

Krishi Utkarsha Pni Purvtha Sahakari ... vs Finolex Industries Ltd on 28 February, 2022

1

FA/567/2017

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MAHARASHTRA STATE CONSUMER DISPUTE
REDRESSAL COMMISSION,MUMBAI, BENCH AT
AURANGABAD.

FIRST APPEAL NO. : 567 OF 2017
IN COMPLAINT CASE NO.: 69 OF 2008
DISTRICT CONSUMER FORUM : BEED.

KRISHI UTKARSHA PANI PURVATHA SAHAKARI SANSTHA,
AWASGAON,
Tq. Kej, Dist. Beed,
Through its Chairman,
Shri. Babasaheb S/o Rangrao Shingare,
R/o at post- Awasgaon, Tq. Kej, Dist. Beed,
Through its G.P.A.
Suraj s/o Ramrao Shingare,
R/o Bhagya Nagar, Aurangabad.

APPELLANT

VERSUS

1. FINOLEX INDUSTRIES LTD,,
(Pipe Division) D-1/10,
M.I.D.C. Chinchwad, Pune- 411019
Through its Assistant General Manger Marketing.

2. Shri. E.K.Ghosh,
I.S.I.(Bureau of I.S.), Western Division Office,
E/9, M.I.D.C. Moral,
Andheri (East), Mumbai 400 093.

3. Shri. V.S.Badodiya,
NABARD, Chief General Manager,
NABARD, 54, Welsli road, Post Box No.5,
Pune- 411 005

2

FA/567/2017

4. MAHARASHTRA FAJYA KRISHI & GRAMIN VIKAS
BANK, BEED,
Branch Beed.

RESPONDENT No.1to4.

CORAM : Smt.S.T.Barne, Hon'ble Presiding Judicial Member.
Mr.K.M.Lawande, Hon'ble Member.

Present : Adv.S.T.Agrawal for appellant,
Adv. M.S.Deshpande for respondent.

JUDGMENT

(Delivered on 28/02/2022) Per Smt.S.T.Barne, Hon'ble Presiding Judicial Member.

1. The appeal is against the judgment and order passed by District Consumer Commission, Beed, in consumer complaint No.345/2001, decided on 28.2.2017.

2. The appellant is the opponent no.1, Finolex Industries Ltd,. The respondent no.1 Krushi Utpanna Pani Purwatha Sahakari Sanstha, Awasgaon, Tq. Kej, Dist.Beed is the original complainant. The respondent no.2 E.K.Ghosh is the opponent no.2, Respondent no.3 V.S.Badodiya the General Manager, Nabard, NABARD is the opponent no.3. The respondent no.4 Maharashtra Rajya Krishi & Gramin Vikas Bank, is the opponent no.4 in original complaint. They are hereinafter referred as per their status in the complaint.

3. It is the case of complainant that, complainant is the co- operative society. The members of the society have formed the society for providing irrigation facilities to it's members by lift irrigation. The society was in need of suitable pipes for irrigation purpose. Hence, contacted opponent no.1, who supplied 864 meters 3 FA/567/2017 2.50 kg, 200 mm pipes,, 1470 meters 4 kg 200 mm pipes and 1050 meters 6 kg. 200 mm pipes. The complainant purchased these pipes for Rs. 3,71,000/- . The opponent no.2 made party, though no relief is claimed is against it. It is necessary party to be requested, to show quality of the goods of opponent no.1 and whether the goods of ISI mark. The opponent no.3 is made party, who has made finance to complainant for irrigation purpose.

4. It is the contention of complainant that, at the time of purchase the pipe from opponent no.1, has quoted the life of pipes as 50 years from the date of supply and installation. Opponent no.1 agreed to provide services for its effective functioning after installation. The complainant contracted and made payment on the representation of the opponent No.1. The said opponent installed the pipes from river Manjra up to the field of complainants' Members. However, within short span of time the pipes found defective and started breaking and leakages from it. Therefore, on 14.2.91 & 5.4.91 the complainant issued notice to opponent No.1. Which is received by the opponent no.1. The opponent replaced the 864 meters pipe of 2.5 kg and 1470 meters 4 kg pipes of 200 mm only. On replacement of these types of pipes the complainant requested the opponent to depute technical person to ascertain the situation of the pipeline. It was also assured that if third type of pipe got leakage, then the opponent company would replace the same.

5. The pipes supplied by opponent were not having ISI mark along with batch number, or lot number. The replaced pipes were bearing 4 FA/567/2017 batch number and ISI mark The opponent initially supplied defective pipe and indulged in unfair trade practice.

6. It is further contention of the complainant that, it has installed scheme of lift irrigation by raising loan from Land Development Bank and NABARD. Due to defective supply of pipes the complainant's scheme could not function and the member of society have sustained heavy loss. Therefore, the pipes of 1050 meter 6 kg 200 mm also started breaking and leaking. Therefore, the scheme could not function effectively as the entire lots were not replaced by the opponent no.1. The complainant thereupon issued letter to opponent no.1 in the month of March 1999 and requested to replace third category/kind of pipes. The complainant received reply from opponent no.1, on 22.3.1999 that, claim of complainant is not true and correct. The complainant thereupon sent detailed letter on 27.12.2000 to opponent no.1 and requested to replace third category of pipes and also claimed compensation. The complainant received reply to said letter on 10.1.2001. The opponent no.1 flatly refused the demand of complainant. The complainant thereupon issued letter dated 10.2.2001, it was replied by opponent no.1 on 12.2.2001, thereby the opponent no.1, not only denied the claim but also threatened the complainant, of counter action.

7. It is the contention of complainant that, it has resulted the non functioning of scheme. The members of the society sustained loss of Rs. 25,000/- per acre amounting to Rs. 26 Lakhs . However, the society has restricted its claim to Rs. 20 Lakhs only, including compensation of Rs. 3,71,000/- of amount raised from the Land 5 FA/567/2017 Development and NABARD. The documents are annexed from Exh-A to H. The copy of resolution authorising it's Chairman, also annexed to the complaint.

8. Initially complaint was filed in the State Commission, Mumbai on 4.9.2001. After establishment of the Circuit Bench, Aurangabad, it has been transferred to Aurangabad Bench, in the year 2008. The Aurangabad Bench then on the point of pecuniary jurisdiction referred the matter to District Consumer Forum, Beed. The District Consumer Forum, Beed had dismissed the complaint in default. It was again restored and opportunity of fresh hearing is given. In the mean time there were several applications made on its rejection and ultimately the matter decided by District Consumer Forum and the District Consumer Forum has dismissed the complaint on the point of pecuniary jurisdiction and limitation.

9. Being aggrieved by the said order of District Consumer Forum dated 28.2.2017 the appellant/ ori. Complainant has preferred this appeal on the following grounds.

That, the District Consumer Forum failed to consider that the complaint was well within limitation from the date of cause of action. Even otherwise there was continuous cause of action to file the complaint. The District Consumer Forum also committed error in holding that, the complaint of Rs. 26,00,000/- is restricted to Rs. 20,00,000/- and the appellant has demanded, interest Rs. 3,71,000/- and cost etc, and held that, the prayer in the complaint is exceeding Rs. 20 Lakhs. And it is thereby held that, the District Consumer Forum has no pecuniary jurisdiction to try and entertain the 6 FA/567/2017 consumer complaint. The District Consumer Forum without considering the pursis filed by the complainant that he is restricting the claim to Rs.20,00,000/-, held that, the complainant's claim exceeded the pecuniary jurisdiction and dismissed the complaint.

10. It is further submitted that, in fact the District Consumer Forum erred that, initially complaint was filed before the State Commission and it was forwarded to District Consumer Forum by State Commission. During pending the consumer complaint various interim applications/orders were challenged in Revision, complaint could not be decided up till now. Then the complaint is decided on the point of limitation and pecuniary jurisdiction.

11. On filing appeal, the opponent no.2 is deleted and opponent no.3&4 proceeded exparte. The Adv. for appellant and opponent no.1 appeared and appellant has submitted that, the District Consumer Forum has decided the claim on the point of pecuniary jurisdiction and limitation and without deciding several interim applications pleased to dismiss the complaint. Hence, he has prayed for remand of matter for fresh hearing. The ld. Adv. for complainant has submitted that, the case was referred to District Consumer Forum by State Consumer Commission, holding the pecuniary jurisdiction with District Consumer Forum. Hence, the District Consumer Forum without any power again decided same issue and hold that, the claim excluding pecuniary jurisdiction. So far as point of limitation is concerned, it is argued that, there is continuing cause of action as the opponent has given warrantee period of 50 years.

7 FA/567/2017

12. On the other hand the ld. Adv. for the opponent no.1 argued that, there is only warrantee of one year was given in this case and in such cases. There is no document showing on record that, there was warranty period of 50 years. In fact, the complaint is lodged after 13 years of purchase of pipes in the year 1986, and without any such agreement complainant is claiming that there was 50 years guarantee/warrantee.

13. The ld. Adv. for appellant argued that in the year 1991, the pipes of two types have been replaced and the opponent thereby admitted the warrantee in existence out of act of replacement of pipes after 5 years. This act itself shows that, there was warrantee of 50 years and hence there is continuous cause of action. The query was raised by this Commission as to whether there is any agreement or mentioned about warrantee in any document or bill, as there is pleading that on purchase of pipes opponent gave warrantee of 50 years. Thus, the complainant is claiming continuous cause of action on the basis of warrantee and it is pleaded that, opponent quoted 50 years warrantee. It is not verbal agreement. When the complainant society is implementing irrigation project with the finance assistance of opponent no.3, the complainant was supported to produce all such documents or agreements. Because without which no finance can be made available. The complaint itself speaks that, besides the letters referred in the complaint marked as A to H. There is no such document showing warrantee is produced.

14. Moreover, the limitation to prefer the complaint before District Consumer Forum is in question and even appeal on the said 8 FA/567/2017 ground no such document is produced on record. The Adv. for appellant has argued that, the admission of opponent replacing the types of pipes within 5 year, itself shows that, there was warrantee of 50 years. When there was agreement between the parties and the complainant approached to claim the relief, it is for the complainant to establish that the complaint within limitation in view of Sec.24-A of the Consumer Protection Act.

15. The complainant has mentioned in the complaint that the opponent quoted 50 years warrantee and that the complaint contacted with opponent it means there was contract between the parties and when such important document is withheld, adverse inference can be drawn that no such 50 years warrantee is agreed nor any inherent of AMC to that effect for 50 years.

16. Merely because some pipes are replaced during 5 years, it does not mean that inference of 50 years warrantee can be drawn. Even otherwise the complainant is silent to matter in the complaint as to when the irrigation system with opponent's pipes has been installed. There is no whisper about date or year in the complaint. The opponent in his w.s. came with the pleading that, the pipes were replaced in the year 1986, and in 1991, since pipes are replaced and after 13 years in the year 1999, the complainant again claimed for leakage and damages to the pipes it goes to show that, irrigation system was working for more than 13 years with said pipes. The alleged cause of action arose in the month of Feb.1999 and the complaint is filed on 4th Sept, 2001. The complainant's pleading that, it has made correspondence with opponent and on refusal by 9 FA/567/2017 opponent. The complainant left to litigate the matter. In the month of March 1999 the complainant claimed to replace the remaining pipes. Then on such refusal in the month of March 1999, the complaint ought to have filed within two years.

17. The complaint not only failed to file the agreement, and also failed to establish that there is continuous cause of action by establishing that warrantee period was for 50 years. But inferring the warrantee on the basis of action of opponent in replacing some of the pipes which itself shows that, complainant is trying to take undue advantage of this platform without producing document on record. Though litigation is going on since 2001 and the complainant is claiming remand of matter only on the basis of observation of the opponent on the point of pecuniary jurisdiction.

18. It is true that, the complainant has filed complaint initially before State Commission Mumbai and restricted to claim to Rs.20 Lakhs including the amount incurred for purchase of pipes of Rs. 3,00,000/-, when the matter was referred by State Commission Aurangabad to District Consumer Forum, Beed the observation of District Consumer Forum in deciding pecuniary jurisdiction is erroneous , but the fact itself do not enable the complaint to claim remand of matter, when the complaint is not within limitation and complainant failed to establish the same, it is not desirable again to remand the proceeding for fresh hearing.

19. It is argued that, some interim applications remain undecided, in fact when complainant has submitted application for referring the 10 FA/567/2017 pipes for lab inspection to the Central Institute of Plastic and engineering and Technology, CIPET, after rejection of said application by District Consumer Forum , revision was filed and said order was set aside and thereupon the sample of pipe was sent to CIPET, the said report is on record at page no 45 to 46. It is not 'conclusive' report for want of sufficient sample of pipe. Also it is observed in the said report that, the internal and external surface of the pipes shall be smooth, clean and free growing and other defects.

20. It is further important to note that, the opponent is claiming that the pipes were of ISI makes and of standard quality. It would have been examined then and there, while sanctioning the loan for scheme from opponent no.3 bank. Moreover, it is alleged that, in the year 1991 the pipes were

replaced earlier. At that time they have not referred those pipes for examination through lab. The report of lab produced on record is of 2014. The installation of pipeline as per pleading of opponent is of 1986. The complainant withheld the agreement. Thus for about 28 years later the sample were sent for test through lab. This period also may affect the life & quality of pipes after such a longer period of 28 years.

21. In the aforesaid circumstances, it reveals that, the complainant itself is not due diligent for filing of complaint. The complaint was dismissed in default for want of proceeding and it has been required to restored. Moreover, in view of aforesaid circumstances, discussed ,it is not desirable to remand the matter to decide the complaint by giving opportunity of fresh hearing, when complaint itself is not within limitation. The complaint is under Consumer Protection Act, it 11 FA/567/2017 is to be decided summarily and not like Civil dispute else vary purpose and object of the Act will be frustrated. Hence, there requires no interference to set aside the order of dismissal on the basis of limitation. Hence, the order.

ORDER Appeal is dismissed with no order as to costs.

Mr.K.M.Lawande
Member

Smt.S.T.Barne,
Presiding Judicial Member

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