

D. Anitha Vs. B. Buchi Reddy

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Jan-24-2014

Judge : The Honourable Mr. R. Lakshminarasimha Rao, Member, the Honourable Mr. Thota Ashok Kumar, Member & the Honourable Mr. S. Bhujanga Rao, Member

Appeal No. : F.A.No. 1243 of 2013 Against C.C.No. 25 of 2011 District Forum Ranga Reddy

Appellant : D. Anitha

Respondent : B. Buchi Reddy

Judgement :

Oral Order: (R. Lakshminarasimha Rao, Member)

1. The complainant is the appellant. She filed complaint claiming for completion of construction of the house by the respondent and a sum of Rs.40,000/- towards compensation as also an amount of Rs.50,000/- towards damages.

2. The appellant filed complaint stating that the respondent entered into construction agreement with her on 04.03.2010 for construction of house in her plot bearing number 71 situate at Ambedkar Nagar, Jillelliguda, Hyderabad for consideration of Rs.4,10,000/-. As per the terms of the agreement, the appellant agreed to complete the construction of the house within two months from the date

of agreement. The appellant paid the amount of Rs.4,10,000/- and an excess amount of Rs.40,000/- to the appellant and the appellant failed to complete the construction of the house. The appellant lodged complaint before the Police, Meerpet before whom the appellant promised that he would complete the construction work of the house within one month therefrom. The respondent failed to keep his promise. The appellant requested the appellant in the month of December, 2010 to complete the construction of the house and she also addressed letter reiterating therein her request for completion of the construction of the house.

3. The respondent resisted the claim on the premise that the agreement between the appellant and him for construction of house is contract of personal service and as such the complaint is not maintainable and that the complaint filed seeking for specific performance of agreement is not maintainable before the Consumer Forum and the appellant has to seek redressal of her grievance in civil court.

4. The respondent submitted that the appellant has entered into agreement with him for construction of her house for consideration of Rs.4,10,000/-and she had not paid the entire sale consideration to him nor did she pay additional amount of Rs.40,000/- to him. It is denied that the respondent had not completed construction of the house. The appellant failed to mention the left out construction work of the house. The appellant agreed to pay additional amount of Rs.10,000/- towards construction of additional bathroom, Rs.8,000/- towards laying of flooring tiles, Rs.10,000/- towards plumbing work like drainage pipe line and water pipe line.

5. The respondent submitted that the appellant has to pay total amount of Rs.4,58,000/- inclusive of the consideration for carrying out construction of additional work and she paid an amount of Rs.3,30,000/- and she still has to pay balance amount of Rs.1,28,000/-. The respondent submitted that the appellant filed complaint before the Police, Meerpet on false information and the police advised her to pay balance amount to him and that to escape her liability to pay the amount due to him, the appellant filed complaint before the District Forum.

6. The appellant filed her affidavit and the affidavits of J.Vijayakumar and M.Sukkamma and the documents, Exs.A1 to A5. The respondent filed his affidavit and the affidavit of J.Vijayakumar and he has not chosen to file any documents. The appellant has filed copy of notice dated 12.11.2013 which was received as additional evidence by order in I.A.No.17 of 2014 dated 23.01.2014.

7. The District Forum dismissed the complaint on the premise that the complainant tampered with agreement as to the duration of the period within which the respondent had to complete construction of the house and that the complainant failed to show the specifications of the house as to attribute deficiency in service to the respondent.

8. Feeling aggrieved by the order of the District Forum, the complainant has filed appeal contending that the District Forum ought to have directed the respondent to complete construction of the house and that on account of delay in construction of the house, the District Forum ought to have directed the respondent to pay compensation to her.

9. It is contended that the District Forum has not considered the appellants affidavit wherein she stated that the respondent had abandoned the construction work of the house and that on her lodging complaint with the Police, Meerpet the respondent agreed to complete the construction of the house within a period of two months.

10. The point for consideration is whether the order of the District Forum suffers from misappreciation of facts or law?

11. The respondent entered into agreement on 4.03.2010 for construction of house in the plot bearing number 71 belonging to the appellant. The appellant submitted that the respondent has not completed the construction work within time whereas the respondent contended that the appellant is not consumer within the meaning of Section 2 (1) (d) of the Consumer Protection Act and she has not paid the agreed amount as also there is no agreement between them to complete construction of house within a period of two months.

12. The respondent agreed to construct house for consideration of Rs.4,10,000/- which was subsequently stated to have been increased to Rs.4,58,000/- on account of carrying out additional construction work. The respondent has agreed to carry out the construction work by purchasing the material and has not merely undertaken to do the job of a mason. Thus, we are inclined to accept the status of the appellant as consumer to invoke the jurisdiction of Consumer Forum as observed by the District Forum as under:

œThe learned counsel for the opposite party firstly argued that the present case does not come within the purview of Consumer Protection Act since it is a personal contract and the opposite party is only a mason. First of all the occupation of the opposite party is shown as builder in the cause title of the complaint. Admittedly, the opposite party entered into an agreement with the complainant on 04.03.2010 for construction of a house in her plot for a consideration of Rs.4,10,000/-. The said agreement is marked as Ex.A1. When the agreement is for the house construction and when the complainant alleges deficiency in service, the present case certainly comes within the purview of the Consumer Protection Act?.

13. The agreement dated 4.3.2010 does not contain any recital as to the time within which the respondent has to carry out construction work of the house. The District Forum has rightly held that the period of two months has been subsequently added in the agreement and thus the appellant tampered with the document.

14. The appellant approached the police Meerpet on 22.10.2010 stating that she entered into agreement with the respondent for construction of her house for consideration of Rs.4,10,000/- which includes cost of the building material and it was agreed that the respondent would complete the construction of house within the period two months and that she paid the sum of Rs.4,10,000/- to him.

15. J.Vijayakumar has stated in his affidavit filed by the appellant that the appellant and the respondent entered into agreement for construction of the house by the respondent for consideration of Rs.4,10,000/- to be completed within two months and he worked as mason with the respondent as also that the respondent failed to

complete the construction of the house even after he made a promise thereof before the police Meerpet .

16. Subsequently J.Vijayakumar stated in his affidavit filed by the appellant that he was under the employment of the respondent as mason and he received a sum of Rs.15,000/- from the appellant on instruction of the respondent as also the respondent agreed before the police Meerpet to complete construction of the house within two months therefrom.

17. The same J.Vijayakumar filed another affidavit on behalf of the respondent stating that the appellant is his sister and she entrusted the construction work to the respondent and that the respondent agreed to carry out construction of the house for consideration of Rs.4,10,000/- in view of his friendship. He has stated that there was no time frame stipulated to perform the part of contract by the respondent and the appellant and her husband forcibly obtained his signature on the affidavits. He has stated that he has no knowledge of the transaction stated to have been conducted between the appellant and the plumber, carpenter etc.

18. The glaring inconsistency in the affidavits filed on different dates by J.Vijayakumar do not carry any evidentiary value and the appellant as also he has suppressed the fact that he is her brother. It is pertinent to note that the respondent admitted receipt of a sum of Rs.3,30,000/- out of the total consideration of Rs.4,10,000/-. There has been an agreement presumably an oral agreement for carrying out additional work such as additional bathroom, flooring tiles, plumbing work like drainage pipe line and water pipe line. The appellant admitted to pay extra amount for carrying out the additional work by the respondent.

19. As the matter reached the police station, the respondent completed construction of the originally agreed construction work as also additional work subsequently agreed upon. During pendency of the appeal, the appellant has filed copy of notice dated 12.11.2013 which goes to show that the respondent completed construction of the house and the appellant is due the balance amount. The respondent demanded for payment of balance amount with interest thereon.

20. The appellant failed to prove that time stipulation was made in terms of the agreement for carrying out construction work of the house pertaining to her. However, mere absence of time frame in the agreement does not by itself cannot be considered as a factor for throwing out the complaint. The respondent failed to complete construction of the house beyond reasonable period. Thus, the respondent is accountable for the delay caused in completion of the construction of the house beyond reasonable period.

21. The appellant claimed a sum of Rs.40,000/- towards compensation and Rs.50,000/- towards damages besides seeking relief for completion of unfinished work. As held above, the respondent completed construction of the house as also delivered its possession to the appellant and the appellant has been residing in the house. The delay caused in carrying out construction of the building of the house has certain causes such as the appellant seeking for additional work besides the originally agreed construction work. The appellant resorted to tamper with the agreement so as to make a case against the respondent for the delay in construction of the house. Thus, the appellant cannot seek for damages and insofar as claim for compensation is concerned, this Commission, taking into consideration of the attitude of the appellant in inserting the words time frame for construction of house two months as also her entrusting the additional construction work to the respondent, inclined to award a sum of Rs.5,000/-.

22. In the result the appeal is allowed setting aside the order of the District Forum. Consequently the complaint is allowed directing the respondent/opposite party to pay an amount of Rs.5,000/- to the appellant/complainant. There shall be no separate order as to costs.

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