SUPREME COURT OF INDIA

Messrs Bhandari Construction Company

Vs.

Narayan Gopal Upadhye

(B.P.Singh and P.K.Balasubramanyan,JJ.,)

20.02.2007

JUDGMENT

P.K.Balasubramanyan, J.

1. Leave granted.

2. This appeal challenges the decision of the National Consumer Disputes Redressal Commission

3. The appellant is a construction company. The respondent sought to purchase an office room in the third floor of a building being constructed by the appellant. The parties agreed to sell and purchase. According to the company the purchase price was fixed at Rs.7, 75, 000/-. Documentation, registration and other expenses were to be borne by the respondent Rs.5, 00, 000/- was paid by cheque. The balance due, was Rs. 3, 41, 190/-. The respondent had not paid the said sum. The sale transaction was, therefore, not complete. The room was not put in the possession of the respondent. The terms of the transaction were reduced to writing by an agreement dated 27.7.1997.

4. The respondent approached the District Consumer Redressal Forum with a complaint. His case as per his amended complaint was as follows:

> "On 4.7.1997 the company agreed to sell a room having an area of 260 sq.ft. for a price of Rs.9, 00, 110/-. The amount was paid in a lump. Receipt for Rs.9, 00, 110/- was issued. The company issued an allotment letter dated 22.7.1997. On 31.7.1997 the agreement was executed. In spite of repeated demands after completion of the construction, the company did not put him in possession. The company was demanding extra amounts. It avoided handing over of possession. It issued a notice intending to terminate the agreement. Since possession was not given and the company attempted to sell the premises to someone else, he suffered losses which were shown as amounting to Rs.4, 84, 000. He was, therefore, entitled to recover a sum of Rs.4, 84, 000/- as compensation. He was entitled to an order restraining the company from transferring the office room bearing No.309, to any other person. The company was liable to be directed not to create any obstruction in his taking

possession of office room No.309. The company was to be directed to remove the lock it had put at the door of the room."

5. It is seen that on 4.7.1997 the respondent handedover two cheques bearing No.299667 and 299678 to the company for a total sum of Rs.9, 00, 000/-. He paid a sum of Rs.110/- in cash. He obtained a receipt. Cheque No.299667 was for Rs.7, 50, 000/- and cheque No.299668 was for Rs.1, 50, 000/-. The parties agree that these two cheques were not encashed, but were returned to the respondent. According to the company, the respondent agreed to destroy the receipt for Rs.9, 00, 110/- issued in that behalf, by the company. The case of the company is that the cheques were returned because the purchase price was something less than Rs.9, 00, 000/- and it was found to be only Rs.7, 75, 000/-. In view of this, the respondent on 8.7.1997, issued a fresh cheque to the company, bearing No.299669, for a sum of Rs.5, 00, 000/-. That cheque was encashed by the company. The parties reduced the transaction into writing. As per that agreement, the payment of Rs.5, 00, 000/- by cheque dated 8.7.1997 and its receipt was acknowledged. A sum of Rs.1, 25, 000/- was to be paid by 15.8.1997. Another sum of Rs.1, 25, 000/- was to be paid by 19.9.1997. Rs.25, 000/- was to be paid at the time of transfer of possession. A sum of Rs.150/- per sq. ft. by way of deposit for meeting the maintenance charges, was also to be paid. The payment by the purchaser was to be the essence of the contract. The total purchase price was shown in the agreement as Rs.7, 75, 000/-.

6. Before the District Forum, the company denied the case of the respondent and set up in defence the written agreement between the parties. It pleaded that in spite of being called upon to do so, the respondent had not paid the balance amount due. The company, therefore, terminated the agreement. The respondent was not entitled to any relief. The sum of Rs.5, 00, 000/- received by cheque had been returned to the respondent and the cheque issued in that behalf was received by him.

7. In his evidence before the District Forum, the respondent made a departure from the complaint regarding consideration. He admitted that the sum of Rs.9, 00, 000/- paid by way of two cheques by him on 4.7.1997, was returned to him. He had agreed to destroy the receipt. He said that the cheques were returned because the Director of the company wanted a portion of the consideration in cash. He wanted Rs.5, 00, 000/- by way of cheque and Rs.4, 00, 000/- by way of cash. The respondent handed over a cheque for Rs.5, 00, 000/-, as agreed on all hands. The same day, he withdrew from the bank a sum of Rs.4, 00, 000/- by cash and handed it over to one Thanekar who was an agent of the company. But the respondent produced no receipt for payment of this amount, though such a payment was denied by the company.

8. Before the District Forum, the respondent gave up his claim for compensation and pressed only the relief of getting possession of the building on the basis that he had paid the entire consideration. Of course, he tried to say that he had already been put in possession and his possession was being interfered with by the company. The District Forum took the view that it would be proper to leave the respondent to approach the Civil Court for relief in view of the nature of the dispute. The complaint was, therefore, dismissed. The respondent went up

in appeal to the State Commission. The State Commission remanded the complaint to the District Forum to decide the dispute. It took the view that it was not necessary or proper to refer the complainant to a suit. Thus, the matter came back to the District Forum.

9. Before the District Forum, further evidence was taken. The complainant and the representative of the company were cross-examined on the affidavits filed by them. The District Forum found that the respondent had not established that he had paid the entire consideration of Rs.7, 75, 000/-. According to the District Forum, the written agreement governed the relationship between the parties. There was also no evidence to prove the payment of Rs.4, 00, 000/- in cash as claimed by the respondent. The payment of Rs.5, 00, 000/- out of the purchase price of Rs.7, 75, 000/- by way of cheque alone was established. Though the same had been returned to the respondent by way of a cheque, he had not encashed it. The District Forum therefore passed an order giving liberty to the respondent to pay a sum of Rs.3, 40, 890/- along with interest at 15% per annum from 3.9.1999 till the date of payment and to obtain possession of the office premises in question within a period of two months from the date of receipt of that judgment and directed the company to handover vacant possession of the premises within a period of two months from the date of receipt of the amount. But alternatively, it gave liberty to the respondent to demand from the company the refund of Rs.5, 00, 000/- along with interest at 15% per annum from 8.7.1997 till the date of realisation by issue of a notice in that behalf to the company. On receipt of such a notice the amount was to be paid by the company within two months of its receipt.

10. The respondent, feeling aggrieved, appealed to the State Commission. The company, it is said filed a belated appeal but the delay was refused to be condoned. Therefore, the decision of the District Forum as against the company became final.

11. The State Commission proceeded to accept an affidavit filed by an employee of the bank on which a self cheque was drawn by the respondent. The allegation in that affidavit was that a self cheque for Rs.4, 00, 000/- was encashed by the respondent and the amount was handed over to Thanekar, an agent of the company. That allegation was accepted. No opportunity was provided to the company to cross-examine the employee. The State Commission modified the decision of the District Forum. It directed the company to handover the premises to the respondent on the basis that the entire consideration had been paid. It also ordered that the company had to pay interest at 6 % per annum on the sum of Rs.9, 00, 110/-. The order of the State Commission is seen to be cursory. It had not even referred to the relevant pleadings and the evidence, before interfering with the order of the District Forum. It is difficult to understand its reasoning.

12. The company filed a revision before the National Commission. The company pointed out the variance between the case set up by the respondent in his complaint and in his evidence. It pointed out that the terms of the transaction having been reduced to writing, it was not open to the respondent to lead evidence in variation thereof. It also pointed out that the evidence attempted to be given was also at variance with the case set up. It pointed out that there was no receipt evidencing the alleged payment of Rs.4, 00, 000/- to the company. The payment was not proved. All the other payments had been acknowledged by receipts. The

State Forum was, therefore, in error in interfering with the order of the District Forum. It was also submitted that during the pendency of the proceedings, the premises had been transferred to some other person and hence the company should be relieved of its obligation to deliver the premises. The respondent reiterated his contention that he had paid a sum of Rs.9, 00, 000/- to the company. He also appears to have made some general submissions on the tendency of builders to receive part of the sale price in cash.

13. The National Commission brushed aside the contentions of the company. It did not place due emphasis on the case set up by the respondent in his complaint and the total departure from that case made in his evidence. It ignored the fact that the agreement between the parties having been reduced to writing there was a bar against leading evidence contradicting its terms. Decrying what it termed the attitude of builders in demanding part of the sale price in cash, the National Commission dismissed the revision. This is what is challenged in this appeal by the company.

14. We find that the respondent had totally given up the case set up by him in his complaint while giving evidence. The transaction on 4.7.1997 as set up by the respondent was given up by him. He also admitted that the two cheques handed over for Rs.9, 00, 000/- that day, were not encashed by the appellant. He admitted that they were returned. He further admitted that the receipt for Rs.9, 00, 000/- issued to him was in respect of those two returned cheques. He also admitted that he had thereafter issued a cheque for Rs.5, 00, 000/-. He agreed that a sum of Rs.5, 00, 000/- by way of a cheque was returned to him by the company. But he had not encashed it. He admitted the agreement dated 27.7.1997 and the terms thereof and the factum of its registration on 31.7.1997. He also admitted that he had no receipt to show the payment of Rs.4, 00, 000/- in cash.

15. When the terms of the transaction are reduced to writing, it is impossible to lead evidence to contradict its terms in view of Section 91 of the Indian Evidence Act, 1872. There is no case that any of the provisos to Section 92 of the Act are attracted in this case. Why the case that was sought to be spoken to by the respondent was not set up by him in the complaint was not explained. The case set up in evidence was completely at variance with the case in the complaint. There was no evidence to show that the consideration was to be Rs.9, 00, 000/-, especially, in the light of the recitals in the registered agreement. There was also no document to show the payment of Rs.4, 00, 000/- by way of cash. Hence, this was no evidence to show that the balance amount due under the agreement after the admitted payment of Rs.5, 00, 000/- was paid. The affidavit produced before the State Forum and the evidence of the colleague of the respondent is clearly inadmissible and insufficient to prove any such payment. Thus, the case set up by the respondent in his evidence was not established. It is in that situation that the District Forum taking note of the payment of Rs.5, 00, 000/- and the failure of the respondent to encash the cheque for Rs.5, 00, 000/- that was returned by the company, ordered the complainant to pay the balance amount due under the transaction as evidenced by the written instrument and take delivery of the premises in question and in the alternative gave him the option to take back the sum of Rs.5, 00, 000/- with interest. Neither the State Commission, nor the National Commission has given any sustainable reason for differing from the conclusion of the District Forum. A mere suspicion

that builders in the country are prone to take a part of the sale amount in cash, is no ground to accept the story of payment of Rs.4, 00, 000/- especially when such a payment had not even been set up in the complaint before the District Forum. Not only that, there was no independent evidence to support the payment of such a sum of Rs.4, 00, 000/- except the ipse dixit of the respondent. The affidavit of the bank employee filed in the State Commission cannot certainly be accepted as evidence of such a payment. Payment of such a sum had clearly been denied by the company. The respondent had, therefore, to prove such a payment. His case that the purchase price was Rs.9, 00, 000/-, itself stands discredited by the recitals in the agreement dated 27.7.1997 in which the purchase price was recited as Rs.7, 75, 000/-. Not only that the respondent did not have a receipt for evidencing the payment of Rs.4, 00, 000/- and if the amount was paid on 5.7.1997 or 8.7.1997, as claimed by him, he would certainly have ensured that the payment was acknowledged in the agreement for sale executed on 27.7.1997. The agreement for sale actually speaks of his obligation to pay the balance to make up Rs.7, 75, 000/- after acknowledging receipt of Rs.5, 00, 000/-. The respondent is not a layman. He is a practising advocate. According to him, he specialises in documentation. He cannot, therefore, plead ignorance about the existence of the recital in the agreement. He cannot plead ignorance of its implications.

16. We were taken through the entire material. The respondent who appeared in person, brought to our notice the evidence in extenso. At the end of it all, we find that we cannot agree either with the State Commission or with the National Commission. Actually, the District Forum had been indulgent to the respondent in giving him the relief it did. Suffice it to say, we find it impossible to sustain the decision of the National Commission.

17. Hence, we allow this appeal. We set aside the decision of the National Commission and that of the State Commission. We restore the decision of the District Forum. Normally, we would have ordered the cost of the appeal to the company, but since the respondent appeared in-person, we refrain from ordering it. The parties will bear their costs in this Court.