

Varun Singhi Vs. T.S. Nagar

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Jun-15-1998

Judge : A.P. Chowdhri, President & Desh Bandhu, Member

Appeal No. : Case No. A-271 of 1997

Appellant : Varun Singhi

Respondent : T.S. Nagar

Judgement :

A.P. Chowdhri, President:

1. The complainant entered in to an agreement dated 30th November, 1995 with Mr. T.S. Nagar, Proprietor Neerv Construction Company, hereinafter referred to as the opposite party for the construction of first floor of the House No. A-41 Nirman Vihar. The case of the complainant is that the opposite party left the work incomplete and failed to remove certain glaring defects. Opposite party admitted specified short-comings in a writing dated 22.6.1996. Payment in terms of that writing was made by the complainant but the respondent failed to complete the work and remove the defects. The complainant sent two telegrams dated 29.5.1996 and 11.6.1996 and seven letters in detail but failed to elicit any reply to any of them. According to the complainant, the work left incomplete or defective would require an amount of Rs. 1,34,000/- to rectify the defects and complete the

same. Having failed to get the needful done, he approached District Forum. The opposite party appeared and instead of filing his written version giving a reply to each paragraph, the opposite party felt contented by filing a short reply with vague and general type of allegations. On a consideration of the matter, the District Forum-IV observed that the complainant failed to place on record report of an expert in support of his case. It was further of the view that the nature of the dispute between the parties was such that the same could not be determined without taking elaborate oral and documentary evidence including cross-examination of witnesses. Accordingly the complaint was disposed of leaving it open to the complainant to seek his remedy in the Civil Court. In coming to this conclusion, the District Forum placed reliance on *Special Machine, Karnal v. Punjab National Bank and Others*, I (1991) CPJ 78.

2. Aggrieved by the order, the complainant has filed this appeal.

3. Notice was sent to the respondent by Registered Post and the same was not received back undelivered. Service was presumed. None, however, appeared for the respondent. The case was adjourned in the hope that the respondent may appear later on but non appeared on the adjourned date. We have, therefore, heard Mr. N.N. Anand, Advocate for the complainant and have carefully gone through the records.

4. The contention of Mr. Anand is that here was a case in which the opposite party failed to specifically deny the material averments made in the complaint and felt contented by filing a short reply. The obvious implications was that averments made by the complainant had been admitted. He further submitted that the complainant placed on record copies of two telegrams and seven letters which were sent to the respondent but he failed to reply any of them indicating that the respondent did not controvert the contents of the said communication. Mr. Anand also pointed out that the respondent himself admitted in writing dated 22.5.1996 about the various short comings. A typed copy of the writing is filed as Annexure L alongwith the photocopy al the original writing on the record of present appeal with regard to the evidence of the expert, the complainant placed on record a detailed report prepared by Mr. O.P. Sharma, Charterer Engineer, Arbitration Consultant

Government Regd. Valuer and Insurance Surveyor in the report dated 15.7.1996 Mr. Sharma came to the conclusion that the cost of rectifying the defects and completing the incomplete work would amount to Rs. 46,310/-. He has supported his report by photographs which have been collectively marked Annexure N. The appellant also placed on record evidence to show that he got done certain work relating to plumbing and electrical fittings with supporting receipts and vouchers.

5. Before we deal with the material on record, we may deal with the question whether the facts and circumstances of this case justified the District Forum in relegating the complainant to the Civil Court. In *M/s. Special Machine, Karnal v. PNB and Others*, I (1991) CPJ 78 (NC) the decision relied on by the District Forum the dispute was between the said firm and the Punjab National Bank. In the facts of that case it was held that elaborate scrutiny and statement of accounts can be satisfactorily undertaken and performed only in a regular civil suit and not in proceedings before the FORA constituted under the Act. In a later decision in *Janta Machines Tools v. Oriental Insurance Company Limited*, I (1991) CPJ 234 (NC) it was observed by the National Commission that it was not a case where the Insurance Company did not take prompt any necessary steps for deciding the claim under the Policy of Insurance. In other words, there was no deficiency in service and the parties were, therefore, left to have their remedy in the Civil Court where they would have ample opportunities to examine witnesses at length and take other necessary steps. In *S. Bhagat Singh v. The Oriental Insurance Company*, II (1991) CPJ 700 (NC) Mr. Yadav J. speaking for the National Commission referred to another decision in *S.K. Abdul Shakur v. State of Orissa and Others*, II (1991) CPJ 202 (NC) and pointed out that the observations in *Janta Machine Tools* case (*supra*) had to be understood against the background of the special facts relating to that case. It was nowhere laid-down in that case that in all cases where examination and cross-examination is involved the proper Forum for adjudication of the dispute was only the Civil Court. The following observations from *Abdul Shakur* case were extracted and we would like to reproduce the same as follows :

If jurisdiction is declined, the Redressal Forums set-up under the Act in all such cases on the mere ground that examination and cross-examination of witnesses

would be necessary, it would amount to unjust denial of the benefits of the Act to the aggrieved consumer by erroneous application of its jurisdiction by the Forums.

6. For these reasons, in our view, the District Forum-IV fell into a grave error in relegating the complainant to the Civil Court merely on the ground that the case would require conducting elaborate oral and documentary evidence and involved cross-examination of witnesses of both sides.

7. A salient feature of the present case is that the opposite party, respondent in the appeal, failed to contract any of the nine communications sent to him. He failed to file detailed written version specifically denying material averments of fact. Another special feature of this case is that the respondent admitted in writing about the existence of certain defects and incomplete work. In spite of the payment having been made in pursuance of the said writing he failed to do the needful.

8. The next question is to the amount to which the complainant is entitled. The amount claimed by the claimant, namely Rs. 1,34,000/- is very much on the higher side. This is borne out by the report of Mr. Sharma, produced by the appellant. According to the report of Mr. Sharma, the amount required was Rs. 46,310/-. We have gone through the terms of the agreement as well as the detailed report prepared by Mr. O.P. Sharma, who had advanced cogent reasons in support of his findings. We accept the report in toto.

9. For the foregoing reasons, the appeal is allowed and the order of the District Forum is set aside, and the respondent is directed to pay Rs. 46,310/- alongwith Rs. 1,500/- as costs. In case the respondent fails to make the payment within time specified above, the amount awarded by this order shall carry interest @ 18% per annum from the date of default till payment. A copy of the order be conveyed to the parties as well as District Forum-IV.

Appeal allowed.

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