file the complaint only in 2003. The

complaint as rightly held by the District Forum was clearly barred by limitation. Further the agreement had been signed by Mr. Arivudai Nambi as representing Matrix Housing Private Limited. He had not been made a party. If only he had been made a party, the real position would have been known. So far as OP2 was concerned, the complainant and his wife had parted with money for putting up construction and mortgaged their undivided share of their property and it was no excuse for them to say that the cheque was issued to OP1 and that OP2 should proceed against OP1. As already noted, the complainant and his wife had agreed to the second opposite party handing over the loan payment cheque to OP1 directly and OP2 had acted as per the instructions. The complainant and his wife acknowledged receipt of the cheque. There are absolutely no merits in the appeal.

11. In fine, the appeal fails and the same is dismissed. There will be no order as to costs in the appeal.

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