

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION Nos.3630, 4191, 4220, 4254,
4640, 4641 and 4650 of 2011

02.08.2018

Between:

V.V. Durga Prasad and others

..Petitioners

and

The Andhra Pradesh State Consumer Disputes
Redressal Commission, Hyderabad and others

..Respondents

Counsel for the petitioners: Mr.P.Shiv Kumar

Counsel for respondent No.1: Assistant Government Pleader
for Civil Supplies

Counsel for private respondents: Mr.M.Annapurnayya

The Court made the following:

COMMON ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This batch of writ petitions is filed against common order, dated 30.11.2010, of the Andhra Pradesh State Consumer Disputes Redressal Commission at Hyderabad – respondent No.1 (for short ‘the State Commission’) passed in a batch of first appeals filed against common order, dated 31.10.2007, of the Consumer Disputes Redressal Forum-I, Hyderabad (for short ‘the District Forum’) passed in a batch of consumer complaints.

2. For convenience, the petitioners are referred to as “the opposite parties” and the contesting respondents as “the complainants”.

3. Brief facts leading to the filing of these writ petitions are stated hereunder.

The complainants and the opposite parties, who were developers and the owners of the land, entered into agreements of sale in respect of construction of apartments on 16.11.1999. As per clause 4 thereof, the opposite parties shall construct apartments as per the plan and specifications mentioned in the annexure thereto and shall deliver possession on or before 31.12.2001. Admittedly, even before the said date stipulated for completion of construction and handing over of possession, the opposite parties executed sale deeds in favour of third parties on different dates in the year 2000 itself. The complainants caused legal notices issued on 03.01.2004 to the opposite parties, demanding cancellation of sale deeds executed in favour of third parties

and execution of sale deeds in their favour and handing over of possession of the flats. The opposite parties got reply notices issued to the complainants on 04.05.2004.

4. In the year 2005, the complainants raised disputes before the District Forum seeking relief of specific performance of the agreements of sale or in the alternative for payment of compensation. The opposite parties filed their version, wherein they raised objections to the limitation as well as jurisdiction. The District Forum has not specifically dealt with the aspect of limitation. However, on the objection relating to jurisdiction, it held that as there was deficiency in service with the refusal of registration of sale deeds in pursuance of the agreements of sale executed by the opposite parties, the complainants are entitled to damages. Accordingly, the District Forum allowed the complaints by directing refund of the entire sale consideration along with interest at the rate of 18% per annum from the date of the agreements of sale till the date of realization and also to pay compensation of Rs.5,000/- and legal expenses of Rs.2,000/- to the complainants. This common order was carried in first appeals before the State Commission as noted hereinbefore.

5. The State Commission has specifically dealt with both the objections relating to the limitation as well as jurisdiction. As regards the aspect of limitation, the State Commission held that Article 54 of the Limitation Act, 1963 (for short 'the Limitation Act') stipulates that the

cause of action would commence from the date that was fixed for performance of contract and if no such date is fixed, the cause of action would commence when the plaintiff has notice that performance is refused. It was further observed that on fact the opposite parties did not refuse performance of the agreements of sale and therefore, by no stretch of imagination, it can be said that the complaints are barred by limitation. With regard to jurisdiction, the State Commission relied upon the judgment in **Faqir Chand Gulati vs. Uppal Agencies Pvt. Ltd.**¹ and rejected the plea of the opposite parties. The State Commission has, accordingly, confirmed the common order of the District Forum.

6. At the hearing, Mr.P.Shiv Kumar, learned counsel for the petitioners/opposite parties, has submitted that both the *fora* below have committed serious error in entertaining the complaints, which were clearly barred by limitation, and also in exercising jurisdiction, which is not vested in them.

7. Mr.M.Annapurnayya, learned counsel for the complainants, on the contrary, has made strenuous efforts to support the orders of the *fora* below.

8. As regards the objection relating to the limitation, Section 24-A of the Consumer Protection Act, 1986 (for short 'the Act') reads as under.

“ 24A. Limitation period. –

¹ 2008(4) CPR 449 (SC)

(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.”

9. The meaning of cause of action is considered in a catena of judgments to the effect that it consists of a bundle of facts which if the plaintiff proves, will be entitled to the relief sought by him which if not proved would give the defendant a right to immediate judgment.

In **A.B.C. Laminart (P) Ltd. v. A.P. Agencies²**, the Supreme Court, at paragraph-12, held as under.

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it

² (1989) 2 SCC 163

has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

In **K.Jitender Das v. Executive Engineer, RWS & S Division**³, following the above judgment of the Supreme Court, one of us (CVNR,J), at paragraph-7, observed as under.

“7. It is well settled that cause of action consists of bundle of essential facts which the plaintiff has to prove in order to sustain his action. This connotes that both the right to sue and cause of action are the same and the cause of action is synonymous with the right to sue. (See N.Narayana Murthy v. Ganga Raju [1958 ALT 434]”

10. In the instant case, as per clause 4 of agreements of sale, dated 16.11.1999, the possession of the flats was to be delivered to the complainants on or before 31.12.2001. Based on this stipulation, the learned counsel for the opposite parties urged that the right to sue to the complainants commenced on 01.01.2002, the day following the date on which the flats should have been handed over to the complainants. On the facts of the present case, the cause of action did not end with 31.12.2001. Though the complainants did not approach any *forum* for three years, they, however, caused legal notices issued on 03.01.2004 to the opposite parties. The opposite parties gave separate but identical replies on 04.05.2004, the relevant contents of which have been extracted by the State Commission in its order, which are reproduced herein below.

³ 2015(4) ALT 366

“With reference to your legal notice dt.3.1.2004 issued on behalf of Smt.K.Suguna, R/o.H.No.18/C, (990, MLA’s Colony) Road No.12, Banjara Hills, Hyderabad, I hereby state that myself, K.V.Rajendra and Surendra Kaul jointly purchased the property admeasuring 4532 sq.yds. in Sy.No.28 at Babbuguda Village of Balanagar Mandal and, in turn, entered into agreement with “Vamshi Constructions Pvt. Ltd.” for its development. We authorized the said company to sell the flats.

Though, at the first instance, we sold flat No.104/B with a plinth area of 1354 sq.ft. constructed by the said Vamshi Constructions Pvt. Ltd. to your client by receiving Rs.5.00 lakhs towards sale consideration, under an Agreement of Sale dt.16.11.1999, later we sold the same flat to one C.Shamsunder Rao S/o C.Subba Rao vide registered sale deed document No.5686/2000 dt.20.12.2000 to meet exigencies. I reiterate that, we have not done with an intention to cause any loss to your client.

We jointly take the responsibility and undertake to compensate your client appropriately. You are, therefore, requested to advise your client to defer legal action.”

(emphasis added)

Indeed, a party cannot create artificial cause of action in order to save limitation. Therefore, in ordinary course, the exchange of notices after more than three years and the date fixed for handing over of the flats may not have been relevant for the purpose of computing limitation. But, as could be seen from the contents of the reply notices, the opposite parties, while not explaining the reasons for their selling the flats to third parties, unequivocally admitted their joint responsibility and undertook to compensate the complainants with a request to them to defer legal

action. In the light of this candid admission of default and acknowledgment of their responsibility by the opposite parties to compensate for the acts done by them to the complainants, a fresh cause of action had arisen to the latter to initiate legal proceedings and within eleven months thereof, the complainants raised consumer complaints before the District Forum.

11. Though the State Commission relied upon Article 54 of the Limitation Act to hold that the complaints were filed within the period of limitation, we are of the opinion that the aforesaid reason is not sustainable. Article 54 as could be evident from its specific language stipulates limitation for filing the suit for specific performance of agreements of sale. Though the complainants sought the said relief as the main relief, the District Forum, however, granted alternative relief of refund of sale consideration along with interest as a measure of compensation. Therefore, while Article 54 of the Limitation Act has no application, Section 24-A of the Act - the special statutory enactment governing the limitation, is squarely applicable to the instant case. In the light of the analysis of the facts and legal position made hereinbefore, we are of the opinion that the complaints filed by the complainants based on reply notices, dated 04.05.2004, are well within the period of two years stipulated under Section 24-A of the Act. Though we do not agree with the reasoning of the State Commission, we, however, agree with its conclusion that the complaints were filed within the period of limitation.

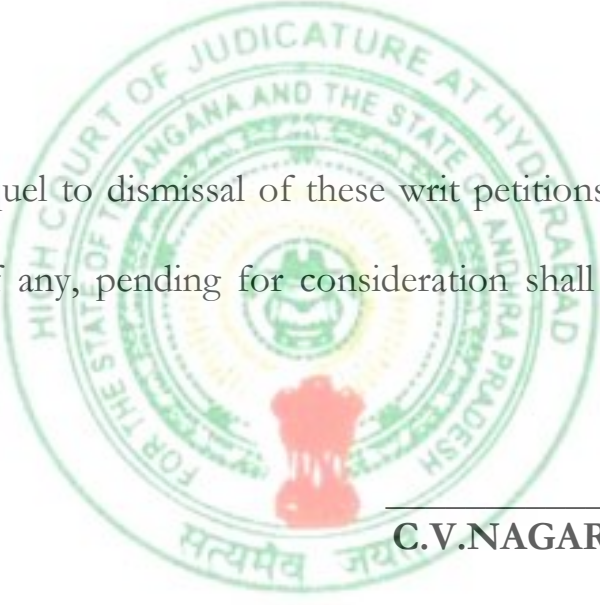
12. As regards the objection to the jurisdiction, undoubtedly, the *fora* under the Act is not vested with the jurisdiction to direct specific performance of the agreements of sale. Though such a relief is sought by the complainants, the District Forum only directed refund of the advance sale consideration along with interest. Though it could have been open to the complainants to have filed a suit for specific performance of the agreements of sale or in the alternative to refund the sale consideration along with interest, they are entitled to invoke the jurisdiction of the District Forum for the latter relief, as under Section 3 of the Act, the remedies under the Act are in addition to and not in derogation of any other remedies available under other enactments. In **Narne Constructions (P) Ltd., Secunderabad vs. Union of India**⁴, a Division Bench of this Court held that the liability to register sale deed being the part of duty towards the purchaser, refusal to do the same amounts to deficiency of service and therefore, an aggrieved party in a case of refusal to register sale deed has his own choice either to invoke the jurisdiction of the Consumer Forum or to approach the civil Court. It was further held that Section 3 of the Act provides that the provisions of the Act are in addition and not in derogation of the provisions of any other law for the time being in force. Hence, we do not find any merit in the submission of the learned counsel for the opposite parties that the *fora* below had no jurisdiction to entertain the complaints filed by the complainants. At any rate, even in equity also the

⁴ 2011(1) ALD 342 (DB)

complainants are entitled to the relief as granted by the District Forum viz., refund of the full sale consideration admittedly received by the opposite parties and award of compensation, in view of unjust denial of flats to the complainants by the opposite parties.

13. On a holistic consideration of the facts and law as discussed above, we are of the opinion that these Writ Petitions are wholly devoid of any merit and the same are, accordingly, dismissed with costs of Rs.10,000/- (Rupees ten thousand only) in each of the writ petitions in favour of the complainants.

14. As a sequel to dismissal of these writ petitions, the miscellaneous applications, if any, pending for consideration shall stand dismissed as infructuous.



C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

02nd August, 2018

GHN

