

(2012) 05 NCDRC CK 0079

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

R.P. Oberoi Son of  
Late Shri Dev Datt  
Oberoi

APPELLANT

Vs

Vinod Bahl S/o Late  
Shri Behl Ram Bahi

RESPONDENT

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Date of Decision: May 23, 2012

Citation: 2012 0 NCDRC 179 : 2012 2 CPR 606 : 2012 3 CPJ 128

Hon'ble Judges: V.B.Gupta , Vinay Kumar J.

Advocate: R.P.Oberoi

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Judgement

1. COMPLAINT No.233 of 1994 was first decided by the State Consumer Disputes Redressal Commission of Delhi, on 5.12.2005. Three appeals were filed against this order by the OPs, as well as the Complainant, which were decided by the National Commission on 27.4.2010. The matter was remanded back to the State Commission for fresh consideration and disposal. Accordingly, the matter was considered afresh by the State Commission and decided on 26.5.2011. The State Commission has dismissed the complaint, against which, the Complainant Shri R.P.Oberoi has filed the present appeal.

2. THE appellant has chosen to conduct his case on his own and therefore has been heard in person. THE record as produced by him, together with those submitted during the course of the present proceedings, have been perused and considered.

The appeal of Shri Oberoi was filed on 11.11.2011, with a delay of 124 days. In the application for condonation of this delay, the following explanation has been

advanced by the appellant:-

1. That the Appellant is 82 years old retired Civil Servant and has been fighting this case on his own for the last 17 years. He was not aware that the period of filing an Appeal has been reduced from 90 days to 30 days. When he visited the Tribunal's Office a few days back to file his Appeal, he was advised to submit an application for condonation of delay as the period of 30 days was over. Hence this application. 2. That the Appellant has undergone two surgeries- 1st in 1992 and the 2nd in March 2010. Even since his last surgery, he has been advised to restrict his activities and take maximum rest. 3. That the younger widowed sister of the Appellant has been on a death-bed in a Hospital in Meerut since July, 2011 and finally expired in the second week of September, 2011. The Appellant, therefore, had to spend considerable time in Meerut to give her moral support.

With reference to the above, the appellant was required to produce the relevant records of treatment and the records produced have been seen. The certificate of Madanta-Medicity filed by him shows that he was admitted on 24.3.2010 with coronary complaint and was discharged on 27.3.2010 after coronary angioplasty. Record also shows a brief admission into the Northern Railway Referral Hospital, on 4.12.2010 with cardiac problem. However, these medical records are of no direct relevance to the present appeal as, in point of time, they are well before the date of the impugned order. We also find it difficult to accept the plea regarding lack of awareness of limitation of 30 days for filing the appeal, as the applicant had in the same case filed his earlier appeal against the order, which was subsequently set aside by this Commission. We therefore, do not find the explanation in justification of the large delay of 124 days acceptable.

3. COMING to the facts of the case, as seen from the records, the Complainant became owner of Plot No.279, Kailash Hill, New Delhi, in 1985. In 1991, he was introduced to OP-1 as a builder with whom he reached an understanding for construction on this plot. The case of the Complainant was that the ground and the first floors were to be given to him and the basement and second floor were to be retained by the builder, in return for raising the entire construction at his own cost. The construction was completed in 1992, and the two floors of his share were handed over to him on 12.11.1993.

The State Commission has pointed out that the original complaint was filed on 30.8.1994 against OP-1/Shri Vinod Bahl only. Later, an application was moved to implead Shri Rajendra Madan and Smt. Anita Kalra as OPs-2 and 3 respectively, which was allowed on 22.12.1995. OP-2 did not file any written response. OP-3 filed

a written response stating that she has no connection with the Complainant and had no role to play in the construction of the property. The Commission has observed in this behalf that:-

Throughout the case, contentions of the complainant are regarding deficiency in service on the part of the OP No.1 only with whom he had understanding. It is pertinent to note that apart from moving application for impleading OP no.2 & 3, the complainant neither filed amended Memo of Parties, nor did he file amended complaint incorporating any plea or prayer against the OP No.2 & 3. Even when the case was put to trial, he tenders evidence only against the OP no.1. There is no evidence against the OP No.2 and 3. Photocopy of collaboration agreement placed on record does not bear signature of anyone.

4. AGAINST OP-1/Vinod Bahl the complaint alleges defective service in the following areas:-

a) what was built as the basement, is actually the ground floor resulting in the Complainant being given the first and the second floors instead of ground and the first. b) Over an above the four agreed floors, the builder has constructed an additional floor, without any payment to the complainant. c) Sub-standard material has been used and the quality of construction is very poor. d) There is seepage of water through walls on all floors.

With reference to the above issues raised in the complaint, the State Commission has observed that

a. In support of the complaint the complainant has filed his own affidavit but all the material details narrated by him in his complaint are not repeated, nor even touched in this sole evidence led by him. His evidence is only to the effect that an understanding was reached with OP Mr Vinod Bahl on 30.4.1991, main terms of which are mentioned in the letter Annexure 3 of the broker Sh. Kewal Krishan (para 10) b. It is pertinent to note that the Complainant had made detailed allegations regarding defects in the construction, but these do not find support even from his own affidavit filed in evidence. (para 12). c. Another thing mentioned in the affidavit is that building was inspected by Mr. Manohar an Architect, who submitted report. The report on record however is unsigned and hence cannot be taken into consideration (para 12). d. In the case the subject matter of the case i.e. Collaboration Agreement has been reduced to writing, that document alone would be admissible to prove its term as per provision of Section 91 and 92 of the Indian Evidence Act. In this case, the original agreement has neither been produced nor

proved. In fact the application of the OP No.3 for producing original documents was opposed by the Complainant. (para 13) e. The Complainant chose not to lead evidence regarding his allegation of construction being defective and have failed to prove defective service in constructing basement and etc. floor as discussed above. (Para 22)

From the above observations it is clear that the complainant had failed to lead proper evidence in support of his complaint. In the appeal to this Commission, questioning the dismissal of his complaint by the State Commission, the appellant/Complainant Shri R.P. Oberoi, has revisited the facts as narrated in his complaint petition. However, the memorandum of appeal does not raise any substantive grounds of challenge to the impugned order. The appellant, in fact, supports the observation of the State Commission on the Collaboration Agreement when he says:-

That none of the OPs had disputed the veracity of any of the documents submitted by the complainant except mentioning at the Collaboration Agreement submitted by the complainant is un-signed. It is surprising that the second commission in its judgment has doubted the broker's letter and Architect's Report. Similarly, on the observation of the State Commission in relation to the report of the architect, the appeal memorandum says:- That in Para 12 of its judgment, the second Commission has not accepted the Architect's report as it is unsigned. I am not aware if the report is signed or not as it was submitted directly to the Commission. The report is on the letter head of the Architect and is accompanied by 12 photographs of the building. It was accepted by the then State Commission to whom it was submitted as it finds mentioned in its judgment. In case, the present Commission has any doubt, about its genuineness, it could have easily confirmed it.

5. FROM the detailed examined above, we come to the inescapable conclusion that the appellant has neither been able to give an acceptable explanation for the large delay of 124 days nor has he succeeded in making out a substantive case against the impugned order. In our view, the impugned order is based on the evidence lead before the State Commission and cannot be assailed on that account. Consequently, the appeal fails on the grounds both of limitation and merit. It is therefore, dismissed with no order as to costs.