



WEB COPY



WP No. 2160 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**RESERVED ON : 27-06-2025
PRONOUNCED ON : 29-07-2025**

CORAM

**THE HONOURABLE MRS JUSTICE J. NISHA BANU
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**WP No. 2160 of 2024
and WMP Nos.2330 & 2331 of 2024**

Kolappan Thanu Achari
S/o.Late Shri K. Thanu Achari,
7-C, Bank Of India Colony, Ashok Nagar,
Chennai - 600083.

Petitioner(s)

Vs

1.R.Gunanithi,
W/o. C.Ramakrishnan,
Door No. 632B, 7th Cross Street, Ram Nagar South,
Madipakkam, Chennai - 600091.

2.The Registrar,
National Consumer Disputes Redressal Commission
New Delhi.

3.Real Value Promoters Private Limited,
represented by its Managing Director, Amarasri,
No. 455, Anna Salai, Teynampet, Chennai - 600018.

Respondent(s)



WP No. 2160 of 2024

WEB COPY

Writ Petition filed under Article 226 of the Constitution of India to call for the records of the order dated 10.10.2023 passed by second respondent/National Consumer Disputes Redressal Commission, New Delhi, dismissing the application filed by the petitioner in I.A.No.8897 of 2023 seeking condonation of delay 103 of days in preferring the appeal in First Appeal No.5 of 2023 and quash the same and remand it back to the State Consumer Disputes Redressal Commission at Tamil Nadu with a direction to substitute the third respondent name in C.C.No.63 of 2019 instead of petitioner's name.

For Petitioner(s): Mr.R.Chandrasudan

For R1: Mr.M.R.Jothimanian

For RR2 & 3: No appearance

ORDER

(Made by M.Jothiraman J.)

Assailing the correctness of the order dated 10.10.2023 passed by the National Consumer Disputes Redressal Commission (for brevity “National



WP No. 2160 of 2024

WEB COPY

Commission”), New Delhi, dismissing the application filed by the petitioner in I.A.No.8897 of 2023 seeking condonation of delay 103 of days in preferring the appeal in First Appeal No.5 of 2023 and quash the same and remand it back to the State Consumer Disputes Redressal Commission (for brevity “State Commission”) at Tamil Nadu with a direction to substitute the third respondent name in C.C.No.63 of 2019 instead of petitioner's name.

2. The case of the petitioner is that the National Commission as well as the State Commission have incorrectly saddled the petitioner with liability for deficiency without testing the core issue as to whether the jural relationship constituting consumer and service provider between the petitioner and the first respondent exists or not. Before the State Commission, the entire relief was directed against the third respondent/Real Value Promoters Private Limited (for brevity “company”), which is a limited company incorporated under Indian Companies Act, 1956. However, the first respondent has erroneously roped the petitioner as opposite party for the proceedings in an independent individual capacity instead of arraying the third respondent/company as opposite party without understanding the



WP No. 2160 of 2024

WEB COPY

rudimentary rule of law that the company being a incorporation sue and sued in its name *dehors* the fact whoever represented the company in different capacity during different period. The company had failed to follow the proceedings, which resulted in passing of the *ex parte* order dated 03.01.2022 by the State Commission. While allowing the complaint, the State Commission overlooked the crucial fact that the petitioner cannot be personally liable for deficiency of service allegedly committed by the third respondent/company. The valuable right to contest the case on merits, and that too, on the very short legal point, has been turned down by the National Commission on a hyper technical ground. Hence, this petition.

3. The learned counsel appearing for the petitioner would submit that when the petitioner seeking to condone the delay of 103 days in filing an appeal, especially, the petitioner has shown sufficient and valuable reason seeking indulgence of the tribunal, hence, the order passed by the National Commission has to be set aside on this ground alone. It is further submitted that the tribunal has merely quoted various judgments instead of going into the reasons assigned by the petitioner seeking condonation of



WP No. 2160 of 2024

WEB COM

delay and has miserably failed to state as to how they would not constitute

“just reason” and “sufficient cause”. Moreover, the tribunal ought to have

seen as to what would be relative hardship to the first respondent if the

petitioner herein is provided with an opportunity in the appeal to canvass

the correctness of the order impugned in the appeal. He would further

submit that the State Commission erroneously roped the petitioner as

opposite party in the proceedings in an independent individual capacity

instead of arraying the third respondent/company as opposite party without

understanding the rudimentary rule of law that the company being an

incorporation sue and can be sued in its name. Further, he would submit that

summons were issued to the petitioner without testing the core issue as to

whether the jural relationship constituting consumer and service provider

between the petitioner and the first respondent/S.Gunanidhi exists or not.

Stating so, he prayed to allow the writ petition. To strengthen his arguments,

he has relied upon the judgment of the Supreme Court in ***New India***

Assurance Company Limited Vs. Hilli Multipurpose Cold Storage Private

Limited reported in ***(2020) 5 SCC 757*** to show that the opposite party

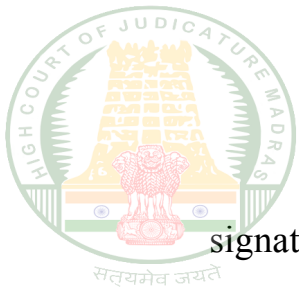
would get the time of 30 days, and in addition another 15 days at the



WP No. 2160 of 2024

discretion of the forum to file its response and that no further discretion of granting time beyond 45 days is intended under the Consumer Protection Act, 2019 (for brevity “the Act”).

4. *Per contra*, the learned counsel for the first respondent would submit that the petitioner has not complied with mandatory requirements under Section 51 of the Act. He would further submit that the petitioner ought to have approached the Supreme Court against the order passed by the National Commission in First Appeal No.5 of 2023, whereas, the petitioner has challenged only the order dated 10.10.2023 passed in I.A.No.8897 of 2023. The petitioner has not chosen to file any written statement within a period of 45 days. The contention of the petitioner that there is no consumer or service provider relationship between him and the first respondent is totally incorrect, since the sale deed dated 14.12.2011 and agreement for project promotion and construction dated 14.10.2011, executed by the petitioner in favour of the first respondent clearly shows the existence of consumer and service provider relationship and further, the petitioner is one of the directors of the company, who is the authorized



WP No. 2160 of 2024

WEB COPY

signatory and decision maker of the said company, and all the decisions made by the company is deemed to be made by the petitioner and the company is vicariously liable for the decision and act of the petitioner *vice versa*. Further, he would submit that the petitioner has neglected and failed to file an appeal within the time stipulated under the Act and hence, the reasons are not *bona fide* one and misleading this Court by placing incorrect facts and prays this appeal to be dismissed with costs.

5. We have considered the submissions made on either side and perused the records.

6. The first respondent has filed the complaint before the State Commission in C.C.No.63 of 2019. The said complaint has been filed against the petitioner/builder, authorized agent of the third respondent/company, alleging deficiency in service, not handing over the possession of the flat as per the sale agreement entered between them with a direction to hand over the possession with compensation of Rs.5,00,000/- and Rs.2,95,000/- as damages for the delay in handing over the flat along



with costs of the complaint. The petitioner/builder though appeared through a counsel, failed to file any written version within the mandatory period prescribed under the Act and hence, he was set *ex parte* on 01.09.2021 for non filing of written version. The first respondent filed proof affidavit and marked the documents as Exs.A1 to A4 before the State Commission. The State Commission has considered the complaint preferred by the first respondent as to whether there is any deficiency in service and unfair trade practice on part of the petitioner/builder as alleged by him and if so, what relief he is entitled to. Upon hearing the arguments and considering the documents, the State Commission in C.C.No.63 of 2019 *vide* order dated 03.01.2022 has allowed the complaint in the following termsG:

“7. Heard the Counsel for the complainant and perused the documents submitted on behalf of the complainant. It is seen from the documents that the complainant had. booked a flat with the opposite party and had entered into a Construction Agreement dt14.10.2011 by which the opposite party had promised to handover the possession of the flat before July 2013. Vide letter dt. 07.01.2019 the complainant had stated that he had paid Rs.31,26,961/- to the opposite party towards purchase of the flat but the opposite party failed and neglected to handover the flat though they promised to hand over the same before July 2013. The opposite



WEB COPY



WP No. 2160 of 2024

party had also issued receipts for the payments made by the complainant marked as Ex.A2. Thus, we are of the view that the opposite party had admitted the Payment of Rs.31,26,961/- towards the total construction cost of the flat allotted to the complainant. Further the Sale Deed executed for the undivided share of the land shows that an extent of 283 sq. ft. was sold proportionate to the built-up area to be purchased by the complainant. In such circumstance, the opposite party was bound to handover the possession of the flat as per the terms found in the Construction Agreement i.e. July 2013. As the same was not handed over till the date of filing of the complaint we are of the view that the opposite party had committed clear deficiency in service in not handing over possession as promised. Thus we answer the point No.1 in favour of the complainant the opposite party had committed deficiency in service and unfair trade practice in illegally retaining the amount received from the complainant and failing to handover the flat as promised to the complainant.

.....

In the result, this complaint is partly allowed as follows:-

- a) The opposite party shall hand over the possession of the flat within six weeks from the date of receipt of the copy of this order or the opposite party shall refund a sum of Rs.31,26,961 (Rupees Thirty one lakhs twenty six thousand nine hundred and sixty one only) with 18% interest from the date of complaint till realization (option of the complainant);*
- b) Compensation of Rs.2,00,000/- (Rupees Two lakhs only) for*



WEB COPY



WP No. 2160 of 2024

the mental agony ad hardship and

c) Cost of Rs.10,000/- (Rupees Ten thousand only) with election expenses.”

7. It is seen from the records that the State Commission has dispatched free certified copy of the aforesaid order by post on 23.08.2022. The first respondent has also addressed a letter dated 12.04.2022 to the petitioner mentioning about the order passed by the State Commission in C.C.No.63 of 2019 dated 03.01.2022. Thereafter, the first respondent has filed a execution application in E.A.No.31 of 2022 in C.C.No.63 of 2019 and notice was issued by the State Commission to the petitioner on 23.08.2022 and the case was posted on 23.09.2022. Aggrieved over the order passed in C.C.No.63 of 2019, the petitioner has preferred a First Appeal before the National Commission with a delay of 103 days in filing the same and therefore, he filed an interim application in I.A.No.8897 of 2023 in First Appeal No.5 of 2023 for condonation of delay. The National Commission *vide* order dated 10.10.2023, dismissed I.A.No.8897 of 2023 in the following terms:

“5. We have carefully gone through the reasons for



WEB COPY



WP No. 2160 of 2024

delay/grounds for condonation mentioned in I.A.No.8897 of 2023 as well as those adduced during the hearing. Under relevant provisions of Consumer Protection Act/Rules/Regulations, the first appeal has to be filed within 30 days from the date of receipt of certified copy of the order.

6. *In view of the foregoing, we find that sufficient and good grounds have not been made out by the appellant in the instant case for condonation of delay. Accordingly, I.A.No.8897 of 2023 is dismissed. Consequently, First Appeal is also dismissed being barred by limitation."*

8. Aggrieved by the aforesaid order, the present writ petition has been filed.

9. It is relevant to extract Sections 2(g) & (m) and 19 of the Consumer Protection Act, 1986, which reads as follows:

"2. Definitions

(g) **"deficiency"** means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

(m) **"person"** includes-

(i) a firm whether registered or not;



WEB COPY



WP No. 2160 of 2024

- (ii) a Hindu undivided family;
- (iii) a co-operative society;
- (iv) every other association of persons whether registered under the Societies Registration Act, 1860 (22 of 1860) or not;

19. Appeals

Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

PROVIDED that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.”

10. It is contended by the petitioner that there is no consumer or service provider relationship between him and the first respondent. In this regard, the State Commission has found in paragraph no.7 that there is a deficiency of service by the petitioner herein and have rightly considered the promise of service by the petitioner towards handing over of the said flat within the stipulated period.

11. It is pertinent to note that the petitioner fails to comply with the

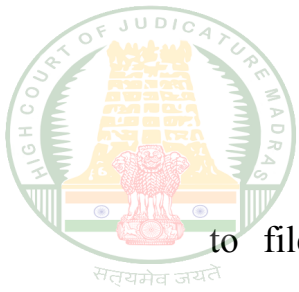


WP No. 2160 of 2024

WEB COPY

conditions stipulated in the sale deed and the agreement entered into between them and that hits the deficiency of service from the side of the petitioner as per Section 2(g) of the Consumer Protection Act, 1986. It is also to be noted that the petitioner is one of the Directors of the third respondent/company and he is the authorized signatory. In such circumstances, the decision made by the third respondent/company herein is deemed to be made by the petitioner.

12. It is to be noted that the legal principles laid down by the Hon'ble Constitution Bench of the Hon'ble Supreme Court in the judgment reported in *(2020) 5 SCC 757, New India Assurance Company Limited*, wherein, it has been held that the limitation period provided in the statute, mandatorily cannot be extended beyond the prescribed period of 45 days *i.e.* period of 30 days along with discretionary extension of time up to 15 days. The order passed by the State Commission was made ready on 16.03.2022 and the same was intimated to the petitioner by the first respondent on 12.04.2022 through registered post. Therefore, even after receiving the intimation from the first respondent, the petitioner has neglected and failed

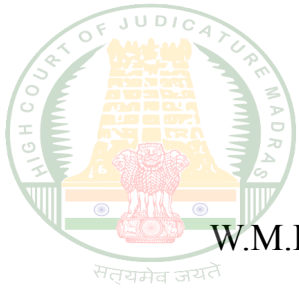


WP No. 2160 of 2024

to file an appeal leading to delay and crossing of limitation period prescribed in the statute.

13. It is seen from the records that non-compliance of the order passed by the State Commission, the first respondent was constrained to file a execution application and notice was sent on 13.09.2022. Despite the same, the petitioner did not appear in the execution application and thereafter, the State Commission has issued bailable warrant dated 20.12.2022 on the petitioner. We are of the view that the first respondent had already struggled for more than 13 years for the act of the petitioner and now he filed this writ petition with an intention to evade the execution proceedings pending before the State Commission. It is also to be noted that the National Commission had dismissed the condone delay application in I.A.No.8897 of 2023, since the petitioner has not shown any sufficient cause for filing the appeal with an inordinate delay of 103 days. The first respondent is the *bona fide* purchaser of the petitioner. There is no merit in this writ petition and the same is liable to be dismissed.

In the result, this writ petition is dismissed. No costs. Connected



WP No. 2160 of 2024

W.M.Ps. are closed.

WEB COPY

(J.N.B., J.)(M.J.R., J.)
29-07-2025

nsd
Index: Yes/No
Speaking/Non-speaking order
Internet: Yes
Neutral Citation: Yes/No



WP No. 2160 of 2024

WEB COPY

To

1.The Registrar,
National Consumer Disputes Redressal Commission,
New Delhi.

2.The Registrar,
State Consumer Disputes Redressal Commission,
Tamil Nadu.



WEB COPY



WP No. 2160 of 2024

**J.NISHA BANU J.
AND
M.JOTHIRAMAN J.**

nsd

WP No. 2160 of 2024

29-07-2025