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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 520/2020 & CM APPL. 26760/2020**

PURI CONSTRUCTION PVT. LTD. Petitioner
Through: Mr. Pravin Bahadur, Mr.Amit
Agarwal, Ms.Kanika, Mr.S.Anjan Kumar,
Mr.Saurabh Kumar, Mr.Alabhya Dhamija,
Mr.Drouhn Garg and Ms.Sonia Dhamija,
Advs.

versus

SHAILESH GUPTA & ORS. Respondents
Through: Ms. Rekha Aggarwal and Mr.
Gaurav Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)

% **17.08,2022**

1. Consumer Complaint 335/2017 was instituted by the respondent Shailesh Gupta and 47 other complainants against the petitioner Puri Construction Pvt. Ltd. before the learned National Consumer Disputes Redressal Commission (“the learned NCDRC”) under Section 12(1)(c)¹ read with Section 21² of the Consumer Protection Act, 1986

¹ 12. **Manner in which complaint shall be made. –**

(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by –

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum on behalf of, or for the benefit of, all consumers so interested;

² 21. **Jurisdiction of the National Commission. –** Subject to the other provisions of this Act, the National Commission shall have jurisdiction –

(a) to entertain –

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore;

("the Act") and Order I Rule 8³ of the First Schedule to the Code of Civil Procedure, 1908 ("the CPC"), as a representative class action complaint. It was clearly stated, in the complaint, that it was being filed for resolution and redressal of the grievances of the 48 named complainants "and also to address the common grievance of all the consumers who are affected by the price discrimination by the opposite party in the 'Aanand Vilas' project".

2. The complaint averred that, relying on advertisements issued by the petitioner, the complainants booked apartments in the 'Aanand Vilas' project by making an initial payment of ₹ 7.5 lakhs for 3 BHK and ₹ 10 lakhs for 4 BHK apartments. It was alleged, in the complaint, that (i) the application form provided to the complainants and other investors in the petitioner's project did not contain relevant or substantial information about the project or the time within which it

³ Order I Rule 8 One Person May Sue or Defend on Behalf Of All In Same Interest:

1. Where there are numerous persons having the same interest in one suit,-
 - (a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;
 - (b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.
2. The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.
3. Any person on whose behalf, or for whose benefit, a suit is instituted or defended, under sub-rule (1), may apply to the Court to be made a party to such suit
4. No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2)
5. Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.
6. A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

would be completed (ii) the Provisional Allotment letter, which was forwarded to the investors/apartment buyers nearly a month after the filing of the application form, stated, *inter alia*, that, if the signed application form was not received back within 15 days of receipt by the concerned apartment buyer/investor, the offer of allotment would stand automatically cancelled and the money deposited by the investor/buyer would be refunded after deducting 15% of the sale consideration of the flat as earnest money, without interest, (iii) the Apartment Buyer Agreement (ABA) which subsequently came to be executed between the buyers and the petitioner was a one sided document containing several arbitrary and coercive clauses; moreover, it enhanced the period within which possession of the flats were to be handed over to the buyers to 54 months, as against 36 months held out at the pre-launched stage, (iv) the buyers/investors were coerced to pay several charges such as Preferential Location Charges (PLC), car parking, club furnishing charges and fire fighting charges, which found no place in the initial application form provided to them, which they had filled in and submitted, (v) though 80-90 % of the payments demanded by the petitioner had been paid by the complainants, the complainants were forced to honour all the allegedly illegal demands of the petitioner and (vi) the petitioner was allotting identical flats to outsiders at nearly half the price at which they were allotted to the complainants.

3. These acts of the petitioner, it was alleged, constituted “unfair trade practices” within the meaning of Section 2(r)(1)(ix)⁴ of the Act,

⁴ (ix) materially misleads the public concerning the price at which a product or like products or goods

as the petitioner was effectively misappropriating hard earned money of the investors.

4. Predicated on the aforesaid allegations, the consumer complaint prayed thus:

“That in view of the above, the Complainants pray before this Hon’ble Commission to:

- i. Direct the Opposite Party to handover legal possession of the respective apartments to all the similarly situated aggrieved buyers/allottees/consumers who have been affected because of the price discrimination in the project “Aanand Vilas, in Sector 81, Faridabad, Haryana” of the Opposite Party which is complete in all respect and in conformity with the Apartment Buyer Agreement and along with the completion certification and all other additional/requisite permissions for the same;
- ii. Direct the Opposite Party for an immediate 100% refund of the excessive amount paid by all the similarly situated aggrieved buyers/allottees/consumers who have been affected because of the price discrimination in the project “Aanand Vilas, in Sector 81, Faridabad, Haryana” of the Opposite Party like the inflated BSP and several Preferential Location Charges (PLC), Car parking, Club furnishing charges etc., along with a penal interest of 18% per annum from the date of the receipt of the payments made to the Opposite party;
- iii. Direct the Opposite Party for an immediate 100% refund of the total principal amount paid by all the similarly situated aggrieved buyers/allottees/consumers who have been affected because of the price discrimination in the project “Aanand Vilas,

or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

in Sector 81, Faridabad, Haryana”, along with a penal interest of 18 % per annum from the date of receipt of payment\$ made to the Opposite Parties, in the event that the Opposite Party is unable to offer the relief claimed under Clause (i) and (ii) or as stipulated by this Hon’ble Commission;

iv. Direct the Opposite Party to pay compensation of Rs.10,00,000/- (Rupees Ten Lakhs Only) to the similarly situated aggrieved buyers/allottees/consumers who have been affected because of the price discrimination in the project “Aanand Vilas, in Sector 81, Faridabad, Haryana” for mental agony harassment, discomfort and undue hardships caused to the Complainants as a result of the above acts and omissions on the part of the Opposite Parties;

v. Direct the Opposite Party to pay a sum of Rs. 10,00,000/- (Rupees Ten Lacs Only) to, all the similarly situated aggrieved buyers/ allottees/consumers who have been affected because of the price discrimination in the project “Aanand Vilas, in Sector 81, Faridabad, Haryana” as a whole, towards litigation costs;

vi. That any other and further relief in favor of all the similarly situated aggrieved buyers/allottees/consumers who have been affected because of the price discrimination in the project “Aanand Vilas, in Sector 81, Faridabad, Haryana” as the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.”

5. A reading of the afore-extracted prayer clause in the consumer complaint reveals that the consumer complaint was filed not only to further the interests of the 48 named complainants, but also on behalf of “all the similarly situated aggrieved buyers/allottees/consumers”. In these circumstances the complainants also filed, along with the consumer complaint, an application under Section 12(1)(c) read with

Section 21 of the Act and Order I Rule 8 of the CPC.

6. Para 3 of the application specifically averred that the reliefs claimed by the complainants in the complaint were common and grant of such reliefs would result in identical benefits enuring in favour of all concerned allottees/buyers/consumers who had booked apartments in the 'Aanand Vilas' project.

7. In view thereof, the application prayed thus:

“In light of the above-stated fact It is prayed that the present Application be allowed and the Complainants be permitted to file, institute and pursue the present Complaint on behalf of the similarly situated consumers/buyers/allottees who are affected by price discrimination in the "Aanand Vilas, in Sector-81, Faridabad, Haryana" under the Section 12(1)(c) of the Consumer Protection Act, 1986 read with Order 1 Rule 8 of the Code of Civil Procedure, 1908.”

8. At this juncture, it may be noted that, Order I Rule 8 of the CPC has been made applicable to class action complaints by Section 13(6) of the Act, which reads thus:

“13. Procedure on admission of complaint

(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.”

9. By order dated 1st August 2017, the learned NCDRC permitted the complaints to file the consumer complaint on behalf of all the

allottees of residential flats in the 'Aanand Vilas' project being developed by the petitioner in Section 81, Faridabad. The complainants were, therefore, permitted to file a single complaint on behalf of and for the benefit of all allottees of residential flats in the said project. Consequent thereupon, the order directed issuance of a public notice in terms of Section 13(6) of the Act read with Order I Rule 8(2) of the CPC.

10. Seven investors/flat buyers responded to the notice issued by the learned SCDRC. Subsequently, 36 of the 48 original complainants withdrew from the complaint, in order to pursue their remedies under the Real Estate (Regulation and Development) Act, 2016 (RERA).

11. On or around 15th May 2019, 11 of the respondents/complainants moved IA 8580/2019 before the learned NCDRC, for permission to amend consumer complaint 335/2017, by rewording the prayer clause thus:

“26) That the prayer clause of the existing consumer complaint needs to be amended as follows :-

i) Direct the Opposite Party to refund the total amount paid along with 18% or appropriate interest to all the similarly situated aggrieved buyers /allottees/consumers in the project "Aanand Vilas, in Sector-81, Faridabad, Haryana".

ii) Direct the Opposite Party to pay compensation of Rs 10 lacs to all the Similarly situated aggrieved buyers /allottees/consumers in the project "Aanand Vilas, in Sector-81, Faridabad, Haryana", for mental agony, harassment, discomfort and undue hardships caused to the complainants as a result of the above acts and omission on the part of the Opposite Party.

iii) Direct the Opposite Party to pay a sum of Rs 10 lacs only to all the similarly situated aggrieved buyers /allottees/consumers in the project "Aanand Vilas, in Sector-81, Faridabad, Haryana", as a whole, towards litigation costs;

iv) That any other and further relief in favour of all the similarly situated aggrieved buyers/allottees /consumers in the project "Aanand Vilas, in Sector-81, Faridabad, Haryana", as the Hon'ble Commission may deem fit and proper in the facts and circumstances of the case”.

12. The said IA 8580/2019 was allowed by the learned NCDRC *vide* order dated 29th August 2019, which forms the first order under challenge in the present petition. The order was completely unreasoned and read thus:

“**IA/8580/2019** (Amendment of prayer)

No reply to the application has been filed. The complainants want to modify the prayers made in the original complaint though the cause of action continues to remain the same. The proposed amendment is allowed. The amended complaint be filed within four weeks with advance copy to the OP which shall be entitled to file written version to the amended complaint within next four weeks. The affidavits by way of evidence have already been filed by the parties. If any additional affidavit by way of evidence is sought to be filed, it can be filed by the parties within eight weeks from today alongwith additional documents if any sought to be filed by them.”

13. The petitioner filed RA 264/2019 before the learned NCDRC, seeking a review of the order dated 29th August 2019 (*supra*) passed by it. The petitioner asserted that the amendment, as sought by the respondents, could not have been granted without complying with the

mandate of Order I Rule 8 of the CPC, as the complaint had been filed, and permitted to be prosecuted, as a class action proceeding under Section 12(1)(c) of the Act. It was submitted in the said application that, consequent to issuance of a public notice in accordance with Section 12(1)(c) of the Act and Order I Rule 8 of the CPC, in terms of the directions issued by the learned NCDRC in its order dated 1st August 2017 in IA 1817/2017, various IAs had been filed by allottees and buyers interested in impleading themselves in the complaint case, which were allowed *vide* order dated 12th March 2018 passed by the learned NCDRC. The amendment that the respondents desired to carry out, it was submitted, effectively resulted in abandonment, by the respondents, of the primary prayer of handing over of possession of the flats, as urged in the original consumer complaint. This, it was submitted, entirely changed the nature of the complaint.

14. Order I Rule 8 (4) of the CPC, it was submitted, prohibited abandonment of any part of the claim in a suit filed under Order I Rule 8 in a representative capacity, unless due notice had been given to all persons so interested, in the manner stipulated under Order I Rule 8(2) of the CPC. No such prior notice having been given before filing IA 8580/2019, it was submitted that the application was *ex facie* misconceived and the amendment proposed in the said application could not be allowed.

15. It was pointed out that CC 335/2017 was a complaint covering all investors/home buyers in the ‘Aanand Vilas’ project, the

respondents could not seek to abandon part of the claim without the consent of all persons whom they represented.

16. For having failed to follow the mandatory procedure envisaged by Order I Rule 8(4) of the CPC, the petitioner contended that IA 8580/2019 had necessarily to be dismissed. As such, the petitioner sought review of the order dated 29th August 2019, passed by the learned NCDRC and, consequently, dismissal of IA 8580/2019.

17. The aforesaid Review Application 264/2019, filed by the petitioner, stands rejected by the learned NCDRC *vide* order dated 9th September 2020, which constitutes the second order under challenge in the present petition.

18. Apropos the specific contention advanced by the petitioner, predicated on Order I Rule 8(4) of the CPC, the learned NCDRC holds as under:

“2. The submission of the Ld. Counsel for the review applicant is that the prayer made in the original complaint was for grant of possession and refund was sought only as an alternative relief, whereas the only prayer made in the amended complaint is for refund with compensation. In his submission such an amendment should not have been allowed without publishing notice in terms of Order I Rule VIII of CPC.

4. The Id. Counsel for the complainant submits that the cause of action pleaded in the original complaint has not been deleted even in the amended complaint and they have only put additional facts which have come to their knowledge at a later date. *In my opinion, there is no necessity of issuing a public notice before allowing the amendment of the complaint. Once*

the amendment is allowed a fresh public notice can be issued, referring to the prayers made in the amended complaint. If such a course of action is adopted, the other buyers, who are interested in the relief claimed in the original complaint would come to know that now the prayer made in the complaint is confined to refund of the amount paid to the builder with compensation etc. Such other buyers, if they do desire, can avail their own independent remedies since they will be outside the purview of this complaint. The scope of the present complaint will now be restricted to only such flat buyers who are interested in seeking refund of the amount paid by them to the builder and who do not wish to take possession of the flats allotted to them.”

(Emphasis supplied)

19. Aggrieved by the aforesaid order, the petitioner has approached this Court, invoking its supervisory jurisdiction under Article 227 of the Constitution of India.

20. This petition was tagged with four other petitions, i.e. CM(M) 1393/2017 (*TDI Infrastructure Ltd. v. U.O.I. and Anr.*), CM(M) 100/2018 (*DLF Homes Rajpura Pvt. Ltd. v. U.O.I. and Anr.*), CM(M) 1333/2017 (*DLF Homes Rajpura Pvt. Ltd. v. U.O.I. and Anr.*) and CM(M) 664/2018 (*Lucina Land Development Ltd. v. U.O.I. and Anr.*).

21. As the challenge, in all these petitions, was to orders passed by the learned NCDRC in exercise of its original jurisdiction, and the order would be appealable to the Supreme Court under Section 23 of the Act, a preliminary issue of whether the order would be amenable to challenge under Article 227 of the Constitution of India arose.

22. The said issue stands decided by me in favour of the petitioners

vide my judgment dated 27th April 2022 in CM(M) 664/2018 (*Lucina Land Development Ltd. v. U.O.I.*⁵).

23. As such, submissions were advanced, before me, on the merits of the impugned orders.

24. Mr. Pravin Bahadur, learned Counsel for the petitioner, submitted that the mandate of Order I Rule 8(4) of the CPC which, by virtue of Section 13(6) of the Act, was applicable, *mutatis mutandis*, to proceedings before consumer fora under the Act, was absolute and inexorable. He submits that, once the application of the respondents under Section 12(1)(c) of the act, to prefer CC 335/2017 as a class action proceeding on behalf of all flat buyers similarly situated had been allowed, it was not open to the learned NCDRC to allow the application of the respondents, which sought to abandon the prayer for possession contained in the original complaint, without notice to all persons whom the respondents had been permitted to represent under Section 12(1)(c) of the Act. No such notice having been issued, Mr. Pravin Bahadur submits that the impugned orders passed by the learned NCDRC are fundamentally bereft of jurisdiction. He submits that the view adopted by the learned NCDRC in the impugned order dated 9th September 2020, passed in RA 264/2019, is inimical to Order I Rule 8(4) of the CPC and cannot, therefore, sustain.

25. Mr. Pravin Bahadur relies, for the said purpose, on the judgment of the High Court of Kerala in *Ulahannan Kurian v. Markose*⁶ and

⁵ 2022 SCC OnLine Del 1274

⁶ AIR 2001 Ker 13

the judgment of the High Court of Punjab and Haryana in *Ram Mehar v. Suraj Singh*⁷.

26. Ms. Rekha Aggarwal and Mr. Gaurav Gupta, learned Counsel appearing on behalf of Respondents 1 and 3 respectively, emphatically contest the submissions advanced by Mr. Pravin Bahadur. Ms. Rekha Aggarwal chooses to emphasise the equity aspect of the dispute. She submits that the petitioner having never chosen to file a reply to the amendment application of the respondents', could not seek, at this late stage, to contest the orders passed by the learned NCDRC. She submits that nearly four years have elapsed since the impugned orders and that the complaint is at the stage of final hearing. At this late stage, she submits, putting the clock back to the stage of the application for amendment filed by the respondents would be seriously prejudicial to their interests. Given the fact that the Consumer Protection Act is a piece of beneficial legislation, Ms. Aggarwal submits that the Court should not condescend to the arguments advanced by Mr. Pravin Bahadur. She submits that the amendments that the respondents sought to effect in CC 335/2017 did not alter the cause of action but merely deleted the prayer for recovery of possession. That, she submits, was an informed decision that the respondents had taken, which it was within their authority to take. Inasmuch as, while allowing the respondents application under Section 12(1)(c) of the Act, a public notice had been issued by the learned NCDRC, she submits that all concerned persons must be deemed to have notice of the proceedings. The objection being voiced

⁷ AIR 1989 P&H 307

by Mr. Bahadur is, therefore, submits Ms. Aggarwal, at best, a technical objection which has to give way to the dispensation of substantial justice.

27. Even while supporting the submissions of Ms. Aggarwal, Mr. Gaurav Gupta chose to contest the correctness of the submissions of Mr. Pravin Bahadur submissions on merits. He submits that there is a difference between abandonment of a claim and amendment of the consumer complaint. According to Mr. Gupta, it is not proper to equate the two expressions.

28. Mr. Gupta has also emphasised the words “so interested” in Order I Rule 8(4) of the CPC. According to him, the words “so interested” relate back to Order I Rule 8(3). In other words, only those persons who applied to become parties in the proceedings, consequent to the public advertisement issued under Order I Rule 8(2), according to Mr. Gupta, could be treated as persons “so interested” within the meaning of Order I Rule 8(4). Else, he submits, the scope of inquiry would become open ended. According to Mr. Gupta, it would be fallacious to hold that the learned NCDRC ought to have presumed that even persons who had not chosen to respond to the public advertisement issued under Order I Rule 8(2) were, nonetheless, “interested” in the outcome of the proceedings, as would require issuance of prior notice to them under Order I Rule 8(4) before allowing the prayer to amend the consumer complaint.

29. Mr. Gupta also chose to submit that, in any case, even on

merits, the amendment that the respondents sought to carry out in the consumer complaint could not have been contested, as they did not alter the basic case of the respondent, and it was always open to a party to give up the claim. As such, he submits that, even if the strict rigour of Order I Rule 8 (4) of the CPC were to apply in the present case, any other persons, to whom notice would have to be issued under the said provision could not have seriously contested the request for amendment, as made by the respondents. He, therefore, echoes the submission of Ms. Aggarwal that the objection voiced by Mr. Pravin Bahadur is essentially technical in nature.

Analysis and findings

30. The issue, according to me, admits of no complexity whatsoever. The statutory mandate is plain and uncompromising.

31. Section 2(1)(b)(iv) of the Act defines “complainant” as meaning “one or more consumers where there are numerous consumers having the same interest”. Commonality of interest has been held by the Supreme Court, in *Brigade Enterprises v. Anil Kumar Virmani*⁸ to be the *sine qua non* for allowing an application under Section 12(1)(c) of the Act, to be filed by one or more consumers on behalf of others not individually impleaded.

32. In this context, the wordings of Section 12(1)(c) are of considerable importance. Section 12(1)(c) allows filing of “a complaint in relation to any goods sold or delivered or agreed to be

⁸ (2022) 4 SCC 138

sold or delivered or any service provided or agreed to be providedwith a district forum by one or more consumers, where there are numerous consumers having the same interest, with the permission of the district forum, on behalf or, or for the benefit of, all consumers *so interested*". (This provision has been made applicable, *mutatis mutandis*, to the NCDRC, by Section 22(1) of the Act⁹). Where, therefore, an application under Section 12(1)(c) stands allowed by the Consumer Forum, it amounts to lending, by the Consumer Forum, of its judicial imprimatur to the contention, of the applicants/complainants before it, that all persons whose cause the complainants seek to espouse are persons who are "so interested" in the complaint and the reliefs sought therein.

33. The respondents being, therefore, "complainants" as defined in Section 2(1)(b)(iv) of the Act, Order I Rule 8 of the CPC becomes applicable, *mutatis mutandis*, to CC 335/2017 filed by the respondents, by operation of Section 13(6) of the Act.

34. The interpretation placed by Mr. Gaurav Gupta on the expression "so interested", as employed in Order I Rule 8(4), does not commend itself to acceptance.

35. The interpretative principle that the same expression, used in different provisions of a statutory instrument, is required to be accorded the same meaning, unless the provision in question unmistakably points to a contrary intent may, by now, be regarded as

⁹(1) The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the

fossilized in law. The applicability of this principle is augmented in a case where the expression figures in different parts of one statutory provision.

36. This principle was expressed in the opinion of Hegde and Mukherjea, J.J., in *Kesavananda Bharati v. State of Kerala*¹⁰ thus:

“It is one of the accepted rules of construction that the court should presume that ordinarily the legislature uses the same words in a statute to convey the same meaning. If different words are used in the same statute, it is reasonable to assume that, unless the context otherwise indicates, the legislature intended to convey different meanings by those words.”

37. To the same effect are the decisions in *Bhogilal Chunilal Pandya v. the State of Bombay*¹¹, *K. N. Guruswamy v. the State of Mysore*¹² and *Suresh Chand v. Gulam Chisti*¹³.

38. The House of Lords in *Farrel v. Alexander*¹⁴, expressed the same principle by ruling that “where the draftsman uses the same words or phrase in similar context, he must be presumed to intend it in each place to bear the same meaning”.

39. In *State (NCT of Delhi) v. Union of India*¹⁵, the Supreme Court held that expression “any matter” used in the proviso to Section 239 AA(4) would have to be accorded the same interpretation as was accorded to it elsewhere in the same Article of the Constitution.

Commission, be applicable to the disposal of disputes by the National Commission.

¹⁰ (1973) 4 SCC 225

¹¹ AIR 1959 SC 356

¹² AIR 1954 SC 592

¹³ AIR 1990 1 SCC 593

¹⁴ (1976) 2 All ER 721

¹⁵ (2018) 8 SCC 813

40. Applying the above principle, the expression “so interested”, figuring in the various clauses of Section 8(1) has to be accorded the same meaning in each clause. For that matter, in my opinion, the words also carry the same meaning as the words “so interested” as employed in Section 12(1)(c) of the Act, which is why Order I Rule 8 has, by Section 13(6) of the Act, been made applicable, *mutatis mutandis*, to class action complaints preferred under Section 12(1)(c).

41. Clause (a) of Order I Rule 8 (1) states that “*where there are numerous persons having the same interest* in one suit one or more of such persons may, with the permission of this Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons *so interested*”. Obviously, all persons whose cause the suit seeks to espouse, as persons having commonality of interest, are persons “so interested” within the meaning of Order I Rule 8 (1)(a).

42. Order I Rule 8 (2) requires the Court, in every case where permission to file a class action suit is granted under Order I Rule 8 (1) to, at the plaintiff’s expense, give notice of the institution of the suit, *to all persons so interested* either by personal service or, if that is not possible, by public advertisement. Clearly, the words “all persons so interested” refers back to the expression “so interested” as employed in Order I Rule 8 (1)(a). That is to say, all persons whose interest the complainant, filing a class action complaint under Section 12 (1)(c) of the Act, purports to espouse, are persons “so interested” within the meaning of Order I Rule 8(1)(a) and, equally therefore,

Order I Rule 8 (2).

43. Order I Rule 8 (3) does not even employ the expression “interested”. What it states is that any person on whose behalf, or for whose benefit, a suit is instituted under Order I Rule 8 (1) may apply to the Court to be made a party to the suit. In other words, it is open to any of the persons whose interest the plaintiff under Order I Rule 8 (1) (a) purports to espouse, to individually apply to become a party to the suit. That does not, by any principle of interpretation, restrict the ambit of the expression “so interested” as employed in Order I Rule 8(1)(a) or Order I Rule 8 (2), to the persons who so apply under Order I Rule 8 (3) alone. The intent of Order I Rule 8 (3) is obvious. It is to ensure that, even though the representative suit under Order I Rule 8 (1)(a) espouses the interest of a large number of persons having commonality of interest, if any of such person or persons desires to individually espouse her or his cause before the Court, she or he may apply individually to do so under Order I Rule 8(3) by being made individually a party to the suit. This provision can, therefore, have no impact whatsoever on the understanding of the expression “so interested” as employed in the other clauses of Order I Rule 8, including Order I Rule 8 (4).

44. Plainly expressed, if a suit is filed by, say, 4 persons under Order I Rule 8(1)(a), purporting to espouse the cause of 100 more persons who have commonality of interest with them, all 104 persons become persons “so interested” within the meaning of Order I Rule 8(1) and (2). Consequent on issuance of advertisement under Order I

Rule 8(2), if, say, only 20 persons respond under Order I Rule 8(3) by applying for individually being made parties to the suit, *the remaining 80 do not, thereby, drop out of the category of the persons “so interested”*, as Mr Gaurav Gupta would seek to contend. They remain persons “so interested”, who do not desire to file individual suits, but are willing to have their cause espoused by the 4 initial plaintiffs.

45. Proceeding to Order I Rule 8 (4), the provision unequivocally prohibits abandonment of any part of the claim in *any such suit* – meaning any suit instituted in terms of Order I Rule 8 (1) – to be abandoned, unless the Court has given, at the plaintiff’s expense, notice to *all persons so interested*, in the manner specified in Order I Rule 8 (2).

46. In other words, applying the provisions of Order I Rule 8 *mutatis mutandis* to the Act, if one or more consumers desire to file a representative consumer complaint, espousing the cause of a large number of persons having commonality of interest, under Section 12(1)(c) of the Act, they would have to apply under the said provision for permission to file a representative complaint, whereupon the Court would give notice to all persons so interested, i.e. all persons whose common interest the complaint purports to espouse, either individually or by way of public advertisement. If, at a later point of time, the complainant/complainants desires to abandon any part of the claim, Order I Rule 8(4) permits such abandonment provided, prior thereto, the Court issues notice, once again, to all persons so interested, i.e. all persons whose interest the original complaints purported to espouse, in

the same manner as envisaged by Order I Rule 8 (2) i.e. either individually or, if that were not possible, by public advertisement.

47. In the present case, not only was the amendment application not filed after notice to all the persons on whose behalf consumer complaint 335/2017 was filed, it was not even espoused by all the then existing complainants (including those who had responded to the notice issued by the learned NCDRC on 1st August 2017). The exercise having not been undertaken in the present case, there is undoubtedly substance in the submission of Mr. Praveen Bahadur that the learned NCDRC has erred in allowing the respondents' application for amendment of Consumer Complaint 335/2017, by abandoning the relief of possession originally claimed.

48. The observations of the learned NCDRC, in para 4 of the impugned order dated 9th September, 2020, passed in RA 264/2019, are clearly opposed to Order I Rule 8 of the CPC and, therefore, to Section 13(6) of the Act as well. In the face of the said provisions, it was not open to the learned NCDRC to opine that there was no necessity of issuing a public notice, before allowing the amendment of the complaint, inasmuch as the amendment of the complaint clearly sought to abandoning the relief of possession originally urged. The opinion expressed by the learned NCDRC in para 4 of the impugned order dated 9th September, 2020, being in the teeth of Order I Rule 8 (4) of the CPC, cannot therefore, in my respectful opinion, sustain.

49. It was also not open to the learned NCDRC, in my respectful

opinion, to hold that the amendment could initially be allowed and, thereafter, a public notice issued, as would enable persons who were interested in the relief sought in the original complaint to individually apply to the Consumer Forum and follow their own independent remedies. Such a suggestion, again, is, in my respectful opinion, completely opposed to Order I Rule 8 of the CPC and, consequently, to Section 13(6) of the Act. Where Order I Rule 8(4) expressly requires prior notice to “all persons so interested” in the class action complaint, that requirement cannot be substituted by first allowing the complaint to be amended by abandoning part of the relief sought and, thereafter, issuing a public notice to the persons on whose behalf the complaint was filed. That would amount to placing the cart before the horse.

50. Apropos the submissions advanced by Ms. Rekha Aggarwal, they are merely to be urged to be rejected. Considerations of equity cannot trump the provisions of the statute. The petitioners approached this Court shortly after the passing of the impugned orders and the present petition has been pending before this Court since 2018. If, therefore, in the interregnum, the proceedings before the learned NCDRC have progressed, that progress has necessarily to be subject to the outcome of the present petition. No equities can be claimed on that ground.

51. For that matter, even if they could be claimed, such claims could not sustain in the face of the express provisions of Order I Rule 8(4) of the CPC, read with Section 13(6) of the Act. It is trite that equity cannot operate against the statute.

52. For the same reason, the submission, of Mr Gupta, that the defect in procedure was, if at all, only technical, as no one could possibly oppose the amendment, is merely speculative and conjectural, and cannot, therefore, sustain in law. The principle that persons who are required, in law, to be impleaded, have to be so impleaded, and that it is no answer to this requirement to urge that, even if they were impleaded, they would have no sustainable case to put up, is as old as the hills.¹⁶

Conclusion

53. In the light of the aforesaid discussion, the impugned orders dated 29th August, 2019 and 9th September, 2020 of the learned NCDRC, being directly opposed to Section 13(6) of the Act read with Order I Rule 8 (4) of the CPC, cannot, in my respectful opinion, sustain.

54. The impugned orders dated 29th August 2019 and 9th September 2020 are, therefore, quashed and set aside.

55. The petition is accordingly allowed, with no orders as to costs.

C. HARI SHANKAR, J

AUGUST 17, 2022

kr/dsn/r.bararia

¹⁶ One may refer, for example, to **Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545**