

Ganeshlal Vs. Shyam

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SooperKanoon Citation : sooperkanoon.com/1170627

Court : Supreme Court of India

Decided On : Sep-26-2013

Judge : H.L. Gokhale and J. Chelameswar

Appellant : Ganeshlal

Respondent : Shyam

Advocate for Pet/Ap. : Mr. Lambat

Judgement :

REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.331 OF 2007 GANESHLAL Appellant(s) :VERSUS: SHYAM Respondent(s)

ORDER

Heard Mr. Kishor Lambat, learned counsel in support of this appeal. None appears for the respondent though served.

2. The appellant herein had agreed to sell a plot of land to the respondent by virtue of an agreement entered into with him on 2nd August, 1999. Inasmuch as the appellant failed to hand over the possession of the concerned plot of land, the respondent filed a complaint, bearing No.62 of 2000, before the District Consumer Redressal Forum at Wardha. The appellant had raised the contention that the Consumer Forum had no jurisdiction to try the matter and a claim for specific

performance of the agreement would lie only before the Civil Court and not before the District Consumer Redressal Forum. The District Forum, however, in its order dated 10.10.2000 took the view that no civil dispute was involved, and that it was a case of deficiency in rendering service to the respondent. The District Forum therefore passed an order directing the appellant to deliver the possession of the concerned plot of land.

3. The appellant carried this matter in appeal to the State Commission under Section 15 of the Consumer Protection Act, 1986 (the Act, for short). The State Commission rejected the said appeal by its order dated 23.10.2000. Being aggrieved by the judgment and order passed by the State Commission, a revision was filed before the National Consumer Disputes Redressal Commission. The National Commission took the same view and dismissed the revision by the impugned order dated 14.9.2001. Being aggrieved by this judgment and order the present appeal has been filed. Though the respondent has been served, he has not turned up to defend the cause.

4. Mr. Lambat, learned counsel for the appellant submitted that the dispute between the parties was concerning the sale of a plot of land. A complaint as defined under Section 2(1)(c) of the Act was lodged to look into the allegations of (i) unfair trade practice or a restrictive trade practice adopted by any trader or service provider; (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects; (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect; (iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price; (v) goods which are sold are hazardous to life and safety when used; (vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety.

5. Learned counsel submits that a sale of plot of land simpliciter cannot lead to a complaint to the District Consumer Forum or to the State or National Consumer Disputes Redressal Commission. The jurisdiction of the District Consumer Forum

under Section 11 of the Act is to entertain a complaint and as seen above, complaint is defined in a particular manner, and primarily it is with respect to the deficiency in making available the goods and services. The term deficiency is also defined under Section 2(1)(g) of the Act which reads as follows:

deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

6. It is submitted that failure to hand over possession of the plot of land simpliciter cannot come within the jurisdiction of the District Consumer Forum, State Commission or National Commission. We quite see merit in this submission of Mr. Lambat, particularly having seen the definition of 'deficiency' as quoted above. We may, however, note that when it comes to housing construction, the same has been specifically covered under the definition of 'service' by an amendment inserted by Act 50 of 1993 with effect from 18th June, 1993. That being the position, as far as the housing construction by sale of flats by builders or societies is concerned, that would be on a different footing. On the other hand, where a sale of plot of land simpliciter is concerned, and if there is any complaint, the same would not be covered under the said Act.

7. Having noted this submission of Mr. Lambat, we must, however, record that he has fairly pointed out that subsequent to the order of the State Commission, the appellant has executed the sale deed, and the concerned plot of land has been handed over to the respondent. That being so, although we accept the legal submission made on behalf of the appellant, he cannot be granted any relief, namely to dismiss the complaint which was filed in the District Consumer Forum which has now been entertained and acted upon by the conduct of the appellant himself. The appeal is therefore disposed of with these observations.
.....J (H.L. GOKHALE)J (J.

CHELAMESWAR) New Delhi; September 26, 2013.