

Ajay Enterprise Ltd. Vs. Kamlesh Aggarwal and Another

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : May-03-1995

Judge : A.P. Chowdhri, President & the Honourable Ms. Justice S. Brar, Member

Appeal No. : Appeal No. 42 of 1994

Appellant : Ajay Enterprise Ltd.

Respondent : Kamlesh Aggarwal and Another

Judgement :

A.P. Chowdhri, President:

1. Brief facts giving rise to this appeal are that Smt. Kamlesh Aggarwal, respondent No. 1, who was complainant before the District Forum, entered into an agreement to purchase office space in a commercial complex known as Anupam Commercial Complex at Paschim Vihar Community Centre, New Delhi with the appellant. The amount of Rs. 94,940.40 was to be paid in four instalments and on the payment of the last instalment possession of the premises was to be delivered on 10.12.91. In fact possession was delivered to respondent No. 1 on 23.10.92. The premises did not have necessary amenities including electric connection, water supply and sewerage facilities. The complainant instituted a complaint before the District Forum on 12.1.93 claiming damages @ Rs. 2,000/- p.m.

besides interest @ 24% p.a. on the amount invested by her namely Rs. 94,000/- from the date she was delivered possession (23.10.92) till the aforesaid amenities were provided, Rs. 10,000/- as compensation on account of mental pain and agony and other loss suffered by her as the premises was required to be used as an office by her husband who is an Advocate by profession.

2. The plea of the appellant, who was O.P. No. 1 before the District Forum, was that the flat in question was complete in all respect on the due date but respondent No. 1 herself delayed taking possession thereof. The appellant further tried to put the blame on DESU, O.P. No. 2 before the Forum, for delay in providing individual connection. With regard to water it was stated that MCD had not laid necessary pipe line in the whole area and it was, therefore, not possible to provide water and sewerage connections.

3. Written statement on behalf of DESU arrayed by O.P. No. 2 was also filed and it was stated therein the first application from the appellant for individual electric connection in question was received only on 3.8.93 and it was promptly processed and a reply sent on 19.8.93 calling upon the applicant to provide necessary test report etc. There was no delay whatsoever on the part of DESU in attending to the application.

4. The District Forum noted that there was no dispute that responsibility of the appellant was to provide all amenities including separate electric connection, water and sewerage facility to respondent No. 1. It was further held that no application was shown to have been made to DESU for obtaining individual electric connection prior to 3.8.93. It was, therefore, concluded that the builder had failed to provide individual electric connection, water and sewerage facilities even though possession had been delivered on 23.10.92. It was, therefore, directed that the appellant shall pay Rs. 500/- p.m. from 23.10.92 till all the aforesaid essential services were provided, Rs. 1,000/- were awarded as costs of the proceedings. DESU was directed to process the application made by the builder expeditiously.

5. Aggrieved by the order the builder has preferred this appeal. We have heard learned Counsel for the parties. It was not disputed before us that it was the responsibility of the appellant to provide the various amenities like individual

electric connection, water supply and sewerage. It is not further disputed before us that in fact ultimately individual electric connection was provided on 4.2.94. With regard to water, the appellant appears to have made an application (Annexure A-2) on 4.3.92 which was replied to by the Authorities on 9.3.92. The case of the appellant is that so far MCD has not laid pipe lines in the entire area and it is beyond appellants control to provide water facility unless and until the pipe lines are laid by the Municipal Authorities. Respondent No. 1 has disputed this averment but there is no dispute that water for use in the W.C. is made available by pumping from some other source such as tubewell etc.

6. With regard to provision of individual electric connection the picture is quite clear. It was incumbent on the appellant to provide individual electric connection to respondent No. 1 on the stipulated date i.e. 10.12.91. In any case, it was to be provided at the time when actual physical possession was delivered to respondent No. 1 namely on 23.10.92. In fact the electric connection was made available only with effect from 4.2.94. The contention of learned Counsel for the appellant is that in fact respondent No. 1 had not shown as to what was the basis for her assertion that she had suffered a loss in the delay in providing electric connection. In reply learned Counsel for respondent No. 1 submitted that they had invested a sizable amount of money in providing infracture and had inter-alia shifted his telephone to the premises. He placed on record two bills dated 1.11.93 relating to the period 16.8.93 to 15.10.93 and another dated 15.12.93 for the period 24.3.93 to 15.8.93 showing that the said telephone had been got shifted to the premises in question and had been used there during the period from March 93 to October 93. This was apart from the investment made in purchasing the office accommodation.

7. The learned Counsel for the appellant placed reliance on the following authorities :

(1) General Manager, South Eastern Railway and Others v. Anand Prasad Sinha and Others., I (1991) CPJ 10 (NC)

(2) Bharat Tractors, Muzaffarpur v. Sri Ramchandra Pandey, I (1991) CPJ 14 (NC).

(3) Commercial Officer, Office of the Telecom., Distt. Manager, Patna v. Bihar State Warehousing Corp., I (1991) CPJ 42 (NC).

(4) Rajasthan State Consumer Disputes Redressal Commission, Jaipur v. Superintendent, Telegraph Traffic, Bikaner Division, Bikaner, I (1991) CPJ 75.

8. The contention is that a mere bald statement that the complainant had suffered loss was not enough basis for suffering the loss and including a reasonable amount of compensation must be brought on record. There can be no dispute about the principle canvassed by the learned Counsel. What is required to be seen, however, is whether the claim put forward is genuine, arising out of concrete facts or is merely fanciful or imaginary. In the present case we find that the commercial flat was taken by respondent No. 1 for being used as an office of her husband and in fact it was suitably furnished for that use. This included shifting of telephone etc. It is easily understandable that premises cannot be used satisfactorily without electric connection. It would, therefore, follow that the claim made by respondent No. 1 was not imaginary or fanciful.

9. With regard to water and sewerage, admittedly, these facilities have not been made available so far.

10. Keeping in view the facts and circumstances of this case we are of the view that it would meet the ends of justice if the amount awarded by the District Forum is reduced from Rs. 1500/- to Rs. 1,000/- p.m. for the period from 23.10.92 to 4.2.94 and Rs. 250/- p.m. for the period from 5.2.91 till water supply and sewerage facilities are provided to the premises. Award to costs does not call for any interference.

11. At the time of hearing learned Counsel for respondent No. 1 made a request that he may be handed over the necessary papers with regard to individual electric connection so that he can directly deal with the authorities. The Counsel for the appellant agreed to do so. Necessary papers shall therefore, be handed over to respondent No. 1 within two weeks from today. The appeal is disposed of in the aforesaid terms leaving the parties to bear their own costs.

Appeal disposed of.

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