

M/S Ambience Infrastructure Private ... vs Ambience Island Apartment Owners on 28 August, 2020

Bench: D.Y. Chandrachud, K.M. Joseph

CA 1213-15/2017

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos 1213-1215 of 2017

M/s Ambience Infrastructure Private Limited
(Now known as) Ambience Developers and
Infrastructure Pvt Ltd and Another

App

Versus

Ambience Island Apartment Owners and Others

Res

ORDER

1 These appeals are from an order of the National Consumer Disputes Redressal Commission dated 3 November 2015. The order of the NCDRC is in execution proceedings arising out of an original judgment and order dated 19 March 2014 in Consumer Case No 93 of 2004. By its order dated 19 March 2014, the NCDRC directed the appellants to pay 70% of the maintenance charges from November 2002 with interest at 9 % per annum within 90 days or else pay at an enhanced rate of 12 % per annum.

2 The order of the NCDRC was challenged before this Court in a civil appeal which was dismissed on 29 August 2014. An execution proceeding was initiated before the NCDRC which has resulted in an order dated 3 November 2015. The NCDRC has, by its order, come to the conclusion that under the original order the decretal amount would cover sixty-six persons and that the CA 1213-15/2017 charges.

3 The grievance of the appellants is that since the complaint before the NCDRC pertained only to the deficiency in service as regards the provision of lifts, the order of the NCDRC directing the payment of seventy per cent of the total maintenance amount (as opposed to seventy percent of the maintenance charges collected for lifts) is contrary to the tenor of the complaint and the original order.

4 A preliminary objection has been raised in the counter affidavit to the maintainability of the appeals.

5 Section 23 of the Consumer Protection Act 1986 provides as follows:

“23 Appeal.- Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub- clause (i) of clause (a) section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court 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:

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in prescribed manner fifty per cent of that amount or fifty thousand rupees, whichever is less.”

6 An appeal under Section 23 lies against an order which is passed by the NCDRC in exercise of its jurisdiction under Section 21(a)(i). Section 21(a)(i) provides as follows:

“21. Jurisdiction of the National Commission.- Subject to the other provisions of this Act, the National Commission shall have jurisdiction-

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(a) to entertain-

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore];

7 From the above provision, it is evident that an appeal under Section 23 is maintainable against an order which has been passed by the NCDRC on a complaint where the value of the goods or services and compensation, if any, claimed, exceeds the threshold which is prescribed. 8 In a recent judgment in Karnataka Housing Board vs K.A. Nagamani (2019) 6 SCC 424, this Court made a distinction between execution proceedings and original proceedings and held that the former are separate and independent. In our view, having regard to Section 23 of the Consumer Protection Act 1986, an appeal will not lie to this court against an order which has been passed in the course of execution proceedings. The appeals are hence dismissed as not being maintainable.

9 Ms Kamini Jaiswal, learned counsel appearing on behalf of the respondents has submitted that the objections which were raised on behalf of the appellants in the course of the execution proceedings before the NCDRC were without any merit having regard to the fact that the same objections to the

original order of the NCDRC were raised in the proceedings in review as well as in the civil appeal which was filed before and dismissed by this Court. Ms Jaiswal has submitted that since a review and the civil appeal against the original order have been dismissed, similar objections could not have been raised in the course of execution proceedings. CA 1213-15/2017 10 We have upheld the preliminary objection and have concluded that the appeals filed against the impugned order are not maintainable under the provisions of Section 23 of the Consumer Protection Act 1986. 11 We clarify that in view of the fact that the Court has upheld the preliminary objection, we have had no occasion to express any view on the merits of the grievance which has been raised in these appeals or for that matter in regard to the objections of the respondents thereto.

12 The civil appeals are accordingly dismissed. 13 Pending applications, if any, stand disposed of.

.....J. [Dr Dhananjaya Y Chandrachud]J.
[K M Joseph] New Delhi;

August 28, 2020

CKB

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ITEM NO.3

Court 4 (VC)

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos.1213-1215/2017

M/S AMBIENCE INFRASTRUCTURE PRIVATE

Appellant(s)

LIMITED (NOW KNOWN AS) AMBIENCE DEVELOPERS AND INFRASTRUCTURE PVT. LTD. & ANR.

VERSUS AMBIENCE ISLAND APARTMENT OWNERS & ORS. Respondent(s) (With appln.(s) for stay) Date : 28-08-2020 These matters were called on for hearing today. CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE K.M. JOSEPH For Appellant(s) Mr. Mukul Rohatgi, Sr. Adv.

Mr. P.K. Aggarwal, Adv.

Ms. Tannya Sharma, Adv.

Ms. Deepti Gupta, Advocate Mr. Gurmeet Sachdeva, Adv Mr. Arun K. Sinha, AOR For Respondent(s) Mr. Anup Jain, AOR Ms. Kamini Jaiswal, AOR Ms. Rani Mishra, Adv.

Ms. Aidity Pandey, Adv.

Mr. Abhimanue Shrestha, AOR M/s. Vaibhav And Dash Law Associates, AOR CA 1213-15/2017 UPON hearing the counsel the Court made the following O R D E R 1
The appeals are disposed of in terms of the signed order.

2 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
AR - cum - PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed Reportable Order is placed on the file)