

Delhi Development Authority Vs. Maya Devi

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Apr-01-2003

Judge : Lokeshwar Prasad, President & Ms. Rumnita Mittal, Member

Appeal No. : Appeal No. A-1425 of 2002

Appellant : Delhi Development Authority

Respondent : Maya Devi

Judgement :

Lokeshwar Prasad, President:

1. The present appeal, filed by the appellant, under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as the Act), is directed against order dated 23.3.2002, passed by District Forum No. II, Udyog Sadan, Institutional Area, Mehrauli, New Delhi, in Complaint Case No. 2868/1997 entitled Smt. Maya Devi v. Delhi Development Authority.

2. The facts, relevant for the disposal of the present appeal, briefly stated, are that the respondent Smt. Maya Devi had filed a complaint before the District Forum under Section 12 of the Act averring therein that the appellant Delhi Development Authority (for short DDA) had floated the Ninth Self Finance Scheme, 1996, which was opened on 8.8.1996 and closed on 20.9.1996. It was stated that the respondent had applied for allotment of a flat under the above said scheme vide

Application No. 110749 on 20.9.1996 and had made the initial deposit of Rs. 50,000/- as earnest money. It was stated that the appellant through newspapers notified the particulars of those applications which were, on scrutiny, found to be incomplete. It was stated that such applicants were required to complete the formalities/supply the required information latest by 21.12.1996. It was stated that the respondent supplied the required information to the appellant on 21.12.1996 which was received in the office of the appellant on 21.12.1996 itself under diary number 2491. It was stated that despite completing all the formalities, the name of the respondent was not included in the draw held on 31.12.1996. Alleging deficiency in service on the part of the appellant, on the above count it was prayed by the respondent that the appellant be directed to allot a flat to her in the category of War Widows Quota preferably in Vasant Kunj area, New Delhi. The respondent had also claimed damages, compensation and litigation expenses.

3. The claim of the respondent in the District Forum was resisted by the appellant. In the reply/written version, filed on behalf of the appellant, it was stated that as the application of the respondent was incomplete, the same was rejected summarily as per the terms and conditions of the Brochure.

4. The learned District Forum vide impugned order has held the appellant guilty of deficiency in service and on the basis of the above findings has passed the order, being impugned in the present proceedings.

5. Feeling aggrieved, the appellant has preferred the present appeal under Section 15 of the Act.

6. We have heard the learned Counsel for the appellant at length on the question of admission of the present appeal and have also carefully gone through the documents/material on record. In terms of the provisions contained in Section 15 of the Act, a person, aggrieved by an order, made by the District Forum, can prefer an appeal against such order to the State Commission within a period of 30 days from the date of the order. However, proviso to Section 15 of the Act provides that the State Commission may entertain an appeal even after the expiry of the above said period of 30 days, if it is satisfied that there was sufficient cause for not filing the same within the above said period. The words sufficient cause occurring in

proviso to Section 15 of the Act, are of utmost significance. As per settled law, culled out from various judicial decisions, the above expression sufficient cause, though deserves to receive a liberal interpretation, yet, a just and equitable balance has to be maintained between the right secured by the respondent as a result of expiry of the prescribed period of limitation and the injustice of depriving the appellant of adjudication of his grievances on the merits of his appeal for causes beyond his reasonable control, which means the cause is bona fide and beyond the control of the appellant. Though, no hard and fast line can be drawn as to what affords sufficient cause in a given case, yet, again, as per settled law, any cause which prevents a person from approaching the Court within time is sufficient cause. In doing so, it is the test of a reasonable man in normal circumstances which has to be applied.

7. Admittedly, the present appeal has not been filed by the appellant within the prescribed period of 30 days because the order being impugned in the present proceedings was passed by the learned District Forum on 23.3.2002 and the present appeal has been filed by the appellant on 21.12.2002. Therefore, the question requiring consideration on the threshold is as to whether the appellant has shown sufficient cause for not filing the appeal in time within the meaning of proviso to Section 15 of the Act.

8. The appellant, along with the appeal has filed an application seeking condonation of delay in filing the present appeal. The reason for not filing the appeal in time has been stated in para 3 of the above said application which reads as under :

3. The said impugned order appears to have been despatched on 15.5.2002 and the same also bears the stamp of the post office dated 17.5.2002. The said order was received by the appellant on 17.5.2002. However, the then Dealing Assistant kept the same and did not place the same before the Competent Authority as legal file was not available with him. The legal file was being sent to A.O. (Legal) for processing the fee bill of the Panel Lawyer. The copy of order was placed by the Dealing Assistant before the A.D. (H) on 11.7.2002. Thereafter the J.L.O. (H) got the file from the A.O. (Legal) and sent the same to A.D. (S.F.S.) on 22.7.2002. As

the file was tagged with other files as such the then Dealing Assistant Mr. Sagar did not place the same before the Competent Authority.

In the meantime the charge of the file was given to another Dealing Assistant on 23.9.2002. On account of heavy rush with him he prepared the note on 1.10.2002 and placed the matter before the A.D. (S.F.S.). The matter was examined by A.D. (S.F.S.) and D.D. (S.F.S.) and the file was sent to Legal Department for opinion. The Law Department then gave the opinion on 8.10.2002 and sent the file to A.D. (S.F.S.).

A.D. (S.F.S.) sent the file to Dealing Assistant for preparation of detailed note. The Dealing Assistant then prepared the detailed note and placed the matter before the A.D. (S.F.S.). The matter was examined by the A.D. (S.F.S.) and he then sent the file to D.D. (S.F.S.) and then by Director (H) and then the file was sent to Commissioner (H) for taking decision in the matter.

The Commissioner (H) decided to file an appeal against the impugned order and sent the file through proper channel. The file was then sent through channel to Law Department for entrustment. The Chief Legal Advisor entrusted the matter to Mr. P.K. Aggarwal, Advocate for preparation and filing of appeal. Then again the file was sent by channel to Director (H) for signing of Power of Attorney in favour of Mr. P.K. Aggarwal, Advocate.

Thereafter the file was sent through Law Department to Panel Lawyer Mr. P.K. Aggarwal, Advocate. Sh. P.K. Aggarwal collected the file from the Law Department at Tis Hazari on 6.12.2002. But as certain clarifications were required by him as such after seeking clarification he prepared the appeal and sent the same to the department on 20.12.2002. The file was received by him on 20.12.2002. The present appeal is being filed on 21.12.2002. Thus there is delay of 188 days in filing of the appeal. However it is submitted that the impugned order passed by the learned District Forum is without jurisdiction and the learned District Forum in exercise of its jurisdiction has acted illegally with material irregularity. It is further submitted that no limitation for filing of petition under Section 17(b) of the Consumer Protection Act is prescribed.

9. On a perusal of the contents of the above para it is apparent that certified true copy of the order being impugned in the present proceedings was received by the appellant on 17.5.2002 and if the period of limitation for filing the appeal is to be computed, as commencing from the date of communication of the order, as has been held by the Honble Supreme Court in case Housing Board, Haryana v. Housing Board Colony Welfare Association and Ors., reported as III (1995) CPJ 28 (SC), the present appeal should have been filed by 16.6.2002. The same, as already stated, has been filed much beyond the prescribed period of limitation on 21.12.2002.

10. The reasons assigned for not filing the present appeal in time mainly are that the Dealing Assistant kept the file with himself and did not place the same before the Competent Authority; the file was tagged with other files; the charge of the file was given to another Dealing Assistant who could prepare the note on 1.10.2002 on account of heavy rush, etc. etc. During the course of arguments also the learned Counsel for the appellant made a vain attempt to justify the abnormal delay on the part of the appellant in filing the present appeal by saying that the appellant is a Government organization where matter has to be examined at various levels. In our opinion, the reasons advanced for not filing the appeal in time, by no stretch of imagination, can be treated or termed as sufficient cause within the meaning of proviso to Section 15 of the Act. Delay in filing the appeal cannot be condoned as a matter of generosity. Proof of sufficient cause is a condition precedent for the exercise of such discretion by the Appellate Authority. In our above views, we stand fortified by a decision of the Honble National Commission in case Vice Chairman, Delhi Development Authority v. O.P. Gauba, reported as III (1995) CPJ 18 (NC)=1986-96 CONSUMER 2731 (NS).

11. In the presence of the above facts and the position explained above, in our opinion, whatever liberal interpretation might be put on the words sufficient cause it would be impossible for us to hold that there was no negligence on the part of the appellant. In our opinion, as a matter of fact, the appellant has miserably failed to show sufficient cause for condoning the delay in filing the present appeal and, therefore, the present appeal, is hopelessly barred by limitation.

12. In view of the position explained above, the above mentioned appeal, filed by the appellant, is directed to be dismissed in limine being hopelessly barred by limitation. In the facts and circumstances of the case the parties are left to bear their own costs.

The above mentioned appeal, filed by the appellant, stands disposed of in above terms.

Appeal dismissed in limine.

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