

JITEN K. AJMERA & ANR.

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v.

M/S TEJAS CO-OPERATIVE HOUSING SOCIETY

(Civil Appeal No. 4628 of 2019)

MAY 6, 2019

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[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]

Code of Civil Procedure, 1908: Or XLI, r. 27 – Production of additional evidence at the appellate stage – Application by appellants for bringing additional evidence on record, along with the documents sought to be produced in the pending appeal – Rejected by the State Commission as also National Commission – On appeal, held: The documents came into existence after the appeal was filed before the State Commission – They are of relevance to establish that the appellants were not in a position to obtain the Occupancy Certificate from the Municipal Corporation until the unauthorized structures were removed – In the absence thereof, the appellants would not be in a position to substantiate their case that they were unable to obtain the Occupancy Certificate, and comply with the directions issued by the District Forum – State Commission erred in rejecting the application u/Or XLI, r. 27 by merely stating that the documents are “not necessary” – Said order is an unreasoned one – Thus, the order passed by the State Commission as also the order passed by the National Commission is set aside – Matter remitted to the State Commission to take the additional documents on record, and decide the appeal on merits.

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A. Andisamy Chettiar v. A. Subburaj Chettiar, (2015)
17 SCC 713 : [2015] 14 SCR 190 – referred to.

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Case Law Reference

[2015] 14 SCR 190

Referred to.

Para 3.2

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4628 of 2019.

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From the Judgment and Order dated 16.03.2018 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 175 of 2016.

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A P. N. Puri, Mrs. Reeta Dewan Puri, Abhishek Puri, J. S. Marahatta,
Advvs. for the Appellants.

Prasenjit Keswani, Raghvendra Pratap Singh, Ms. Devika Khanna,
Mrs. V. D. Khanna, Advvs. for the Respondent.

B The Judgment of the Court was delivered by

INDU MALHOTRA, J. Leave granted.

C 1. The present Civil Appeal has been filed to challenge the Order
dated 16.03.2018 passed in Revision Petition No. 175 of 2016 by the
National Consumer Disputes Redressal Commission (hereinafter referred
to as “the National Commission”). The Revision Petition was filed to
challenge the Interim Order dated 10.12.2015 passed by the State
Commission Consumer Disputes Redressal Commission, Mumbai
(hereinafter referred to as “the State Commission”) in First Appeal No.
85 of 2013. The Appellants herein had filed an Application under Order
D XLI Rule 27, CPC for permission to file additional documents, which
have come into existence after the filing of the Appeal before the State
Commission.

2. The background facts in which the present Civil Appeal has
been filed are briefly stated as under:

E 2.1. The Appellants are the sons of Late Smt. Mrudula K. Ajmera
who was the owner and in possession of a plot of land bearing
CTS No. 284/38, Military Road, Marol Village, Andheri
(East), Mumbai – 400059.

F The Late Smt. Mrudula K. Ajmera constructed a building
viz. Tejas Apartments comprising of Ground plus 7 Upper
Floors. The flats were sold to various purchasers on
ownership basis.

The flat owners formed the Respondent – Housing
Society *viz.* M/s Tejas Co-operative Housing Society.

G 2.2. The Respondent – Housing Society filed Consumer
Complaint No. 570 of 2008 before the District Consumer
Disputes Redressal Forum, Mumbai Sub-District.
It was alleged that the Appellants/Opposite Parties had failed
to supply service amenities to the members of the
Respondent – Housing Society, failed to obtain the

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Occupancy Certificate from the Municipal Corporation, and execute the Conveyance Deed in favour of the society. A

The District Forum partly allowed the Consumer Complaint *vide* Order dated 27.02.2013. It was declared that the Appellants had failed to supply the service amenities to the Respondent – Housing Society, and obtain the Occupancy Certificate from the Municipal Corporation, and execute the Conveyance Deed. B

The District Forum directed the Appellants to obtain the Occupancy Certificate for the building within 3 months from the date of judgment. If the Appellants failed to obtain the Occupancy Certificate within the period specified, they would be liable to pay Rs. 500/- per day to the society. C

The Appellants were further directed to execute the Conveyance Deed in favour of the Respondent – Housing Society within 6 months from the date of judgment; refund the amount of Rs. 1,80,600/- collected from the society members towards service amenities; refund the amount of Rs. 1,15,368/- incurred by the society members towards formation of the society; and refund the amount of Rs. 1,98,198/- paid by the society members towards water taxes. D E

- 2.3. Aggrieved by the aforesaid Order passed by the District Forum, the Appellants filed First Appeal No. 85 of 2013 before the State Consumer Disputes Redressal Commission, Maharashtra.

The said Appeal is presently pending before the State Commission. F

- 2.4. On 15.01.2014, the Appellants/Developers filed an Application under Order XLI Rule 27, CPC for leading additional evidence before the State Commission in the pending Appeal. G

The Appellants requested for permission to produce two documents which had come into existence after the filing of the Appeal i.e. (i) Letter dated 08.08.2013 from their Architect to the Executive Engineer, Municipal Corporation H

A of Greater Mumbai (“MCGM”) enclosing the plans of all the floors, and requested for issuance of the Occupancy Certificate; (ii) Reply by the MCGM dated 26.08.2013, wherein it was stated that as per the visit done, there was unauthorized enclosure of elevation features by occupants which was violative of the last approved plans dated 02.07.2001. The Appellants were directed to remove the unauthorized structures along with compliance of requisite conditions.

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C 2.5. The State Commission *vide* Interim Order dated 10.12.2015 held that these documents were not necessary, and rejected the Application.

2.6. Aggrieved by the aforesaid Interim Order dated 10.12.2015, the Appellants herein filed Revision Petition No. 175 of 2016 before the National Commission.

D The National Commission in para 11 of its Order dated 16.03.2018 held that it is an admitted fact that the additional documents sought to be produced by the Appellants did not exist while the matter was before the District Forum. The National Commission merely held that the additional information sought to be introduced does not satisfy the pre conditions under Section 107(1)(d) r.w. Rule 27 of Order XLI, CPC, and since the State Commission had held that the documents were not necessary, it did not call for any interference.

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F 2.7. Aggrieved by the Impugned Order dated 16.03.2018 passed by the National Commission, the Appellants have filed the present Appeal.

3. We have heard learned Counsel for both parties, and perused the pleadings on record.

G 3.1. We have perused the Application filed by the Appellants herein for bringing additional evidence on record, along with the documents sought to be produced in the pending Appeal before the State Commission. These documents have admittedly come into existence after the Appeal was filed before the State Commission. The Appellants therefore, could

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not have produced the said documents before the District Forum. A

3.2. Under Order XLI Rule 27, CPC a party can produce additional evidence at the appellate stage, if it establishes that notwithstanding the exercise of due diligence, such evidence was not within its knowledge, or could not even after the exercise of due diligence, be produced by it at the time when the decree appealed against was passed.¹ B

3.3. These documents are of relevance to establish that the Appellants are not in a position to obtain the Occupancy Certificate from the MCGM until the unauthorized structures, which are in violation of the approved plans, are removed. In the absence of these documents, the Appellants would not be in a position to substantiate their case that they are unable to obtain the Occupancy Certificate, and comply with the directions issued by the District Forum. C

4. The State Commission was in error by rejecting the Application filed by the Appellants under Order XLI Rule 27, CPC by merely stating that the documents are “not necessary”. The said Order is an unreasoned one. The State Commission must have taken a holistic view of the matter. D

5. The National Commission has by the Impugned Order dated 16.03.2018 affirmed the Interim Order passed by the State Commission. E

6. In light of the aforesaid discussion, the Interim Order dated 10.12.2015 passed by the State Commission is hereby set aside, as also the Impugned Order dated 16.03.2018 passed by the National Commission. F

The Civil Appeal is allowed. The matter is remitted to the State Commission to take the additional documents on record, and decide the Appeal on merits in accordance with law. The State Commission is further directed to decide the Appeal expeditiously since it is pending since 2013.

Ordered accordingly. G

Nidhi Jain

Appeal allowed.

¹ *A. Andisamy Chettiar v. A. Subburaj Chettiar*, (2015) 17 SCC 713.