

Lucknow Development Authority vs Shyam Kapoor on 5 February, 2013

Equivalent citations: AIRONLINE 2013 SC 340

Bench: Jagdish Singh Khehar, B.S. Chauhan

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 936 OF 2013
(Arising Out of SLP (C) No.19556 of 2012)

Lucknow Development Authority

... Appellant

Versus

Shyam Kapoor

... Respondents

O R D E R

Jagdish Singh Khehar, J.

1. Leave granted.

2. Shyam Kapoor, the respondent herein, preferred a complaint before the District Consumer Forum IIInd, Lucknow (hereinafter referred to as the 'District Forum'), asserting that he had deposited a sum of Rs.5,000/- with the Lucknow Development Authority, i.e., the appellant herein, on 1.12.1982. The aforesaid deposit had been made for allotment of a 6,000 sq. ft. plot in the 'A' category under the Gomti Nagar Residential Scheme (hereinafter referred to as 'the Scheme'). It was alleged, that the Lucknow Development Authority had neither allotted any plot to the respondent-complainant, nor returned the deposit tendered by him. The appellant herein, however, issued a press notice in 1991 requiring persons similarly situated as the respondent-complainant, to deposit an additional amount by January 1992, so as to be eligible for consideration, for such allotment. On account of the fact, that the deposit of the differential amount was imperative for future consideration, the respondent-complainant deposited a further amount of Rs.15,000/- on 30.1.1992. Still, no plot was allotted to the respondent-complainant. On 30.10.1996, Shyam Kapoor, addressed a communication to the Lucknow Development Authority, requiring it to furnish him with details in the matter of allotment of plots. Since the Lucknow Development Authority did not respond to the aforesaid communication, Shyam Kapoor preferred the complaint referred to

hereinabove.

3. In its defence, the appellant herein, while admitting the factual position expressed by Shyam Kapoor in his complaint, raised a number of legal/technical objections. The stand of the appellant so as to defeat the claim of the respondent-complainant included a plea, that the complaint was barred by time. It was also contended that the complainant was not a consumer, and as such, the District Forum had no jurisdiction in the matter. Besides the aforesaid, it was asserted by the appellant before the District Forum, that the respondent-complainant had changed his registration from the Scheme under which he had originally applied, and as such, his claim could not be considered on the basis of the original deposit made by him. The entitlement of the respondent complainant for allotment of a plot under the Scheme was also sought to be disputed on the ground that he was unsuccessful in obtaining a loan from a financial institution.

4. Despite the defences raised by the Lucknow Development Authority before the District Forum, the prayers made by the complainant were allowed by an order dated 30.12.2005. The operative part of the order passed by the District Forum is being extracted hereunder :

“Complaint is allowed. The opposite party is directed to allot any developed plot admeasuring 6000 sq. ft. in any scheme Gomti Nagar at the rate prevailing in January 1992 within two months from the date of order and after adjusting the deposited amount in the total amount of the plot and after depositing the remaining amount and complying another formalities hand over the possession after registration. And opposite party pay Rs.1,000/- to the complainant towards cost of case. Other reliefs are rejected.”

5. Aggrieved with the order dated 30.12.2005 (passed by the District Forum), the appellant herein preferred an appeal before the Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow (hereinafter referred to as the ‘State Commission’). The State Commission having entertained the appeal preferred by the appellant herein, issued notice to the respondent herein on 1.11.2006. While issuing notice, the State Commission stayed the order of the District Forum dated 30.12.2005. Even though notice had been issued, in the appeal preferred by the Lucknow Development Authority, the appellant failed to deposit process fee. Therefore, when the matter was taken up for hearing on 11.5.2007, the State Commission passed the following order:

“As requested learned counsel for the appellants a week time is allowed to take steps failing which the interim order shall stand vacated and the appeal dismissed.”

6. A perusal of the aforesaid order would reveal that one week’s further time was granted to the appellant to deposit process fee. While granting the aforesaid liberty, the State Commission clearly expressed in its order dated 11.5.2007, that in case necessary steps were not taken (in depositing the process fee) within the time stipulated, the interim order passed by the State Commission on 1.11.2006 would stand vacated, and the appeal preferred by the Lucknow Development Authority would also stand dismissed. It is not a matter of dispute, that the process fee was not deposited on behalf of the Lucknow Development Authority (in the appeal preferred by it before the State

Commission) even in the extended time allowed by the State Commission vide its order dated 11.5.2007. In view of the order dated 11.5.2007 extracted hereinabove, the natural consequence for not having taken the steps required of the appellant, the interim order passed on 1.11.2006 stood vacated, and the appeal preferred by the Lucknow Development Authority stood dismissed.

7. Dissatisfied with the effect of the order of the State Commission dated 11.5.2007, which had resulted in dismissal of the appeal preferred by the Lucknow Development Authority before the State Commission, the appellant chose to file a Revision Petition before the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the 'National Commission'). According to the pleadings filed by the appellant, its choice for not filing an application for recall of the impugned order dated 11.5.2007 before the State Commission was, that the State Commission did not have the jurisdiction to set aside or recall, an order of the nature passed on 11.5.2007.

8. It would also be relevant to mention, that the Revision Petition referred to hereinabove, was filed by the Lucknow Development Authority before the National Commission on 5.12.2011, i.e., more than four and a half years after the impugned order dated 11.5.2007 was passed by the State Commission. When the Revision Petition was listed before the National Commission for the first time on 02.02.2012, the counsel representing the Lucknow Development Authority sought an adjournment, to place on record of the Revision Petition, all the orders passed by the State Commission, during the period the appeal preferred by the Lucknow Development Authority had remained pending with it. The National Commission, accordingly, adjourned the Revision Petition for hearing to 5.3.2012. The same was again adjourned on 5.3.2012, so as to enable the learned counsel for the Lucknow Development Authority to obtain instructions. Finally, the Revision Petition preferred by the Lucknow Development Authority was heard and disposed of by an order dated 30.3.2012. The National Commission dismissed the Revision Petition as frivolous, and imposed cost of Rs.10,000/- on the Lucknow Development Authority. The Revision Petition was primarily dismissed, on account of its having been filed well after the prescribed period of limitation. The observation recorded by the National Commission for not entertaining the Revision Petition belatedly, are being extracted hereunder :

“No reason has been set out to explain why the steps were not taken even within the extended period. If the petitioner thought that the impugned order passed was illegal or without jurisdiction, it ought to have challenged the same immediately or within the prescribed period rather than waiting to challenge the same until notice under Section 27 of the Consumer Protection Act, was issued to the petitioner in execution proceedings. To say the least, the conduct of the petitioner in not taking the requisite steps despite a clear cut stipulation that the appeal shall stand dismissed if the steps are not taken and thereafter not approaching the State Commission either for revival of the appeal or this Commission to set aside the said order, speaks volumes about the defaulting conduct of the petitioner. Petitioner being a statutory authority is 'State' within the meaning of Article 12 of the Constitution and was expected to act promptly, prudently and diligently if it was really serious in challenging the said order. The order was passed by the State Commission in presence of the learned counsel for the petitioner and, therefore, the petitioner cannot be allowed to take a

refuge that the certified copy was supplied in the year 2011, after four years and the present petition has been filed thereafter. Having considered the matter, we see absolutely no good ground to condone such huge delay in filing the present revision petition.”

9. Aggrieved with the order passed on 30.3.2012 by the National Commission, dismissing the Revision Petition preferred by the appellant, the appellant has now approached this Court by preferring the instant appeal.

10. The first question which concerns us is the conclusion drawn by the National Commission, that the Revision Petition filed by the appellant was frivolous. In order to controvert the aforesaid determination of the National Commission, learned counsel for the appellant has invited our attention to the decision rendered by this Court in *Rajeev Hitendra Pathak & Ors. v. Achyut Kashinath Karekar & Anr.*, (2011) 9 SCC 541, wherein this Court clearly concluded, that neither the District Forum nor the State Commission had power to review its “ex parte” orders. Orders of the aforesaid nature were, “per se” assailable only before the National Commission.

11. We have no difficulty in accepting the contention advanced on behalf of the appellant before us. As we find no fault in the action of the appellant in having not chosen to move an application for recall of the order dated 11.5.2007 before the State Commission itself. The observations made by the “National Commission” to the effect, that the appellant having not approached the “State Commission” for the revival of the appeal, expressed volumes about the defaulting conduct of the appellant, were clearly unjustified. We are also satisfied that the appellants determination, to assail the order of the State Commission dated 11.5.2007 by preferring a revision petition before the National Commission, was legally justified. In so far as, our instant conclusion is concerned, the same clearly emerges from the following observations recorded by this Court in *Rajeev Hitendra Pathak’s* case (supra) wherein this Court held as under :

“34. On careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the Statute and derive their power from the express provisions of the Statute. The District Forums and the State Commissions have not been given any power to set aside ex prate orders and power of review and the powers which have not been expressly given by the Statute cannot be exercised.

35. The legislature chose to give the National Commission power to review its ex prate orders. Before amendment, against dismissal of any case by the Commission, the consumer had to rush to this Court. The amendment in Section 22 and introduction of Section 22A were done for the convenience of the consumers.

We have carefully ascertained the legislative intention and interpreted the law accordingly.” In view of the above, the choice of the appellant, in approaching the “National Commission” rather than the “state Commission” could not have been described as frivolous. We are, therefore, satisfied that the revision petition filed by the Lucknow Development Authority before the National Commission was procedurally in order. And as such, the choice of the appellant to file a revision petition to assail the

order of the “state Commission” dated 11.5.2007, could not be faulted.

12. The real reason for the National Commission for dismissing the revision petition filed by the appellant was, that it was filed belatedly, well after the expiry of the period of limitation. The observations made by the National Commission to the aforesaid effect, have already been extracted hereinabove. We find nothing wrong in the aforesaid determination of the National Commission. It was imperative for the Lucknow Development Authority to seek condonation of delay, for some justifiable reason as the National Commission was being approached after four and a half years. In the absence of valid justification for condoning delay, the National Commission had no other option, but to pass the order dated 30.3.2012. The fact that the Lucknow Development Authority was duly represented before the State Commission, as also, when the order dated 11.5.2007 was passed by it, reveal that the appellant was aware of the said order right from the beginning. Yet the appellant waited for over four and a half years, to approach the National Commission. Even before this Court, the appellant has failed to express any valid justification for having approached the National Commission belatedly. We, therefore, find no good ground to set aside the order passed by the National Commission on 30.7.2012.

13. Despite our aforesaid determination of the present controversy, we consider it just and appropriate to set aside the costs imposed upon the appellant herein, by the National Commission, in view of the conclusion drawn by us, that the choice of the appellant in approaching the National Commission against the order passed by the State Commission (dated 11.5.2007) could not be described as frivolous. As already noticed hereinabove, the said order could have only been assailed only before the National Commission, as the State Commission had no jurisdiction to recall or modify its own order (dated 11.5.2007). Accordingly, the costs imposed on the appellant in the impugned order is hereby set aside. Besides the aforesaid, the order of the National Commission calls for no interference.

14. The instant appeal is accordingly disposed of in the aforesaid terms.

.....J. (Dr. B.S. Chauhan)J. (Jagdish Singh Khehar)
New Delhi;

February 5, 2013