

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4106 OF 2020

ANOOP SHARMA

Appellant(s)

VERSUS

KAMAL NAIN PANDYA & ORS.

Respondent(s)

CIVIL APPEAL NO. 694 OF 2021

EMAAR MGF CONSTRUCTION PVT. LTD.

Appellant(s)

VERSUS

KAMAL NAIN PANDYA & ORS.

Respondent(s)

CIVIL APPEAL NO. 3827 OF 2020

ANOOP SHARMA

Appellant(s)

VERSUS

**EMAAR MGF CONSTRUCTION
PVT. LTD. & ORS.**

Respondent(s)

ORDER

Being dissatisfied by the order dated 09.11.2020 rejecting the application under Section 12(1)(c) of the Consumer Protection Act, 1986 (hereinafter referred to as '1986

Act' for brevity), Civil Appeal No. 4106 of 2020 and Civil Appeal No. 3827 of 2020 have been filed by the consumer(s), whereas Civil Appeal No. 694 of 2021 has been filed by the developer, raising of the common ground that the impugned order has been passed without affording adequate opportunity of hearing.

The Consumer Complaint No. 3355 of 2017 has been filed by Kamal Nain Pandya and others, while another Consumer Complaint No. 3469 of 2017 has been filed by Anoop Sharma and others. The latter complaint has been dismissed by the impugned order relying upon the judgment of National Consumer Disputes Redressal Commission (for short "Commission") in ***Ambrish Kumar Shukla and others vs. Ferrous Infrastructure Pvt. Ltd.*** 2023 SCC Online NCDRC 116, against which Anoop Sharma has preferred Civil Appeal Nos. 4106 of 2020 and 3827 of 2020. The developer has also challenged the same impugned order dated 9.11.2020, inter alia, contending that the Commission should not have dismissed the subsequent complaint because the complainants, who are different and distinct, may have their separate issues to be decided for the reliefs as prayed in the

complaint. Therefore, they contend that dismissal of the subsequent complaint by the Commission is not justified.

Various arguments have been advanced by the consumers as well as the developer on the issue of refusal of permission in Consumer Complaint No. 3469 of 2017 and the scope of Section 12(1)(c) of the 1986 Act. The developer additionally contends that the order was passed without affording due opportunity. Averring such contentions, the order of grant of permission in Consumer Complaint No. 3355 of 2017 and refusal of permission in Consumer Complaint No. 3469 of 2017 has been assailed by the consumer as well as the developer on such contentions.

After hearing the learned counsel appearing for both the sides, we are of the considered opinion that the issue with regard to entertaining Consumer Complaint No. 3469 of 2017 under Section 12(1)(c) of the 1986 Act is required to be reconsidered in the light of the judgment of this Court in the case of ***Brigade Enterprises Limited v. Anil Kumar Vermani and others*** 2021 SCC Online SC 1283 after affording adequate opportunity to all the parties including developer.

The issue raised regarding adjudication of such a complaint only by a technical member is permitted to be raised before the Commission. At this stage, we are not inclined to decide the veracity of the said issue.

In view of the above, we remit the matter back to the Commission to decide the issue of grant of permission to the consumer under Section 12(1)(c) of the 1986 Act in the light of Brigade Enterprises Ltd. (supra). However, the parties are at liberty to raise all the legal objections as permissible and it shall be considered and decided by the Commission.

If so advised, the appellant(s) in Civil Appeal No. 694 of 2021 may file counter affidavit to the consumer complaint(s) within three weeks from the date of communication of this order.

The civil appeals are disposed of accordingly.

....., **J.**
[J.K. MAHESHWARI]

....., **J.**
[K.V. VISWANATHAN]

New Delhi;
November 24, 2023.

ITEM NO.45

COURT NO.11

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 4106/2020

ANOOP SHARMA

Appellant(s)

VERSUS

KAMAL NAIN PANDYA & ORS.

Respondent(s)

(IA No. 121639/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No. 121640/2020 - STAY APPLICATION)

WITH

C.A. No. 694/2021 (XVII-A)
(FOR ADMISSION and IA No.28447/2021-STAY APPLICATION)

C.A. No. 3827/2020 (XVII-A)
(IA No. 122385/2020 - EX-PARTE STAY and IA No. 122384/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 24-11-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Appellant(s)

Mr. Goutam Narayan, Adv.
Mr. Ujjal Banerjee, Adv.
Mr. Joby P. Varghese, AOR
Mr. Akhash Khurana, Adv.
Mr. Upamanyu Sharma, Adv.
Mr. Shahid Akhtar, Adv.

Mr. Pravin Bahadur, Adv.
Mr. Amit Agarwal, Adv.
Mr. Ms. Kanika Gomber, Adv.
Mr. Saurabh Kumar, Adv.
Mr. S. Anjani Kumar, Adv.
Mr. Vishnu Kant, AOR

For Respondent(s)

Mr. Devendra Singh, AOR

Mr. Pravin Bahadur, Adv.
Mr. Amit Agarwal, Adv.

Ms. Kanika Gomber, Adv.
Mr. Saurabh Kumar, Adv.
Mr. S. Anjani Kumar, Adv.
Mr. Vishnu Kant, AOR

UPON hearing the counsel the Court made the following
O R D E R

The civil appeals are disposed of in terms of the signed
order.

Pending applications stand disposed of.

(NIDHI AHUJA)
AR-cum-PS

(VIRENDER SINGH)
BRANCH OFFICER

[Signed order is placed on the file.]