

A COMMISSIONER, RAJASTHAN HOUSING BOARD
AND OTHERS

v.

HIRALAL CHANDA

B (Civil Appeal Nos 7651-7652 of 2021)

DECEMBER 11, 2021

[DR. DHANANJAYA Y CHANDRACHUD AND
A. S. BOPANNA, JJ.]

Consumer Protection Act, 1986: s.24-A – Appellant-Housing

- C *Board launched a scheme for allotment of house on hire purchase mode of payment – Respondent submitted the application on 23.2.1985 and deposited a registration amount of Rs.5000/- – On 3.9.1993, appellant issued reservation-cum-demand letter demanding seed money to be deposited in three instalments for the allotment of house under the scheme – Respondent alleged that the said letter was addressed at an earlier location which he had left while appellant stated that the said place was the one notified to it by respondent – On 15.4.1999, appellant issued letter requiring the production of a challan for the deposit of seed money – Respondent sought time for same – On 29.07.1999, respondent was again called upon to produce proof of deposit – Eventually on 29.05.2000, registration of respondent was cancelled on account of failure to deposit seed money – Respondent was also asked to comply with formalities to effectuate refund of Rs.5000/- – On 6.8.2009, Housing Board took policy decision to restore registration where same were cancelled due to administrative mistake of Board if application for restoration is filed within one year from the date of cancellation of registration – Eventually, respondent applied for restoration on 2.8.2010 which was followed by a notice of demand – Respondent filed consumer complaint complaining deficiency of service and challenging cancellation of allotment – District Forum held in favour of respondent and directed the appellant to allot the respondent a house within six months at the rate which was applicable on the date when it was allotted to the next junior applicant – State Commission and National Commission confirmed the decision of District Forum – Hence instant appeal – Held: s.24A of the Act 1986 provides the period of limitation for filing a complaint – A*
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period of two years has been provided for filing a complaint from the date on which the cause of action arose – In the present case, the cancellation took place on 29.5.2000 which was preceded by a letter of the respondent dated 3.5.1999 by which he had expressly stated that he would be making a deposit within one and a half months – Even after the cancellation, there was no challenge to the cancellation of the allotment – The cause of action became barred by time much prior to office order dated 6.8.2009 – The National Commission erred in holding that the cause of action arose on the issuance of office order dated 6.8.2009 because even on its plain terms, the policy decision would not revive the registration of the appellant which was cancelled due to his own default – District Forum failed to notice that the respondent had received both the letter dated 15.4.1999 as well as the letter of cancellation of 29.5.2000 – Moreover, letter dated 15.4.1999 contained a clear reference to the earlier letter of the Housing Board of 1993 – It would be far-fetched to assume that while the respondent had received several letters from the Housing Board, he had not received the letter demanding the seed money in the first place – In conclusion, besides the delay on the part of the respondent in espousing his rights to challenge the cancellation of the allotment, the case did not clearly fall within the ambit of the policy decision which was taken on 6.8.2009.

Disposing of the appeals, the Court

HELD: 1. No formal allotment was ever made to the respondent and upon the deposit of the initial amount towards registration, his name was registered under the Scheme. According to the appellant, a letter was addressed to the respondent on 3 September 1993 requiring the deposit of seed money or an advance in three installments under the Scheme. The respondent disputes the receipt of the letter and the District Forum primarily held in his favour on the ground that the appellant ought to have produced proof of receipt, which was not done. The important circumstance, which has a bearing on the case, however, is that thereafter, the appellant communicated to the respondent on 15 April 1999 requiring him to produce proof of deposit of the seed money in terms of the earlier letter of 3 September 1993. There was a clear reference to the earlier letter

- A dated 3 September 1993. The respondent is an advocate and this was a fact which would not miss the attention of a legally trained person. In his response, which was dated 3 May 1999, the respondent did not deny receipt of the earlier letter dated 3 September 1993. By his reply, the respondent sought a time of one and a half months to deposit the amount. The respondent, however, admittedly did not make any deposit of the amount which was required until eventually the registration was cancelled on 29 May 2000. The respondent was in receipt of the letter of cancellation which is admitted in terms of his letter dated 12 December 2008 to the Estate Manager of the Housing Board
- B and, subsequently, on 2 August 2010 to the Commissioner, Urban Development. Even after the cancellation of the allotment, the respondent took no steps to pursue his remedies under the Consumer Protection Act 1986. The respondent was evidently persuaded to take recourse to his legal remedies in 2011 because a policy decision was taken by the Housing Board on 6 August 2009 in terms of which, it was stipulated that where a registration/allotment had been cancelled due to an administrative mistake of the Housing Board, it would be restored if the application is filed within one year from the date of cancellation. On the other hand, cases where there was no administrative fault on the part
- C of the Housing Board, would not be restored. [Para 8][592-C-H; 593-A-B]

2. Section 24A of the Consumer Protection Act 1986 provides the period of limitation for filing a complaint. A period of two years has been provided for filing a complaint from the date on which the cause of action arose. In the present case, the cancellation took place on 29 May 2000 which was preceded by a letter of the respondent dated 3 May 1999 by which he had expressly stated that he would be making a deposit within one and a half months. Even after the cancellation, there was no challenge to the cancellation of the allotment. The cause of action became barred by time much prior to the policy decision dated 6 August 2009. The NCRC erred in holding that the cause of action arose on the issuance of the office order dated 6 August 2009 because even on its plain terms, the policy decision would not revive the registration of the appellant which was cancelled due H to his own default. [Para 9][593-B, E; 594-D-F]

3. In this backdrop, the basis on which the District Forum allowed the complaint was clearly erroneous. The District Forum failed to notice that the respondent had received both the letter dated 15 April 1999 as well as the letter of cancellation of 29 May 2000. Moreover, as we have noted earlier, the letter dated 15 April 1999 contained a clear reference to the earlier letter of the Housing Board of 1993. It would be far-fetched to assume that while the respondent had received several letters from the Housing Board, he had not received the letter demanding the seed money in the first place. In conclusion, besides the delay on the part of the respondent in espousing his rights to challenge the cancellation of the allotment, the case did not clearly fall within the ambit of the policy decision which was taken on 6 August 2009. [Paras 10, 11][594-F-H; 595-A]

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State Bank of India v. BS Agricultural Industries (2009)

**5 SCC 121 : [2009] 4 SCR 762; HUDA v. Tej
Refrigeration Industries Ltd. (2013) 14 SCC 758 –
relied on.**

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*Chief Administrator PUDA and Ors. v. Shabnam Virk
(2006) 4 SCC 74 : [2006] 3 SCR 221 – referred to.*

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<u>Case Law Reference</u>		
[2006] 3 SCR 221	referred to	Para 8
[2009] 4 SCR 762	relied on	Para 9
(2013) 14 SCC 758	relied on	Para 9

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7651-7652 of 2021.

From the Judgment and Order dated 04.10.2018 of the National Consumer Dispute Redressal Commission in Revision Petition No. 613-614 of 2017.

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N.K. Chauhan, Praveen Swarup, Advs. for the Appellants.

Satyavikram, Ms. Lekha G.V., Advs. for the Respondent.

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- A The Judgment of the Court was delivered by
DR. DHANANJAYA Y CHANDRACHUD, J.
1. Leave granted.
2. These appeals arise from a judgment of the National Consumer Disputes Redressal Commission¹ dated 4 October 2018. The NCDRC dismissed the revision petitions seeking to challenge the judgment of the State Consumer Disputes Redressal Commission, Rajasthan² which in turn had affirmed the decision of the District Consumer Disputes Redressal Forum – Second, Jaipur³.
- C 3. The appellant launched a General Registration Scheme⁴ in 1985 in pursuance of which the respondent submitted an application on 23 February 1985 for allotment of a Middle Income Group ‘B’ Category house in Jodhpur on a hire-purchase mode of payment, after depositing a registration amount of Rs 5,000. On 31 May 1985, the appellant issued a letter of confirmation acknowledging receipt of payment and confirming the registration of the respondent under the Scheme. According to the appellant, a reservation-cum demand letter was issued to the respondent on 3 September 1993, demanding seed money, which was to be deposited in three installments for the allotment of a house under the Scheme. The respondent disputes receipt of the letter on the ground that it was addressed to him at an earlier location which he had left. On the other hand, the case of the appellant is that the letter was addressed to the respondent at the place which was notified to the Housing Board. Be that as it may, on 15 April 1999, the appellant issued a communication to the respondent requiring the production of a challan for the deposit of the seed money in terms of the letter dated 3 September 1993. There is no dispute about the receipt of this letter since the respondent submitted a reply on 3 May 1999 by which he sought time of a month and a half to deposit the seed money. The case of the appellant is that on 26 July 1999, the respondent was once again called upon to produce proof of deposit.
- G 4. Eventually, on 29 May 2000, the registration of the respondent was cancelled on the ground that he had failed to deposit the seed money or advance amount to obtain an allotment. By the letter dated 29 May

¹ “NCDRC”

² “SCDRC”

³ “District Forum”

H ⁴ “Scheme”

2000, the respondent was requested to comply with certain formalities to effectuate the refund of Rs 5,000. There is no dispute about the fact that the letter of cancellation was received by the respondent, this being in terms admitted by the respondent in his subsequent letters dated 12 December 2008 (Annexure P-8) to the Estate Manager of the Housing Board and again by his letter dated 2 August 2010 (Annexure P-10) to the Commissioner, Urban Development.

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5. The Housing Board took a policy decision on 6 August 2009 in the following terms:

“OFFICE ORDER

Subject: - Restoration of the registration/allotment after cancellation. C

As per the meeting no. 207 dated 16.07.2009 organized by the Director of Board, the decision was taken under point no. 207.15 that all the earlier orders passed for cancellation of Registration/ Allotment by the Board are quashed. The cases where the Registration/allotment are canceled due to administrative mistake of Board, in those cases if the application is filed within one year from the date of cancellation of registration/allotment the Registration/allotment will be restored only on approval from the board and the cases where there is no administrative fault on the part of Board, such Registration/allotment will not be restored.” D E

6. Following the above decision, the respondent applied for restoration of his registration on 2 August 2010, which was followed by a notice of demand on 18 January 2011. Eventually, on 14 February 2011, the respondent instituted a consumer complaint before the District Forum complaining of a deficiency of service and challenging the order of cancellation of allotment. The District Forum by its order dated 11 December 2012, directed the appellant to restore the registration and to allot the respondent a house within six months at the rate which was applicable on the date when it was allotted to the next junior applicant. The order of the District Forum was confirmed in appeal by the SCDRC on 28 November 2016. The revision has been dismissed by the NCDRC on 4 October 2018.

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7. We have heard Mr N K Chauhan, learned counsel for the appellant and Mr Satyavikram, learned counsel for the respondent.

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- A 8. The primary issue which requires to be considered is whether there was, in fact, any default on the part of the appellant or conversely whether it was the respondent who was in breach of his obligations as a prospective allottee. In **Chief Administrator PUDA and Ors. v. Shabnam Virk⁵**, this Court discussed the binding effect of the terms and conditions of allotment on the consumer. This Court held that the consumer is bound to pay the increased price of the allotted house since the terms of the allotment specified that the price declared earlier is a tentative assessment and is subject to revision. Thus, the appellant is entitled to cancel the allotment if the respondent has failed to fulfil the conditions of the allotment. At this stage, it is material to note that no formal allotment was ever made to the respondent and upon the deposit of the initial amount towards registration, his name was registered under the Scheme. According to the appellant, a letter was addressed to the respondent on 3 September 1993 requiring the deposit of seed money or an advance in three installments under the Scheme. The respondent disputes the receipt of the letter and the District Forum primarily held in his favour on the ground that the appellant ought to have produced proof of receipt, which was not done. The important circumstance, which has a bearing on the case, however, is that thereafter, the appellant communicated to the respondent on 15 April 1999 requiring him to produce proof of deposit of the seed money in terms of the earlier letter of 3 September 1993. There was a clear reference to the earlier letter dated 3 September 1993. The respondent is an advocate and this was a fact which would not miss the attention of a legally trained person. In his response, which was dated 3 May 1999, the respondent did not deny receipt of the earlier letter dated 3 September 1993. By his reply, the respondent sought a time of one and a half months to deposit the amount. The respondent however admittedly did not make any deposit of the amount which was required until eventually the registration was cancelled on 29 May 2000. The respondent was in receipt of the letter of cancellation which is admitted in terms of his letter dated 12 December 2008 to the Estate Manager of the Housing Board and, subsequently, on 2 August 2010 to the Commissioner, Urban Development. Even after the cancellation of the allotment, the respondent took no steps to pursue his remedies under the Consumer Protection Act 1986. The respondent was evidently persuaded to take recourse to his legal remedies in 2011 because a policy decision was taken by the Housing Board on 6 August
- H ⁵(2006) 4 SCC 74

2009 in terms of which, it was stipulated that where a registration/allotment had been cancelled due to an administrative mistake of the Housing Board, it would be restored if the application is filed within one year from the date of cancellation. On the other hand, cases where there was no administrative fault on the part of the Housing Board, would not be restored.

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9. Section 24A of the Consumer Protection Act 1986 provides the period of limitation for filing a complaint. The provision reads thus:

“24A. Limitation period

(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

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(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified section-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period.

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Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.”

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A period of two years has been provided for filing a complaint from the date on which the cause of action arose. In **State Bank of India v. BS Agricultural Industries**⁶, this Court observed that the limitation prescribed under Section 24A is a legislative mandate. If the consumer forum adjudicates upon a complaint on merits, which is barred by time, such an order would be liable to be set aside on grounds of illegality. In **HUDA v. Tej Refrigeration Industries Ltd.**⁷, this Court reiterated that the consumer forums should comply with the mandate of Section 24A. This Court observed thus:

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“11. A reading of Sections 12 and 24-A makes it clear that a complaint filed after expiry of two years counted from the date of accrual of cause of action cannot be admitted by any consumer forum unless the complainant is able to show that he had sufficient

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⁶(2009) 5 SCC 121

⁷(2013) 14 SCC 758

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- A cause for not filing the complaint within the prescribed period and the forum concerned records reasons for condoning the delay. The embargo contained in Section 24-A against admission of a complaint is unambiguous and if that section is read in conjunction with Section 12, which prescribes the procedure for entertaining the complaint, it becomes clear that before admitting a complaint and issuing process, the consumer forum must feel convinced that the same has been filed within the period of limitation or that the complainant has succeeded in showing sufficient cause for delayed filing of the complaint. Unfortunately, most of the consumer forums in the country do not follow the provisions of Section 12 read with Section 24-A and a large number of complaints are entertained without considering the issue of limitation. This results in overburdening of the dockets of consumer forums and consequential delay in the disposal of other deserving cases.”
 - D In the present case, the cancellation took place on 29 May 2000 which was preceded by a letter of the respondent dated 3 May 1999 by which he had expressly stated that he would be making a deposit within one and a half months. Even after the cancellation, there was no challenge to the cancellation of the allotment. The cause of action became barred by time much prior to the policy decision dated 6 August 2009. The
 - E NCRC erred in holding that the cause of action arose on the issuance of the office order dated 6 August 2009 because even on its plain terms, the policy decision would not revive the registration of the appellant which was cancelled due to his own default.
10. In this backdrop, the basis on which the District Forum allowed
- F the complaint was clearly erroneous. The District Forum failed to notice that the respondent had received both the letter dated 15 April 1999 as well as the letter of cancellation of 29 May 2000. Moreover, as we have noted earlier, the letter dated 15 April 1999 contained a clear reference to the earlier letter of the Housing Board of 1993. It would be far-fetched
 - G to assume that while the respondent had received several letters from the Housing Board, he had not received the letter demanding the seed money in the first place.
11. In conclusion, besides the delay on the part of the respondent in espousing his rights to challenge the cancellation of the allotment, the
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case did not clearly fall within the ambit of the policy decision which was taken on 6 August 2009. A

12. At this stage, we may also note that the Housing Board which is in appeal has stated before the Court that it would be ready and willing to make an allotment to the respondent but not at the rate which was prevalent when (as directed by the District Forum) a person immediately junior to him in order of registration was made an allotment. The respondent has himself been guilty of default and, therefore, such a direction to allot at a rate prevalent in the past would not be correct. Therefore, we record the statement of the Housing Board that should the respondent be ready and willing at the present point of time, he would be given an alternate allotment but in accordance with the rates prevailing on the date of allotment. In the event that the respondent is not willing to accept the alternate allotment at the present rate, it has been stated on behalf of the appellant that the registration money which has been deposited would be duly refunded to the respondent in accordance with the policy of the Housing Board. B C D

13. Subject to the recording of the above statement, which has been made on behalf of the Housing Board, we allow the appeals and set aside the impugned judgment and order of the NCDRC dated 4 October 2018 in Revision Petition Nos 613-614 of 2017.

14. The appeals shall stand disposed of in the above terms. E

15. Pending applications, if any, stand disposed of.

Devika Gujral

Appeals disposed of.