

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.294 OF 2011
(Arising out of SLP(C)No.18123 OF 2009)

B.GAUTAM

.....APPELLANT

VERSUS

M/S BABA CONSTRUCTIONS

.....RESPONDENT

O R D E R

The respondent has sent a letter dated 05.01.2011 for adjournment. We have perused the letter and are of the view that there is no justification for entertaining the request of the respondent because this is the fourth round of litigation and the appellant, who had entered into an agreement with the respondent almost 23 years ago for purchase of the flat constructed by the latter is still awaiting execution of the sale deed.

Leave granted.

The complaint filed by the appellant alleging deficiency in service on the respondent's part in the matter of construction of flat in Balanagar Village and Mandal, Ranga Reddy District was partly allowed by the Andhra Pradesh State Consumer Disputes Redressal Commission, (for short, 'the State Commission') vide order dated 25.01.2001 and direction was given to the respondent

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to execute the sale deed. Simultaneously, the appellant was directed to pay the balance amount, if any, to the respondent with interest. The appeal filed against the order of the State Commission was dismissed by the National Consumer Disputes Redressal Commission (for short, 'the National Commission') but Civil Appeal No.8802 of 2003 filed by the respondent was disposed of by this Court on 10.11.2003 by directing the State Commission

to decide the remaining controversy between the parties.

In the second round, the State Commission again directed the respondent to execute the sale deed in favour of the appellant.

The revision filed by the respondent was disposed of by the National Commission by directing the respondent to execute the sale deed in terms of the order of the State Commission subject to payment of the specified amount and interest, if any. Special

Leave Petition (C) No.11444 of 2005 filed by the respondent was disposed of by this Court on 19.09.2005 with a direction to the State Commission to look into all the aspects of the case.

In compliance of the direction given by this Court, the State Commission again considered the matter and passed detailed order dated 19.06.2006, the relevant portions of which are extracted below :-

"Taking into consideration that this matter has been pending since 1991 and that the complainant submits that he has been made to run to pillar to post and the opposite party has been avoiding registration of the flat for more than 10 years and that he is tired and vexed with the attitude of the opposite party and to purchase peace he is ready and willing to pay a sum of Rs.14,946/- with a view to put an end to this long standing litigation and the defiant attitude of the

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opposite party and in the interest of justice we direct the complainant to pay a sum of Rs.20,000/- to the opposite party and on such payment the opposite party shall register the flat in favour of the complainant within a period of six weeks from today.

It is submitted that in pursuance of the interim order of this Commission dt.21.12.1999, the complainant has deposited a sum of Rs.10,000/- before this Commission on 28.12.1999 and the said sum is lying in deposit with this Commission. Hence the complainant is directed to pay to the opposite party the balance sum of Rs.10,000/- and on such payment the opposite party shall register the flat in favour of the complainant within a period of six weeks from today, failing which penalty proceedings will be initiated against the opposite party.

The complaint is accordingly disposed of to the extent indicated above. Time for compliance six weeks."

The revision filed by the appellant against the third order of the State Commission was allowed by the National Commission vide order dated 2.7.2007 and the following directions were given

to the parties:

"Accordingly, while allowing revision aforesaid order dated 19.06.06 is modified and respondent is directed to deposit Rs.15,467/- (Rs.25,467/- minus of Rs.10,000/- already lying in deposit with State Commission) with the State Commission within three weeks hereof. Sale deed will thereafter be executed and registered as per the order dated 25.01.01 by opposite parties 2 & 4 within three weeks. After execution and registration of sale deed said amount of Rs.15,467/- together with amount of Rs.10,000/- deposited pursuant to interim order dated 21.12.99 by the respondent will be released by the State Commission in favour of the opposite parties."

The respondent challenged the aforesaid order in Special Leave Petition.....CC No.2449 of 2000, which was summarily dismissed by this Court vide order dated 10.03.2008.

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In the meanwhile, the appellant filed M.A. No.129 of 2008 in R.P. No.1753 of 2006 before the National Commission for condonation of 128 days delay in deposit of the amount in terms of order dated 2.7.2007 and extension of time by two weeks. In paragraphs 3, 4, 5 and 6 of the application, the appellant made the following averments:

"3. It is submitted that I am a chronic Diabetic and has been suffering from several other consequential ailments. I lost my vision to a greater extent, though I have been taking treatment for my eyes, including periodical Laser treatment.

4. It is humbly submitted that the order dated 02-07-2007 was acknowledged by one of my relatives on 26-08-2007, but the said order was not brought to my notice as I was hospitalized and undergoing treatment for Diabetes Mellitus, Coronary Artery Diseases, Primary Hypertension and Chronic Renal Failure.

5. It is humbly submitted that besides being suffered from several such ailments, I had also undergone heart operation in CTC, Military Hospital, Pune. After Angioplasty I was discharged from the said Military Hospital on 08-12-2007 with advise of complete bed-rest for a period of one month. While it was so, on 02-01-2008, I had undergone eye operation in L.V. Prasad Eye Institute, Hyderabad, for restoration of my vision, followed by a laser treatment on 10-01-2008. Presently, I have improved my vision and am able to see objects at a distance of 12 feet with 6 + glasses for reading with additional lights.

6. It is humbly submitted that in view of my deteriorating health, my wife could not inform about the order dated 02-07-2007, passed by this Hon'ble Commission in the above Revision Petition

and at last on 20-01-2008, my wife cautiously informed about the said order dated 02-07-2007, which was acknowledged by my father-in-law by name Sri. Y.V. Narasimha Rao, who is aged about 84 years."

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By the impugned order, the National Commission dismissed the appellant's application albeit without even advertng to the averments contained therein.

We have heard Shri. K. Maruthi Rao, learned counsel appearing on behalf of the appellant and perused the record including the counter affidavit filed by the respondent through its Promoter, Salike Sathyamurthy, who has narrated the sequence of events leading to the filing of the special leave petition by the appellant and made the following claim:

"It is further submitted by this Respondent that the Petitioner herein has to discharge still the liability of Rs.1,87,651/- (Rupees One Lakh Eighty Seven Thousand only) in all including the simple interest of 18% till 30.11.2010 that is Rs.10,000/- for the dues of cost as per the first agreement as ordered by the State Commission and Rs.25,467/- towards the extra work done and admitted by the Petitioner himself in courts below and allowed by the National Commission and Rs.1,52,144/- towards simple interest @ 18% allowed and ordered by the courts below (by the State Commission as well as the National Commission earlier) in favour of the Respondent herein."

In our view, the appellant had made out a case for extension of the time and the National Commission committed serious error by declining his request and that too without even looking into the averments contained in the application filed for the purpose. If the National Commission did not feel satisfied with the averments contained in the application about the appellant's illness, then it could have called upon him to file the relevant documents and then decided the application. However, there was absolutely no justification for rejection of the appellant's

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prayer for extension of time by ignoring that he has been forced to litigate due to the obstinate attitude adopted by the respondent.

In the result, the appeal is allowed and the impugned order

The Registry is directed to communicate this order to the respondent at the address given in his letter dated 05.01.2011.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)