

France B. Martins and Another

Vs

Mafalda Maria Teresa Rodrigues (Mrs)

Civil Appeal No. 7593 of 1995

(S. Saghir Ahmed, R. P. Sethi JJ)

24.08.1999

JUDGMENT

SETHI, J. –

1. The appellants, promoters/developers of Perpetual Apartments, agreed to sell a flat in the name of the minor daughter of the respondent. According to the agreement between the parties, the price of the flat being Rs. 2,10,000 was to be paid on or before September 1985. The possession of the flat is stated to have been delivered to the respondent in September 1985 on payment of the whole of the agreed amount. Despite various requests made, the appellant did not execute the sale deed on false pretexts. In the absence of the sale deed, the respondent-complainant could not efficaciously enjoy the property for which she is stated to have paid the price. It was submitted that as the construction of the flat was sub-standard, the respondent-complainant had to incur an expense of Rs. 26,000 for immediate repairs. Her petition filed on 19-6-1992 was dismissed by the Consumer Disputes Redressal Forum, Goa (hereinafter referred to as "the District Forum") on the ground of limitation vide order dated 19-10-1992. The appeal preferred by the respondent was accepted by the Goa State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") and the matter was remitted to the District Forum permitting the respondent to amend her complaint. The District Forum again, vide its order dated 31-3-1993, dismissed the complaint as barred by time. The respondent filed an appeal which was allowed by the State Commission with a direction to the appellants for specific performance of the agreement. The revision filed by the appellant before the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as "the National Commission") was dismissed vide impugned order dated 31-1-1994.

2. Learned counsel appearing for the appellants has vehemently argued that as the complaint filed by the respondent was barred by time, the State Commission was not justified in issuing the directions which were confirmed by the National Commission. It is contended that before insertion of Section 24-A in the Consumer Protection Act (hereinafter referred to as "the Act"), the period of limitation for preferring a claim was such period as is prescribed under the Limitation Act and as according to him the complaint was filed by the respondent after seven years, the same deserved dismissal.

3. The argument, though attractive on the face of it, has no substance when examined in depth. Admittedly, no period of limitation had been prescribed in the Act before insertion of Section 24-A vide amendment made w.e.f. 18-6-1993. Section 24-A of the Act, for the first time, prescribed that the District Forum, the State Commission or the National Commission shall not admit a complaint unless the same was filed within two years from the date on which the cause of action arose. Sub-section (2) of Section 24-A authorises the Commission to entertain a complaint even after the period

of limitation on the existence of sufficient cause for not filing the complaint within the statutory period by recording its reasons for condoning the delay. It is conceded before us that the provisions of the Limitation Act, 1963 have not been specifically made applicable to the proceedings under the Act. The Limitation Act does not extinguish a right but only bars the remedy after a prescribed period of limitation. Section 2(j) of the Limitation Act defines the "period of limitation" to mean the period of limitation prescribed for any suit, appeal or application by the Schedule attached to the Limitation Act and "prescribed period" means the period of limitation computed in accordance with the provisions of the Act. It is not the case of the appellants that the complaint filed by the respondent was either a suit or an appeal or an application within the meaning of the provisions of the Limitation Act. When the legislature, in its wisdom, thought it appropriate not to prescribe the period of limitation for proceedings under the Act, the courts cannot apply the provisions by implication. It has to be kept in mind that the Act was made for better protection of interests of consumers and to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and matters connected therewith. The Act has been enacted to promote and protect the rights of consumers such as :

- "2. (a) the right to be protected against marketing of goods which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to variety of goods at competitive prices;
- (d) the right to be heard and to be assured that consumers' interest will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practice or unscrupulous exploitation of consumers; and
- (f) right to consumer education."

The addition of Section 24-A in the Act reflects the mind of the legislature that they had initially not intended to prescribe any period of limitation for filing the complaints under the Act.

4. The reliance of the learned counsel for the appellants on *New India Assurance Co. Ltd. v. G. N. Sainani* ((1997) 6 SCC 383 : JT (1997) 6 SC 211) also appears to be misplaced inasmuch as this Court in that case had only referred to the practice of the Consumer Commissions of applying the provisions of the Limitation Act. It is important to note that this Court did not approve the application of the Limitation Act to the complaints under the Act but in the circumstances of the case found that even on assumption of the applicability of the period prescribed for a suit relating to similar relief as preferred under the Act, the claim was barred by limitation. This Court held : (SCC p. 388, para 8)

"8. Before insertion of Section 24-A in the Act with effect from June 18, 1993 the Act did not prescribe any period of limitation for filing a complaint. It was, however, not disputed that early to this the Consumer Commissions have been applying the Limitation Act, 1963 to find out if a complaint was barred by limitation or not. Since at the time when the complaint in the present case was filed Section 24-A was not

there, we, therefore, fall back from the provisions of the Limitation Act. Article 44 of the Schedule to the Limitation Act, in relevant part, is as under :

# ----- Description of suit Period of Time from  
which period limitation begins to run ----- 44.  
(b) On a policy of Three The date of the occurrence insurance when the sum years causing the loss,  
or where insured is payable after the claim on the policy is proof of the loss has denied, either partly  
or been given to or received wholly, the date of such by the insurers. denial." -----  
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5. We are, however, clear that prior to its amendment, the Act had not prescribed any period of limitation for filing the complaints by the consumers.

6. Assuming, but without holding, that the provisions of the Limitation Act were applicable, we are of the opinion that the appellants are not justified in urging that the claim preferred by the respondent-complainant was barred by time. It is true that the agreement was executed somewhere in 1983 and the possession of the premises delivered to the respondent-complainant in 1985. It is also evident that at no point of time the appellants denied their liability to execute the sale deed in favour of the respondent. No period for specific performance of the agreement had been prescribed by the parties. The record produced before the authorities under the Act reveals that the appellant had up to 30-8-1991, been acknowledging liability to deliver the legal possession of the flat to the respondent. Vide a notice sent to the respondent by the appellants through their counsel on 30-8-1991 they had admitted that the respondent had paid a sum of Rs. 2,00,000 and was liable to pay a further sum of Rs. 20,000 which the respondent-complainant disputed. The complainant was intimidated :

"Notice is therefore given to you requiring you to pay the said balance sum of Rs. 20,000 within 15 days from the date and take legal possession of the flat failing which our client shall be at liberty to charge you interest at the balance sum payable to him at the rate of 18% per annum from the date of the last payment."

The respondent-complainant could, at worst, assume on 30-8-1991 that the appellants were not interested in the specific performance of the contract between the parties. Even if the period is computed from that date, the complaint was filed well within time in terms of Article 54 of the Schedule to the Limitation Act.

7. There is no substance in the submission of the appellants that as the respondent had allegedly not paid the whole amount, she was not entitled to the directions as were issued by the State Commission. The respondent had categorically stated in para 5 of her complaint that the consideration amount had been paid which was not denied by the respondent. They had only stated that a sum of Rs. 20,000 was still recoverable from her regarding which she had preferred the claim of compensation for the repairs done to the flat as it was found to be constructed of sub-standard material. The findings of fact arrived at by the State Commission do not require any interference. The National Commission was also justified in holding that there was no error of jurisdiction or material irregularity pertaining to the jurisdiction in the order of the State Commission requiring any interference.

8. There is, therefore, no merit in this appeal which is accordingly dismissed but under the circumstances without any order as to costs.