

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 3206 OF 2006
(From the order dated 19.4.06 in Appeal No.2082/03 of the State
Commission, Haryana)

H.U.D.A. & Anr.

Petitioners

Versus

Sunil Kumar Aggarwal

Respondent

CERTIFIED TO BE TRUE COPY
8/2/08
31/8/08
SECTION OFFICER
CONSUMER DISPUTES
REDRESSAL COMMISSION
NEW DELHI-110001

BEFORE :

HON'BLE MR. JUSTICE M.B. SHAH, PRESIDENT
HON'BLE MRS. RAJYALAKSHMI RAO, MEMBER
HON'BLE DR. P.D. SHENOY, MEMBER

For the Petitioner : Mr.Devashish Bharuka, Advocate for
Mr.Alok Sangwan, Advocate

For the Respondent : Mr.Sachin Jain, Advocate

21.02.2008

ORDER

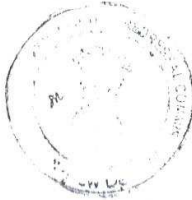
Heard the learned counsel for the parties.

The impugned order dated 19.4.2006 passed by the State
Commission, Haryana, rejecting the Appeal No.2082/2003 on the
ground that the appellatant failed to deposit the statutory amount as



prescribed under the second proviso of Section 15 which was added on 15.3.2003, cannot be justified since the Commission has power to condone such delay in depositing the amount.

Further, the State Commission completely erred in dismissing the appeal on the ground of non-compliance with the second proviso to Section 15 of the Consumer Protection Act. The said proviso to Section 15, inter alia, requires that no appeal by a person, who is required to pay any amount in terms of the order of the District Forum, shall be "**entertained**" unless the appellant has deposited 50% of the amount or Rs.25,000/- whichever is less. Depositing the amount of Rs.25,000/- or half of the awarded amount, whichever is less, is for entertaining the appeal by the State Commission. This proviso speaks of the "**entertainment of the appeal**", to mean that the appeal such as which was filed will not be 'admitted to consideration' unless there is satisfactory proof available of the making of the deposit as prescribed (Re. M/s. Lakshmiratan Engineering Works Ltd., Vs. Asstt. Commissioner (Judicial) I, Sales Tax, Kanpur Range, Kanpur, AIR 1968 SC 488 at 493). Receipt of appeal memo by the Registry is



altogether different from its entertainment, i.e. consideration of appeal on merits by the Consumer Fora. The aforesaid judgement of the Apex Court is referred to and relied upon in the cases of Shyam Kishore & Ors. Vs. Municipal Corporation of Delhi & Anr. – (1993) 1 SCC 22 and St. Mary's School & Ors. Vs. Cantonment Board, Meerut & Ors. – (1996) 7 SCC 484.

It is also to be stated that even if there is delay in depositing the amount, in the interests of justice, the Commission has jurisdiction to condone the same by imposing costs, if required.

Further, rejection of SLP against such order would not be a 'bar for deciding the issue on merits (Re: Union of India & Anr. Vs. Manik Lal Banerjee – (2006) 9 SCC 643).

Hence, the order passed by the State Commission is required to be set aside.

However, to avoid further delay in deciding the matter we have heard the learned counsel for the parties on merits and have gone through the order passed by the District Forum.



In our view, this was not a fit case for filing Appeal because the direction by the District Forum in Complaint No.245/1996 was only to refund the amount with interest. Relevant part of the order is as under :

"We allow the complaint and direct the OPs to pay the amount deducted from Rs.1,40,200/- with interest at the rate of 10% per annum from the date of deposit till realization. We further direct the OPs to pay interest on the amount of Rs.1,40,200/- from the deposit till the date of payment. The OPs are also directed to pay Rs.2000/- towards compensation for harassment and litigation expenses."

It is contended that the petitioners have paid the amount as directed by the District Forum to the complainant. Therefore, there was no justifiable reason for filing an Appeal or Revision Petition. In any set of circumstances, the order to refund the amount deposited by the complainant cannot be said to be in any way



erroneous or illegal because the petitioners have failed to allot the plot to the complainant for which the advertisement was issued.

In this view of the matter, there is no substance in this Revision Petition and the same is dismissed accordingly. The petitioner shall pay Rs.2,500/- as costs to the complainant.



Sd/-

J.
(M.B. SHAH)
PRESIDENT

Sd/-

(RAJYALAKSHMI RAO)
MEMBER

Sd/-

(P.D. SHENOY)
MEMBER

/sra/ 16 / Court-1