

(2003) 10 NCDRC CK 0023

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

DINESH CHANDRA

APPELLANT

Vs

VIJAY KUMAR

RESPONDENT

Date of Decision: Oct. 24, 2003

Citation: 2004 2 CPJ 468

Hon'ble Judges: N.K.Jain , B.L.Khare , Pramila S.Kumar J.

Final Decision: Appeal allowed

Judgement

1. THIS appeal under Section 15 of the Consumer Protection Act, 1986 (for short the "Act") is directed against the order dated 26.6.2002 passed by the District Forum, Dhar allowing complaint made by respondent-Vijay Kumar directing appellant-Dinesh Chandra to execute sale deed of a plot of land in favour of the respondent-complainant after obtaining necessary permission from the Collector, Dhar.

2. IT appears that the parties have on 4.6.1999 entered into an agreement of sale of land for a sum of Rs. 1,31,000/-. The land in question belonged to the appellant who was paid Rs. 31,000/- as earnest money by the respondent. The remaining amount was to be paid by the respondent at the time of execution and registry of the sale deed. Since permission of the Collector was required for making any such sale, it was also agreed between the parties that the requisite permission shall be obtained by the appellant at his own cost.

The respondent approached the District Forum below complaining that the appellant has neither obtained the requisite permission nor executed sale deed in

his favour despite his offer to pay the balance price money to the latter. The complaint was resisted by the appellant also challenged jurisdiction of the Forum to entertain the complaint.

The Forum below after taking evidence of the parties and on hearing them passed impugned order holding that the Forum had the jurisdiction to entertain the complaint and that there was deficiency in service on the part of the respondent.

3. WE have heard Mr. Nitin Pandit, learned Counsel for the appellant and Mr. Jay Prakash, learned Counsel for the respondent.

The first and foremost question requiring determination by this Commission is whether the dispute in question fell within the purview of "consumer dispute" and whether the respondent-complainant could be termed as "consumer" for the purposes of the Act of 1986. The answer in our considered judgment has to be emphatic No.

4. BEFORE the respondent could approach the District Forum below it was necessary for him to show that he is a consumer and the dispute he has raised fell within the purview of "consumer dispute" as envisaged under Clauses (d) and (e) of Section 2 of the Act. The term "consumer" has been defined as follows-

"(d) "consumer" means any person who- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a

person who avails of such services for any commercial purpose; Explanation.-For the purpose of this clause, "Commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment."

Obviously, the case before us does not fall within the purview of Sub-clause (i) of Clause (d) as it was not a case of purchase of any goods. So the question is whether the said agreement of sale of land would amount to hiring or availing of any service for consideration. To answer this question we have to read the definition of "service" as given in Clause (o) of Section 2 of the Act, which thus reads as follows:

"(o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with Banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

It will be thus seen that the definition of "service" though wide and the service may be of any description but before it can fall within the said definition, the service should be such which is made available to potential users and may include the services in the matters enumerated in the later part of the definition. Agreement to sell a plot of land entered into between two persons cannot be termed as a service which is made available to potential users nor it is included in the illustrations given in the definition. Although by way of amendment of 1993 provision of facility in connection with housing construction has been included in Clause (o), but an agreement to sell a land cannot constitute a service in the matter of housing construction. The word "service" has to be construed in the context of definition of words "consumer", "restrictive trade practices" and "unfair trade practices" as also the power of the Forums and the summary adjudicator procedure prescribed under the Act. Judged in this context, an agreement to sell remains an agreement simplicitor which can be enforced by taking recourse to the remedies prescribed under the General Law not by filing complaint under the Act.

5. IT is admittedly a case of the complainant having entered into an agreement with the opposite party for purchase of a plot of land for a sum of Rs. 1,31,000/- and has also paid an advance of Rs. 31,000/-. Evidently, it is an agreement of sale of immovable property. Performance of such an agreement does not amount to service. No question of service, therefore, arises. The remedy of the complainant is to file suit of specific performance of the said contract or for recovery of the

amount, in Civil Court of competent jurisdiction.

6. UNDER a similar fact situation the Tamil Nadu State Commission in *G. Krishnamurthy v. P. Balaraman*, I (1995) CPJ 385, has held that in case of agreement of sale of immovable property no question of service arises and the remedy of the complainant is to only a suit for specific performance or for recovery of the amount in Civil Court. In the instant case, the complainant-respondent has in fact filed suit in Civil Court for recovery of the amount paid by him to the opposite party. As per documents filed before us in appeal, the said suit has been dismissed on a compromise filed by the parties before the Court. UNDER the circumstance, it was not competent for the respondent-complainant to approach the Forum below to enforce the said agreement by taking recourse to the provisions of the Act of 1986. Forum below also fell in error in entertaining the complaint which did not disclose any consumer dispute as defined in Clause (e) of Section 2 of the Act.

This appeal thus succeeds and is allowed. The impugned order is set aside and the complaint filed by the respondent is dismissed with costs throughout. Counsel's fee Rs. 500/-, if certified. Appeal allowed.