IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11710 OF 2024

Mr. Amol Arvind Pawar ...Petitioner
Versus
M/s Dosti Corporation (Vihar)
A partnership firm and Others ...Respondents

Mr. Pranav Nair a/w Ms. Akshata Katara i/b Asahi Legal for Petitioner.
Mr. Aditya Udeshi a/w Mr. Rahul Sanghvi and Mr. Rohan Pawar i/b M/s. Sanjay Udeshi & Co. for Respondents.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 3 FEBRUARY 2025

P.C.:

1. This petition under Article 226 of the Constitution of India, challenges the judgment and order dated 12 January 2024, passed by the National Consumers Disputes Redressal Commission, New Delhi, whereby the petitioner's first appeal (First Appeal No.2276 of 2018) has been rejected and more particularly, on the following observations :-

> "17. It is an admitted position that the Appellant and Respondents have entered into an agreement to purchase Flat No. 504 in the B Wing, with carpet area of 404 Sq Ft, along with car parking space, from the OPs for Rs.33,47,000/-. Initially, he paid Rs.1,00,000/- as earnest money on 18.02.2009, and he paid Rs.3,47,000/- on 24.12.2009, both by cheques, as part payment. An agreement was executed between them on 31.12.2009 and it was registered on 25.01.2010. The OPs acknowledged receipt of Rs. 4,47,000/- from the Complainant. After booking the flat from OPs and making partial payments, he wanted to secure a loan from DHFL. However, a dispute arose over the non-provision of original receipts by the Respondents, leading to the cancellation of the loan and

subsequent termination of the agreement. The Appellant claimed that the Respondents' refusal to provide original receipts caused the loan cancellation caused financial losses and mental agony. The Appellant claimed unfair trade practices, denial of service, and deficiency in service by the Respondents. The Respondents argued that the Appellant failed to pay the balance amount despite multiple reminders, justifying the termination of the agreement. The Respondents also contended they had sent a cheque in compliance with the impugned order, but the Appellant returned it, expressing the intention to file an appeal.

18. It is clear that, after the said Agreement between the parties was executed in respect of flat in question, the Complainant has not paid any further payment to OPs towards the sale consideration. The OPs had forwarded about 30 letters over a period of time to him for payments. When the Complainant failed to make the payments due, the OPs cancelled the said agreement and sold the flat to a third party. Clearly, the agreement was cancelled due to non-payment of the balance sale consideration, despite multiple notices. T The main and apparent reason for the inability of the Complainant to pay the balance consideration due was that the loan sanctioned to him by DHFL was cancelled as he could not provide certain records including receipt for payment of Rs. 4 Lakhs to OPs. Therefore, the contention of the Complainant that he was always ready and willing to pay balance amount of consideration to OPs is Runtenable. It is because of failure to pay balance of sale consideration despite multiple communications, the agreement was cancelled. Therefore, the deficiency in service of the OPs is to the extent of not refunding amount deposited to the Complainant immediately after cancellation of the said Agreement in question. As regards DD No. 571408 for Rs. 4 Lakhs dated 21.12.2011 made by the Complainant in favour of the OPs, it is the admitted position of the Complainant himself that the said DD was never encashed by the OPs. It is in common knowledge that a DD drawn on a Bank is valid and negotiable at face value for only six months. Even then, intriguingly, the Appellant allowed such high value instrument to lapse for over 10 years at the same value for which it was made on 21.12.2011 and took no effective steps to secure the same. In any case, as the said DD not being encashed, OPs could not have issued any receipt for Rs. 4 Lakhs to the Appellant. Therefore, the contentions of the Appellant in this regard are untenable."

2. The grievance of the petitioner is limited that the impugned order deserves interference of this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India firstly for the reason that it is an unreasoned order. There is no analysis of the facts of the case and that the evidence which was available before the forums below, i.e., before the State Consumer Disputes Redressal Commission, Maharashtra ("**the State Commission**" for short) which the National Consumer Disputes Redressal Commission (the "**National Commission**" for short) has been ignored. It is hence an unfair adjudication.

3. In support of his submissions, reliance is placed on the decision of the Single Judge of the High Court of Bombay at Goa in **Seconal Appeal No.78 of 2012, dated 12 July 2013** and the decision of the Supreme Court in the case of **Vilas Dinkar Bhat v. State of Maharashtra and Ors.**[1]

4. On the other hand, learned counsel for the Respondents have drawn our attention to the record to point out the submissions which are made on behalf of the petitioner are untenable in as much as not only the State Commission but also in the impugned order, the National Commission has rendered extensive order in considering not only the legal position, but also the facts of the case and the observations, which were made by the State Commission. It is therefore his contention that the impugned order cannot be contended to be an order, which is without reasons or which does not take into consideration the facts of the case. It is submitted that both the above decisions are inapplicable in the facts of the present case, as a decision which is rendered in the proceedings under the Civil Procedure

1(2018) 9 Supreme Court Cases 89

Code, under which a first appeal was filed and issues being considered for adjudication in the first appeal, and subject matter of a question of law, in the second appeal, cannot be of any relevance insofar as the proceedings under the Consumer Protection Act, 1986 are concerned. Insofar as the second decision is concerned, learned counsel for the respondents submits that the same is also not applicable, as it is rendered in the context of non-consideration of evidence in determining the case status of the petitioner therein.

5. We have heard the learned counsel for the parties.

6. At the outset, we may observe that the petitioner had approached the State Commission with a complaint against the respondents in regard to the agreement entered between the parties on the sale of flat in question. As observed by the State Commission, the sale of the flat to the petitioner was on a request as made by the original allottee of the flat one Mr. Ajay Sawant, proprietor of S.A. Electricals. On Mr. Ajay Sawant's request, the allotment in fact came to be transferred in the name of the petitioner. Such was the nature of the contract. It appears that the petitioner also had financial requirements and accordingly he had approached Dewan Housing Finance Corporation. There were some disputes with the said finance company, the petitioner hence could not avail of the loan. As observed by the State Consumer Commission, as many as 30 letters were addressed to the petitioner by the respondents to make payment of the consideration as per the agreement, however, he defaulted. The observations of the State Commission and the orders passed by the State Commission dated 16 October 2018 in this regard are required to be noted, which reads as :-

> "11) On perusal of record, it appears that although the opponent had given near-about 30 letters to the complainant and complainant had not paid any amount to the opponents towards sale consideration. Hence, they had informed the complainant that under such circumstances they will terminate the agreement executed in favour of the complainant. Irrespective of that, complainant did not turn up to the opponents and paid balance amount of sale consideration to them. Hence, there was no alternative to the opponents but to cancel the agreement executed by them in favour of the complainant in respect of that flat. Hence, they terminated the agreement executed in favour of the complainant and registered the same. They have also informed about the same to the complainant. It appears that thereafter opponents had sold out that flat to third person and now they are not in possession of the same.
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> 12) On perusal of these facts, it has become clear that after agreement was executed in respect of flat in favour of the complainant, the complainant has not paid any amount to the opponents towards sale consideration. For that purpose, opponent had given as many as 30 letters to the complainant. Although, loan was sanctioned to the complainant by DHFL, he could not avail the loan and pay balance amount of consideration to the opponents. Hence opponents required to cancel the agreement executed in favour the Complainant in respect of that flat and sold out the flat to third person. We are of the opinion that opponents were required to cancel the agreement in respect of that flat in favour of the complainant only because of mistake of the complainant who could not pay balance amount of sale consideration to the opponents. As loan sanctioned was cancelled DHFL, complainant was not in a position to pay the balance amount of consideration to the opponents. Under such circumstances, contention of the complainant cannot be accepted that he was always ready and willing to pay balance amount of

consideration to the opponents. As complainant had not paid balance amount of sale consideration to the opponents, opponents were constrained to cancel the agreement executed in favour of the complainant. Under such circumstances, in view of the ruling cited above by the learned advocate for the complainant, complainant is only entitled to get back the amount deposited by him with the opponents. Although it is the contention of the opponents that they were ready and willing to pay the amount deposited by the complainant to him, in that respect they have not taken steps. Hence, we are of the opinion that by not refunding amount to the complainant which he had paid to the opponents, they have given deficiency in service to the complainant. In this case, complainant has proved that he has paid an amount of Rs.4,47,000/- to the opponents as opponents have admitted this amount while executing the agreement of sale of the flat in favour of the complainant. Hence, complainant is entitled to get this amount from opponents along with interest on this amount. We are of the opinion that as opponents were required to cancel the agreement only because of the mistake of the complainant, complainant is not entitled to get any compensation from the opponents. However, he is entitled to get cost of litigation from the opponents. Hence, we answer Point No.1 to 3 in affirmative and proceed to pass the following order.

O R D E R

(1) Consumer complaint is hereby partly allowed.

(2) Opponents to hereby jointly and severally directed to pay an amount of Rs,47,000/- [Rs. Four Lacs Forty Seven Thousand only to the complainant along with interest on this amount 9 p.a. From the date of agreement till realization of the amount by the complainant.

(3) Opponents are hereby also jointly and severally directed to pay cost of litigation of Rs.1,000/- (Rs.One Thousand only) to the complainant within one month from the date of this order, otherwise amount shall carry interest @9% p.a. From the date of this order till realization of the amount by the complainant.

(4) Copies of this order be furnished to the parties forthwith.

Pronounced on
Dated 16th October, 2018.

Sd/-
[D. R. Shirasao] Presiding Judicial Member
Sd/-
[Dr. S. K. Kakade) Member."

7. Thus, it clearly appears that the petitioner was not in a position to establish a case before the forums below that there was any material defect and/or deficiency in service as Consumer Protection Act had envisaged and more particularly to maintain a complaint on such deficiency in services as Section 2(11) of the Consumer Protection Act provides.

8. We also find that the State Commission on materials before it did not accept the allegations which were made in the complaint of any unfair trade practices and claim for compensation as made by the petitioner while recording findings fact against the petitioner. Such findings were examined by the National Consumer Disputes Redressal Commission and in our opinion, quite in detail. We are thus not inclined to accept the case of the petitioner, that the impugned order is an unreasoned order, part of which we have already extracted hereinabove. We are thus clearly of the opinion that there is neither a procedural defect and/or any other illegality in the adjudication of the proceedings under the Consumer Protection Act, as filed by the petitioner, calling for interference of this Court.

9. We may in fact observe that the approach of the petitioner in raising all these contentions that the impugned order passed by the National

Commission being an unreasoned, having no analysis and/or ignorance of evidence, is oblivious to the conduct of the petitioner qua the transaction in question. The proceedings under the Consumer Protection Act, cannot have the trappings of a civil suit so that *stricto sensu* the law governing civil suits and the hierarchy of the category of appeals as provided under the Code of Civil Procedure would become applicable. This is so and it cannot be so as the Consumer Protection Act itself provides for the machinery for adjudication of consumer disputes which is distinct from the several law in relation to suits. For such reason, the petitioner cannot urge that the proceedings before the Consumer Forum were required to be considered as a suit for specific performance or as if it were proceedings of a civil suit under section 9 of the Civil Procedure Code, 1908 ("CPC" for short). As to whether there was any termination which could be implicit or explicit in the facts of that case are all matters in fact to be gone into an appropriate proceeding. The nature of the grievances of the petitioner could have been raised in a civil suit. The petitioner however, never intended to file a civil suit. Also may be for the reason that the petitioner in that case would be required to pay Court fees.

10. We however do not find that any case was made out by the petitioner in the proceedings before the Consumer Commissions, as rightly held by both the forums in the concurrent findings as recorded.

11. Insofar as the decisions as cited on behalf of the petitioner is concerned, we are in agreement with the learned counsel for the respondents that such decisions are wholly inapplicable. The first decision is arising out of the proceedings under the CPC, that is the First Appellate Court is deciding first appeal on a decision rendered in a civil suit, which is certainly not canvass of the present proceedings. The observations in that context as made by the learned Single Judge in deciding the second appeal hence are inapplicable in the context in hand. Insofar the second decision is concerned, the same arises from the proceedings before the caste scrutiny committee, which is the Authority deciding the social status of the citizen as envisaged under the Constitutional provisions, when a caste claim is made, for a caste certificate to be granted validity, it is in such context, the Court has referred to the position in law on examination of such relevant material. Thus such decision in no manner can be applied to the facts in hand.

12. For the aforesaid reasons, we find no merits in the petition. Petition is accordingly dismissed.

13. No costs.

[ADVAIT M. SETHNA, J.] **[G. S. KULKARNI, J.]**