

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6927 OF 2017

Vishnugopal Ganeshlal Sahu and ors. ... Petitioners

-vs-

Sanjay Madhukarrao Patil ... Respondent

WITH

WRIT PETITION NO.29 OF 2018

Vishnugopal Ganeshlal Sahu and ors. ... Petitioners

-vs-

Sanjay Narayanrao Deotale and ors. ... Respondents

WITH

WRIT PETITION NO.6928 OF 2017

Vishnugopal Ganeshlal Sahu and ors. ... Petitioners

-vs-

Akhilesh Shyamnarayan Choube and ors. ... Respondents

WITH

WRIT PETITION NO.6929 OF 2017

Vishnugopal Ganeshlal Sahu and ors. ... Petitioners

-vs-

Dinesh Vinayak Rewatkar ... Respondent

WITH

WRIT PETITION NO.6930 OF 2017

Vishnugopal Ganeshlal Sahu and ors. ... Petitioners

-vs-

Vilas Nilkanthrao Deshpande ... Respondent

WITH

WRIT PETITION NO.6946 OF 2017

Vishnugopal Ganeshlal Sahu and ors. ... Petitioners

-vs-

Sanjesh Vitthalrao Shende ... Respondent.

WITH

WRIT PETITION NO.6948 OF 2017

Vishnugopal Ganeshlal Sahu and ors. ... Petitioners

-vs-

Sandip Natthuji Nandeshwar and anr. ... Respondents.

WITH

WRIT PETITION NO.6949 OF 2017

Vishnugopal Ganeshlal Sahu and ors. ... Petitioners

-vs-

Mangesh Nanaji Bali, Nagpur and anr. ... Respondents.

WITH

WRIT PETITION NO.7631 OF 2017

Vishnugopal Ganeshlal Sahu and ors. ... Petitioners

-vs-

Ashish Kishore Shivhare and ors. ... Respondents.

Shri Masood Shareef, Advocate for petitioners in all writ petitions.

Shri N. Gaidhane, Advocate for respondents in all writ petitions except Writ Petition No.6928/2017.

Shri U. K. Bisen, Advocate for respondents in Writ Petition No.6928/2017.

CORAM : A.S.CHANDURKAR, J.

DATE : December 19, 2019

P.C.

Common order :

Rule. Heard finally with consent of learned counsel for the parties.

The challenge raised in these writ petitions being identical they are being decided together by this common order.

2. The State Consumer Disputes Redressal Commission (for short, the State Commission) by its common order dated 28/06/2017 was pleased to dismiss all the revision petitions preferred by the petitioners that had been filed for challenging the orders passed by the District Consumer Disputes Redressal Forum (for short, District Consumer Forum) condoning the delay in filing various complaints.

3. Each respondent in these writ petitions is the original complainant who has filed complaint under Section 12 of the Consumer Protection Act, 1986 (for short, the said Act). It is the case of each complainant that he had entered into agreement with the petitioners for purchase of residential premises constructed by the petitioners. Though respective sale-deeds were executed in favour of each respondent, the petitioners failed to provide various common facilities which it was bound to provide under the respective agreements. The complainants shortly after residing in those premises noticed various deficiencies and hence sought redressal of the same by approaching the petitioners. The petitioners gave false assurances and failed to remove the deficiencies in those premises. Hence as the respondents were left with no other alternative they filed the aforesaid

complaints under Section 12 of the said Act. Alongwith each complaint a separate application for condonation of delay under Section 24-A of the said Act came to be filed. These applications were opposed by the petitioners and the District Consumer Forum was pleased to condone the delay in filing complaints by observing that the cause of action for filing the same was continuous. The petitioners challenged the aforesaid order by filing revision petitions before the State Commission. These revision applications were filed under Section 17(1)(b) of the said Act. By the impugned order all the revision applications have been dismissed by holding that the delay in filing complaints had been rightly condoned. Being aggrieved the petitioners have challenged the aforesaid order.

4. At the outset the learned counsel for the respondents raised a preliminary objection to the tenability of the writ petitions on the ground that remedy under Section 21 of the said Act was available for being invoked before the National Commission. Without invoking that remedy the petitioners had approached this Court by filing the present writ petitions. Since an alternate statutory remedy was available to the petitioners the writ petitions were not liable to be entertained. In support of said objection Shri U. K. Bisen and Shri N. Gaidhane, learned counsel for the respondents placed reliance on the decisions in *Om Prakash Saini vs. DEM Ltd. and ors. AIR 2010 SC 2608*, *Phalguni Das vs. Tapas Dutta 2013(1) C.P.C. 3*, *The A. P. Co-op. Housing*

Societies Federation Limited Hyderabad vs. The A.P. State Consumer Disputes Redressal Commission, Hyderabad and ors. AIR 2015 Hyderabad 59, Rajendra Singh Sisodiya vs. Madhya Pradesh Housing Board, Indor AIR 2009 Madhya Pradesh 162 and Nivedita Sharma vs. Cellular Operators Association of India and ors. (2011) 14 SCC 337.

5. In reply to the aforesaid preliminary objection Shri M. Shareef, learned counsel for the petitioners placed reliance on the decision in *R. B. Upadhyay vs. State of Commission for Consumer Disputes, Mumbai and ors. 2010(4) Mh.L.J. 472* to urge that since the State Commission had itself exercised revisional jurisdiction, further remedy before the National Commission was not available. Since there was no other statutory remedy available, the petitioners had rightly approached this Court. He also placed reliance on the decisions in *Amerkar Construction and sons and ors. vs. Anil Redkar and ors. 2014(4) Mh.L.J. 743* and *M/s Vyas Enterprises Thr. Its Proprietor vs. Das Darshan Co-operative Housing Society Ltd. 2014 SCC Online NCDRC 174.*

6. While challenging the order on merits it was submitted that the District Consumer Forum as well as the State Commission erred in holding that the cause of action for filing the complaints was of a continuous nature. It was an admitted position that the petitioners had executed sale-deeds in favour of each complainant. After passage of considerable time the aforesaid

complaints had been filed raising a grievance with regard to absence of common amenities in the premises sold to the complainants. The cause of action could not be said to be continuous and the complaints were required to be filed within a period of two years from the date the cause of action arose. In any event it was submitted that the explanation furnished for the delay as caused in filing the complaint was not sufficient to condone the same. Hence the order condoning the delay as well as the revisional orders refusing to interfere with that order were liable to be set aside and the complaints were liable to be dismissed as being barred by limitation.

7. On the other hand the learned counsel for the respondents supported the impugned orders. It was submitted that even though the petitioners had executed sale-deeds with regard to the premises in question that were liable to provide common facilities as mentioned in the respective agreements. The respondents having paid the entire amount of consideration which included the cost of providing common facilities, it was not permissible for the petitioners to now submit that it had no liability to provide those common amenities. The District Consumer Forum as well as the State Commission were justified in holding that the complaints were liable to be entertained by treating the cause of action to be continuous. Hence no interference with the impugned order was called for.

8. Considering the preliminary objection as raised it is seen that against the order passed by the District Consumer Forum condoning the delay the petitioners had filed revision applications before the State Commission. The jurisdiction under Section 17(1)(b) of the said Act has been exercised by the State Commission and the revision applications have thereafter been dismissed. According to the learned counsel for the petitioners the orders impugned as passed by the State Commission are required to be challenged by invoking the jurisdiction of the National Commission under Section 21(b) of the said Act. In *R. B. Upadhyay* (supra) while considering a somewhat similar situation it has been held by the Division Bench of this Court that the jurisdiction under Section 21(b) of the said Act can be invoked only if a consumer dispute is pending before or has been decided by the State Commission. The National Commission has no jurisdiction under Section 21(b) if the order has been passed by the State Commission in exercise of revisional jurisdiction under Section 17(1)(b) of the said Act. As stated above the complaints in question were filed before the District Consumer Forum and the petitioners had invoked the revisional jurisdiction of the State Commission under Section 17(1)(b) of the said Act for challenging the orders condoning delay. Hence against that order a second revision application under Section 21(b) of the said Act would not be maintainable. Thus following the decision of the Division Bench in *R. B. Upadhyay* (supra) it is held that the writ petitions can be entertained as there

is no statutory remedy available to the petitioners under Section 21(b) of the said Act. The decisions relied upon by the learned counsel for the respondents to substantiate their contentions as regards availability of statutory remedy do not support their contentions. The preliminary objection therefore as raised by the respondents cannot be accepted.

9. Coming to the aspect of delay being condoned by the District Consumer Forum, it is seen that according to the respondents despite paying the entire consideration it was found by each respondent that the facilities were not provided though the same were undertaken to be provided in the agreement entered into between the parties. This could be found by the complainants only after taking possession of the premises and residing therein. Thereafter request was made to the petitioners to provide those incomplete facilities but despite giving assurances the same were not provided. It is on that premise that the cause of action has been treated to be continuous. The District Consumer Forum has by relying upon the decision in *M/s Vyas Enterprises vs. Das Darshan Co-operative Housing Society Ltd. 2014 NCJ 462 (NC)* proceeded to condone the delay. That decision of the National Commission was binding on the District Consumer Forum and it has in that backdrop proceeded to condone the delay in filing the complaint. The State Commission in exercise of revisional jurisdiction has maintained that order by observing that the cause of action could be treated as

continuous in nature. Since the respondents could not enjoy the facilities that were liable to be provided while purchasing the immovable property, the delay as condoned was in proper exercise of jurisdiction.

10. Thus on considering the aforesaid aspect I do not find any reason to take a different view. Merely because the delay stands condoned, the same would not mean that all averments made by the respondents in their complaints stand accepted. The said order merely enables an adjudication on merits.

11. In the light of aforesaid discussion by holding the writ petitions to be maintainable and liable to be entertained on merits, I do not find any justifiable reason to interfere with the order passed by the District Consumer Forum condoning the delay in filing the complaints which order has been maintained by the State Commission. By clarifying that observations made in this order are only for deciding the challenge as raised, it is directed that the complaints shall be decided on their own merits and in accordance with law without being influenced by any observations whatsoever.

The Writ Petitions are accordingly dismissed. The parties shall bear their own costs.

JUDGE