

SUPREME COURT OF INDIA

Vinod Kumar Thareja

Vs.

Alpha Construction & Ors.

C.A.No.1493 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

08.02.2011

ORDER

R.V. Raveendran,J.,

SLP(Civil)No.7283/2010

1. Leave granted.

2. The appellant, the owner of a plot measuring about 11000 sq.ft. situated at Bhopal, entered into a Joint Venture Agreement dated 2.7.2004 with the first respondent for development of the said plot by construction and sale of nine duplex flats. Under the said agreement, the appellant was to provide his land to the first respondent for construction of flats; the first respondent was responsible for the construction and sale of the duplex flats; and out of the sale proceeds realized by sale of the flats, the appellant was entitled to 45% and the first respondent was entitled to the balance of 55%. The first respondent was authorized to enter into agreements of sale with prospective purchasers of flats even at the stage of construction and receive the price either in a lump sum or in instalments. The first respondent was solely responsible for completion of construction and the quality of construction. According to the appellant, his obligation under the joint venture agreement was only to contribute the land and in consideration thereof receive 45% of sale proceeds.

3. In pursuance of it, the appellant and first respondent entered into an agreement dated 18.9.2004 with respondents 2 and 3, who were interested in purchasing one of the nine duplex flats to be constructed in the property. The said agreement clearly stated that the first respondent was to construct the duplex flat and receive the consideration from respondents 2 and 3. In pursuance of it, the first respondent's proprietor (Rajbir Singh), as Attorney holder of the appellant, executed a sale deed dated 14.1.2005 in favour of respondents 2 & 3, conveying an extent of 968 sq.ft., of land with a skeletal structure thereon for Rs.6 lakhs.

4. Respondents 2 and 3 filed a complaint dated 22.6.2006 before the District Consumer Redressal Forum, Bhopal ('District Forum' for short) against the first respondent alleging

deficiency in service. In the said complaint they alleged that they had paid Rs.11,80,000/- to the first respondent out of a total consideration of Rs.13,50,000/- for the purchase of a duplex flat; that on 25.6.2005, the Municipal Corporation demolished the structure constructed by the first respondent; and that the first respondent committed an unfair trade practice by not disclosing the true facts and by not delivering the constructed flat. The complainants also alleged that thereafter the first respondent failed to construct the flat and was guilty of gross negligence and deficiency in service. The complainants consequently demanded from the first respondent, refund of the sum of Rs.11,80,000/- paid by them with interest of Rs.3,35,000/-, compensation of Rs.2,00,000/- and punitive damages of Rs.2,00,000/- in all Rs.19,15,000/-.

5. The said petition was contested by the first respondent who was the sole respondent. The appellant was not impleaded as a party before the District Forum, by the complainants. Even the first respondent did not make any application before the District Forum for impleading the appellant as a co-respondent. Nor did he contend that the appellant should be made liable for payment of any amount that may be directed by the commission. He merely contended that the complainants ought to have made the appellant also a party and in his absence the complaint was liable to be dismissed.

6. The District Forum allowed the complaint by order dated 11.1.2007 and directed the first respondent to refund the sum of Rs.11,80,000/- paid by the respondents 2 and 3 to the first respondent, with interest at 18% per annum from the date of deposit till date of payment.

7. Feeling aggrieved, the first respondent filed an appeal before the Madhya Pradesh Consumer Dispute Redressal Commission ('the State Commission' for short) challenging the order of the district forum. In the said appeal, the first respondent made an application for impleading the appellant herein as the third respondent. That application was allowed on 28.4.2008 and the State Commission impleaded the appellant as third respondent in the appeal and directed the appellant to file its response to the complaint filed by the complainants under section 12 of the Act.

8. The appellant therefore filed a counter to the main complaint before the State Commission pointing out that neither in the complaint by the complainant nor in the appeal by the first respondent anything adverse has been pleaded against them nor any claim made against him; and therefore, the question of fastening any liability against him did not arise. The appellant also filed objections to the appeal by contending that he was not a necessary party to the appeal. He pointed out that the complainants had not alleged or proved any wrong doing on his part or any deficiency in service on his part, nor made any claim against him and therefore he could not be impleaded as a party in the appeal.

9. The State Commission allowed the appeal of the first respondent in part by a brief order dated 19.9.2008. It held that as the flats were constructed by the first respondent in the land belonging to the appellant in pursuance of a joint venture agreement between them and as the agreement for sale in favour of respondents 2 and 3 had been executed jointly by the appellant and first respondent and as the subsequent sale deed in favour of respondents 2 and

3 was executed by the proprietor of first respondent as attorney holder of the appellant, and as obtaining of building permission for construction was the joint responsibility of the appellant and the first respondent, the appellant herein was also responsible to compensate the complainants for any loss suffered by them on account of the demolition by the Municipal Corporation. As a consequence, the State Commission, while upholding the direction of the District Forum for refund of Rs.11,80,000/- paid by the complainants, made the following modifications :

“(a) Respondents 2 and 3 shall re-convey the property in favour of appellant;

(b) The interest shall be reduced to 9% per annum; and

(c) The first respondent as also the appellant were liable for the amount payable to respondents 2 and 3.”

10. Feeling aggrieved, the appellant filed a revision before the National Consumer Dispute Redressal Commission ('National Commission' for short) which dismissed the revision by the impugned order with the following observations :

"It is not in dispute that the owner of the property as well as the builder had entered into joint agreement to build the flats and though the responsibility of visiting the office of the corporation frequently to obtain sanctioning the plan/building licence. Commencement certificate and completion certificate etc., was delegated to the builder. The building permission is obtained in the name of owner and builder. Therefore, the builder and owner both are jointly responsible for all commission and omission. Even while collecting money from the consumers/complainants, an agreement was signed by the owner also. Further the Municipal Corporation had demolished the building because of dispute in the title of the property. Therefore, the liability of the petitioner, who claims to be the owner of the property of which title is unclear and still had entered into an agreement and sold the plot to the gullible consumers is proved and the deficiency is writ large."

(Emphasis supplied)

The said order is challenged by the appellant in this appeal by special leave.

11. On the contentions urged, the following question arises for consideration in this appeal : Whether a respondent against whom an order for payment has been made in a complaint under the Consumer Protection Act, 1986, can in an appeal filed by him, seek impleadment of a third party by contending that such third party is also liable either partly or wholly, even if the complainant has not sought any relief against such third party?

12. Respondents 2 and 3 filed the complaint against the first respondent as they had made the payments to the first respondent and first respondent had agreed to construct and deliver

them the duplex flat and that the flat constructed by the first respondent was demolished by the municipal authorities. The complainants had no grievance against the appellant nor did they seek any relief against the appellant. The first respondent herein who was the sole respondent before the District Forum did not seek impleadment of the appellant as a respondent in the complaint before the District Forum. The District Forum allowed the complaint and held that the first respondent, as the service provider, was guilty of deficiency of service and directed the first respondent to pay to the complainants, a sum of Rs.11,80,000/- with interest. That order was not challenged by the complainants (respondents 2 and 3). The only question that can, therefore, be considered in an appeal by the first respondent was whether it was liable to pay any amount to respondents 2 and 3 and, if so the extent thereof.

13. The scheme of the Act does not permit a service provider, who has been made liable to refund the amount paid towards price under the order of the District Forum, to file an appeal and pass on a part of the liability to some third party, on the ground that the contract between them enabled him to do so. In an appeal by a respondent in a complaint, aggrieved by the order made in favour of the complainant, the only issue is whether the liability of the respondent should be upheld, modified or rejected. The question whether anyone else should be made liable along with the respondent in the complaint, does not arise. The appeal by a respondent in a complaint has to be dismissed, if the respondent is liable for the claim. If he has been wrongly made liable, the appeal will be allowed. The issue in the appeal and the relief that can be granted in the appeal can be only qua the complainant and not qua some third party. If a service provider who has been made liable to a complainant wants contribution from anyone else, on the ground that such third party had also contributed to the deficiency in service, it is for the service provider to take independent action against such third party, in respect of the liability. As the complainants neither impleaded nor sought any relief against the appellant, neither the State Commission nor the National Commission could make the appellant liable along with the first respondent.

14. The first respondent contended that when the appellant was impleaded as the third respondent in its appeal, the appellant did not protest, nor challenged the order of the State Commission impleading him as a party, but filed objections to the complaint before the State Commission on merits and participated in the appeal proceedings and therefore he was estopped from challenging his impleadment. Being impleaded as a party in an appeal is different from being made liable by an order in the appeal. A person may not have any grievance if he is merely impleaded as a party, but may have a grievance in regard to the impleading, if such impleading led to making him liable for any payment. When a non-party is impleaded as a respondent in an appeal, he can either challenge the impleadment itself or challenge his impleadment, while challenging the final decision in the appeal. The fact that the impleaded non-party filed objections to the complaint during the pendency of the appeal, on the specific direction of the State Commission, will not deny his right to challenge the impleadment.

15. This appeal is, therefore, allowed and the order of the National Commission affirming the order of the State Commission making the appellant liable jointly with first respondent is set aside. It is, however, made clear that :

“(i) if the first respondent has any claim or cause of action against the appellant, it is at liberty to seek redressal of its grievances against the appellant;

(ii) the order of the State Commission affirmed by the National Commission to the extent it reduces the interest from 18% to 9% per annum and requiring the respondents 2 and 3 herein to re-convey the flat to their vendor under the sale deed dated 14.1.2005 is not disturbed; and

(iii) respondents 2 and 3 may draw any amount deposited by the first respondent towards the amount due under the order of the District Forum as modified by the State Commission.”