

RAJASTHAN HOUSING BOARD & ANR

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v.

RATAN DEVI

(Civil Appeal No.5739 of 2019)

JULY 22, 2019

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**[DR DHANANJAYA Y CHANDRACHUD AND
INDIRA BANERJEE, JJ.]**

Consumer Protection Act, 1986 – In 1990, the Respondent applied for the allotment of tenement in the LIG category in the Mansarovar Scheme and deposited Rs 4,000/- – Case of the appellant that since the respondent failed to deposit the balance of Rs.47,674/-, the allotment was cancelled on 6 April 1994 – Respondent disputed having received the letter of possession and stated that the balance payment was to be made only against possession – Order of the District Forum, allowing the complaint, restored by the National Consumer Disputes Redressal Commission (NCDRC) – On appeal, held: By the first letter dtd. 15 April 1996, addressed by the respondent to the appellant, the respondent admitted that she was unable to deposit Rs.47,674/- but was now ready to deposit the amount – In subsequent letter also, the respondent specifically stated that she was unable to deposit the amount because of her weak financial condition – Thus, at the material time, the respondent was not in a position to comply with the terms of the allotment which required the payment of the balance amount of Rs.47,674/- – Thereafter, the consumer complaint was instituted before the District Forum only in 2008 – This was nearly 16 years after the allotment was made to the respondent – Further, after the respondent was informed in 1998 that her request for the grant of benefit under the Special Exemption Scheme had been disallowed, since the house in question was allotted to her under the Cash Purchase Scheme, the respondent waited almost a decade before moving the District Forum – Complaint before the District Forum was hopelessly delayed and was filed beyond the period of limitation as prescribed under the 1986 Act – Appellant could not have been directed to hand over the tenement to the respondent – Order of the NCDRC, set aside – However, in terms of the interim

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A *order passed by Supreme Court on 23rd April, 2018, the respondent be paid Rs.1 lakh by the appellant, over and above the litigation expenses – Further, in exercise of the jurisdiction u/Art.142 of the Constitution, the amount of Rs 25,000/- deposited by the appellant is directed to be refunded – Constitution of India – Art.142.*

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In 1990, the Respondent applied for the allotment of tenement in the LIG category in the Mansarovar Scheme and deposited Rs 4,000/- on 21 February, 1991. The Letter of allotment issued to the respondent intimating allotment of tenement, stipulated that Rs 47,674/- was payable at the time of possession. As per the appellant, the respondent failed to deposit the balance, as a result of which the allotment was cancelled on 6 April 1994. However, the respondent contended that she did not receive the letter of possession and that the payment of the balance was to be made only against possession. The District Forum allowed the complaint. The State Consumer Disputes Redressal Commission by a split verdict set aside the order of the District Forum. However, the National Consumer Disputes Redressal Commission restored the order of the District Forum. Hence, the present appeal.

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E **Disposing of the appeal, the Court**

HELD: 1.1 By the first letter dated 15 April 1996, the respondent specifically admitted that she was unable to deposit the amount of Rs 47,674/- and she was now ready to deposit the amount. The respondent specifically stated that she was unable to deposit the amount because of her financial condition. Thereafter, the respondent sought the benefit of the Special Exemption Scheme, 1998. However, she was informed that since the house in question had been allotted to her under the Cash Purchase Scheme, the benefit of the Special Exemption Scheme could not be made available to her. In a subsequent letter dated 4 May 2008, the respondent again stated that as her financial condition was weak, she could not deposit the balance of Rs 47,674/- at that time. The facts clearly indicate that at the

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material time, the respondent was not in a position to comply with the terms of the allotment which required the payment of the balance amount of Rs 47,674. Thereafter, the consumer complaint was instituted before the District Forum only in the year 2008. This was nearly 16 years after the allotment was made to the respondent. After the respondent was informed in 1998 that her request for the grant of benefit under the Special Exemption Scheme had been disallowed, the respondent waited almost a decade before moving the District Forum. The complaint before the District Forum was hopelessly delayed and was filed beyond the period of limitation as prescribed under the Consumer Protection Act, 1986. The appellant could not have been directed to hand over the tenement to the respondent. In any event, the authority could not have been held down to the rates of 1992. There is no basis in principle for such a direction. [Paras 9, 10] [959-D-G; 960-A-D]

1.2 The judgment and order of the NCDRC was unsustainable and the same is set aside. However, in the exercise of the jurisdiction of Supreme Court under Article 142 of the Constitution of India, direction is issued for refund of the amount of Rs 25,000 which was deposited by the appellant. In terms of the interim order passed by Supreme Court on 23 April 2018, the respondent should be paid Rs 1 lakh by the appellant, over and above the litigation expenses as directed by Supreme Court. [Paras 11, 12] [960-C-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No.5739 of 2019

From the Judgment and Order dated 29.01.2018 of the National Commission Disputes Redressal Commission, New Delhi in Revision Petition No. 2364 of 2015

K. L. Janjani, Pankaj Kumar Singh, Ms. Varsha Rana, Advs. for the Appellants.

Abhinav Shrivastava and Ms. Preetika Dwivedi, 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.

B 2. This appeal arises from a judgment dated 29 January 2018 of the National Consumer Disputes Redressal Commission¹. The NCDRC restored the judgment of the District Consumer Disputes Redressal Forum, Jaipur² dated 2 January 2014 directing the appellant to allot an LIG tenement in the Mansarovar Scheme to the respondent against the payment of a balance of Rs 47,674 as mentioned in the allotment letter dated 30 April 1992. The respondent has been directed to pay interest at the rate of 6 per cent per annum on this balance amount. In addition, compensation of Rs 70,000 and litigation expenses of Rs 11,000 have been granted to the respondent.

C 3. The respondent applied for the allotment of a tenement in the LIG category in 1990. The respondent deposited an amount of Rs 4,000 on 21 February 1991. On 30 April 1992, a letter of allotment was issued to the respondent intimating an allotment of a tenement in House No. 124/53 in the Mansarovar Scheme. The letter stipulated that an amount of Rs 47,674 was payable at the time of possession.

D 4. According to the appellant, the respondent failed to deposit the balance as a result of which the allotment was cancelled on 6 April 1994. The case of the respondent is that she did not receive a letter of possession and that the payment of the balance was to be made only against possession. The respondent has also disputed having received the letter of cancellation dated 6 April 1994.

E 5. The District Forum allowed the complaint. However, the State Consumer Disputes Redressal Commission³ by a split verdict set aside the order of the District Forum.

F 6. In a revision filed by the respondent, the NCDRC came to the conclusion that (i) the balance was to be paid only at the time of possession; G (ii) no letter offering possession has been proved to have been served on the respondent; (iii) the letter of cancellation was not proved to have been served; (iv) the amount which was deposited by the respondent

¹ "NCDRC"

² "District Forum"

³ "SCDRC"

has not been refunded. In the circumstances, the order of the District Forum was restored by the NCDRC. A

7. When notice was issued on 23 April 2018, the appellant was directed to deposit an amount of Rs 25,000 for litigation expenses which were permitted to be withdrawn unconditionally. This Court also recorded the statement of the appellant, that the amount deposited by the respondent together with interest and penalty may be returned to the respondent. Stay was granted on the above terms. B

8. The material before the Court indicates that the real dispute between the parties is as to whether the letter offering possession was in fact made available to the respondent. The submission of the learned counsel for the respondent is that no letter offering possession having been handed over, the balance in terms of the letter of allotment dated 30 April 1992 was not payable. C

9. On the other hand, learned counsel appearing on behalf of the appellant has drawn the attention of the Court to two letters which were addressed by the respondent to the appellant. By the first letter dated 15 April 1996, the respondent specifically admitted that she was unable to deposit the amount of Rs 47,674 and she was now ready to deposit the amount. The respondent specifically stated that she was unable to deposit the amount because of her financial condition. Thereafter, the respondent sought the benefit of the Special Exemption Scheme, 1998. However, she was informed that since the house in question had been allotted to her under the Cash Purchase Scheme, the benefit of the Special Exemption Scheme could not be made available to her. In a subsequent letter dated 4 May 2008, the respondent again stated that as her financial condition was weak, she could not deposit the balance of Rs 47,674 at that time. She also adverted to the fact that she had been informed that the Board would not be able to give her the benefit of the Special Exemption Scheme since the allotment was under the Cash Purchase Scheme. D
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10. The above facts clearly indicate that at the material time, the respondent was not in a position to comply with the terms of the allotment which required the payment of the balance amount of Rs 47,674. Thereafter, the consumer complaint was instituted before the District G

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A Forum only in the year 2008. This was nearly 16 years after the allotment was made to the respondent. After the respondent was informed in 1998 that her request for the grant of benefit under the Special Exemption Scheme had been disallowed, the respondent waited almost a decade before moving the District Forum. In this factual background, the complaint before the District Forum was hopelessly delayed and was filed beyond the period of limitation as prescribed under the Consumer Protection Act, 1986. The appellant could not have been directed to hand over the tenement to the respondent. In any event, the authority could not have been held down to the rates of 1992. There is no basis in principle for such a direction.

C 11. For the above reasons, we are of the view that the judgment and order of the NCDRC was unsustainable. We accordingly, set aside the judgment and order dated 29 January 2018.

D 12. However, in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India, we are inclined to issue a direction for refund of the amount of Rs 25,000 which was deposited by the appellant. In terms of the interim order passed by this Court on 23 April 2018, we are of the view that the respondent should be paid a total amount of Rs 1 lakh by the appellant, over and above the litigation expenses as directed by this Court.

E 13. The aforesaid payment shall be made within a period of two months of the receipt of a certified copy of this order.

14. The appeal is, accordingly, disposed of.

15. Pending application(s), if any, shall also stand disposed of.

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Divya Pandey

Appeal disposed of.