

(2024) 11 NCDRC CK 0003**National Consumer Disputes Redressal Commission****Case No:** First Appeal No. 1732 Of 2018

M/s Novous Abasan Pvt. Ltd

APPELLANT

Vs

Dakshineswar Saptarshi Welfare
Society & AnrRESPONDENT

Date of Decision: Nov. 19, 2024**Acts Referred:**

- Consumer Protection Act, 1986 - Section 19

Hon'ble Judges: Subhash Chandra, Presiding Member; Dr. Sadhna Shanker, Member**Bench:** Division Bench**Advocate:** Sanjoy Kumar Ghosh, Rupali S. Ghosh, Rajesh Biswas**Final Decision:** Dismissed

Judgement

Dr. Sadhna Shanker, Member

1. This appeal has been filed under section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') in challenge to the Order dated 08.08.2018 of the State Commission in complaint no. 193 of 2013, whereby the I.A. No. 530 of 2018, filed by the opposite party for dismissal of the complaint, was dismissed.

2. We have heard the learned counsel for the appellant (hereinafter referred to as the 'construction company') and the learned counsel for the respondent no. 1 (hereinafter referred to as the 'welfare society') and have perused the record including inter alia the Order dated 08.08.2018 of the State Commission and the memorandum of appeal.

No one is present for the respondent No. 2 (hereinafter referred to as the 'municipal authority').

3. The instant matter relates to builder-buyer dispute. The State Commission, vide its Order dated 08.08.2018, had dismissed the I.A. of the construction company.

4. The main issue in this appeal is as to whether the decision of the State Commission to start hearing the matter after dismissal of the trial matter is correct.

5. Before us, learned counsel for the construction company pleaded that as per the disposal order dated 02.01.2017 of the trial court, the title suit was dismissed for non-prosecution subject to payment of litigation cost of Rs.1,000/- by the welfare society to the construction company. It was further pleaded that the State Commission was not made aware that the dismissal was subject to cost, and it revived the stayed proceedings on 24.11.2017. Thereupon, the construction company filed an I.A. challenging the start of proceedings and the said I.A. was dismissed by the State Commission vide impugned order dated 08.08.2018. It was submitted that since the money was not paid as per the trial court order dated 02.01.2017 while the State Commission revived the complaint, therefore, the same is not a correct action. Since the trial court had not decided the matter on merits and did not dismiss with liberty to revive the consumer complaint, the State Commission should have dismissed the complaint.

6. The welfare society did not appear on the final hearing date before the State Commission, however, it had submitted the written synopsis of arguments. It has been stated that the complaint case is well maintainable and is not bad in law, as claimed. The State Commission possesses necessary jurisdiction to try the case.

7. It is seen that the State Commission while dismissing the I.A. filed, observed as under:

“Perused the papers on record. Considered submissions on behalf of both the parties. It appeared on perusal of the document in the form of Court information issued by the competent authority that the T.S. No. 605/10 was dismissed for non prosecution on 02.01.2017 subject to the payment of litigation cost of Rs. 1000/- and the said cost was not deposited by the plaintiff, the Complainant herein, till 19.04.2018, the date on which the subject Court information was issued.

We have perused the deposit slip. It appeared from the same that the said deposit was made on 15.05.2018. As there was no definite deadline, as it would come apparent on perusal of record, we did not find any ingredient of non compliance of the order of the Ld. Civil Court in depositing litigation cost on a later date. We, however, take note of the fact that the matter should have been properly highlighted before this Bench on 24.08.2017.

Still, in consideration of the fact that the subject case should be decided on merit, we, in the interest of justice, are inclined to dismiss the instant IA/530/2018.

Hence,

Ordered

that the IA/530/2018 be and the same stands dismissed and accordingly disposed of.

Fix 14.09.2018 for filing evidence by the Complainant.”

8. When the matter had travelled to this Commission, vide its order dated 04.09.2014, this Commission had ordered that “the complaint before the State Commission shall remain stayed during the pendency of the above referred civil suit. It shall be open to the State Commission to proceed with the hearing of the complaint after the civil court renders its final decision in the Civil Suit.”

9. The civil suit was dismissed for non-prosecution on payment of cost. However, no time limit for payment of the cost was indicated in the order of the Civil Court. The same was admittedly paid on 15.05.2018.

10. Based on the above, we are of the view that once the trial of the civil court had ceased to be in existence, the State Commission was competent to revive the complaint at its discretion depending on the facts before it. It is to be kept in mind that the proceedings had only been stayed and the complaint had not been dismissed.

11. Further, it is apparent there was no time limit for payment of Rs. 1,000/-. Hence, once the same was paid, it was open for the State Commission to decide the case pending before it.

12. In the facts circumstances of the case, we uphold the order of the State Commission in so far as it relates to revival of the case. Since the date of payment is 15.05.2018, the stayed proceedings would revive at the stage the complaint had been when it was stayed with effect from 15.05.2018.

13. The appeal being without merit is dismissed. There shall be no order as to costs.