

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**REVISION PETITION NO. 570 OF 2020**

(Against the Order dated 20/12/2019 in Appeal No. 302/2015 of the State Commission Tamil Nadu)

1. PRABU HERBERT SAMUEL (CIVIL ENGINEER)  
DOOR NO. 252, KANNAGI NAGAR,  
DHARAPURAM TOWN

.....Petitioner(s)

Versus

1. R. RAJAMMAL  
W/O. A. RAMASAMY D.NO. 84/126, NEHRU NAGAR,  
DHARAPURAM TOWN

.....Respondent(s)

**BEFORE:**

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING  
MEMBER**

FOR THE PETITIONER :                   FOR THE PETITIONER : MR. V. SHANKET, ADVOCATE  
(THROUGH VC)

FOR THE RESPONDENT :               FOR THE RESPONDENT : MS. YAMUNA NCHIAR, ADVOCATE

**Dated : 14 June 2024**

**ORDER**

1. The present Revision Petition is filed against impugned order dated 20.12.2019, passed by the learned State Consumer Disputes Redressal Commission, Tamil Nadu, ('the State Commission') in First Appeal No. 302/2015 wherein the State Commission dismissed the Appeal filed by the Petitioner/OP and affirmed the learned District Consumer Disputes Redressal Forum, Erode, ('the District Forum') order dated 23.09.2015 directing payment of Rs.4,25,000/- by the Petitioner/ OP to the Complainant as compensation for renovating the house in question along with Rs.25,000/- as compensation for mental agony and Rs.5,000/- as litigation cost.

2. There is a delay of 29 days in filing the Revision Petition. As the said delay was during the suspended period of limitation by the Hon'ble Supreme due to Covid-19, the present Revision Petition is treated to have been filed within limitation.

3. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum.

4. Brief facts of the case, as per the Complainant, are that he entrusted the job of construction of a house over the piece of land owned by them with the Opposite Party (OP) who claimed to be an expert construction engineer. A Construction Agreement was entered in

to between them on 24.05.2010 under which the OP had agreed to construct the building measuring 1650 Sq Ft for Rs.12,54,000/- payable in 7 instalments. She had paid the total amount accordingly. When she requested the OP to complete the construction and hand over the possession, the OP dragged the matter, delayed, abused her in filthy language and threatened her. With no other option, she had to take delivery of the building on her own. When she occupied the house there were leakages from the entire ceiling and seepages through the walls and the concrete had also become hollow due to poor construction and posed danger to her life and family. When the same was brought to the notice of the OPs he again threatened her. She then came to know that the OP was not an engineer and he was in fact a mason. Hence, she lodged a police complaint against OP, and a criminal case was registered against OP. It cost Rs.2,58,166/- for her to carry out repairs and complete the left over work. The acts of OP amounted to deficiency in service causing mental agony and monetary loss to the complainant. Being aggrieved, she filed a Consumer Complaint before the learned District Forum.

5. In reply, the OP contended that though the Complainant had obtained permission to construct a house measuring 1300 Sq Ft she insisted the OP to do construction for 1650 Sq Ft. Accordingly the OP completed the construction on 12.01.2011 and handed over the keys to her and demanded payment of the balance Rs.15000/- towards the cost of the construction. But, she abused the OP and threatened him with dire consequences. The OP constructed the house as per the terms of agreement. When OP moved an Application for anticipatory bail the Hon'ble High Court referred the matter to mediation. The mediator appointed an engineer to inspect the said building and to file a report. Accordingly, an engineer had inspected the building and rendered a report that the house was properly constructed and it was fit for occupation. In spite of the same she filed this false complaint.

6. The learned District Forum vide Order dated 23.09.2015 allowed the complaint and granted the following relief:-

***“15. In fine this Complaint is allowed and the Opposite Party is directed to compensate a sum of Rs.4,25,000/- towards renovating the Complaint schedule premises and a sum of Rs.25,000/- towards mental agony & hardship and a sum of Rs.5,000/-, towards cost of the proceedings and the above directions be complied within 2 months this day.”***

**(Extracted from translated copy)**

7. Being aggrieved by the Order of the learned District Forum, the Petitioner/OP filed FA No. 302/2015 and the State Commission vide order dated 20.12.2019 dismissed the Appeal and affirmed the District Forum order dated 23.09.2015 with following observations:

***“4. Points for consideration***

1. *Was not there any deficiency in service on the part of the opposite party?*
2. *Is not the complainant entitled to the reliefs granted by the Learned District Forum?*

5. *Points No.1 & 2*

*The simple case of the complainant is that the opposite party even after receiving the entire cost of construction had not completed the construction of the house which was entrusted to him by the complainant and when the complainant demanded him to complete the construction she was threatened by the opposite party which constrained the complainant to take possession of the unfinished house on her own and the opposite party had used substandard materials and there were defects in the construction as a result of which the entire roof was leaking causing seepages on all the walls which would amount to deficiency in service and hence the opposite party should be directed to pay compensation to the complainant. Per contra the defence of the opposite parties is that he had completed the construction of the said house as per the specifications and within the time as agreed and had handed over possession of the house to the complainant on 12.1.2012 and it was only the complainant who owed Rs.15000/- to the opposite party by way of balance cost of construction and hence there was no deficiency in service on his part.*

*6. It is not in dispute that the complainant and the opposite party had entered in to a construction agreement vide Ex.A2 on 24.5.2010 by and under which the opposite party had agreed to construct a house measuring 1650 sq.ft. as per the specifications mentioned therein at a cost of Rs.12,54,000/- and that the complainant had to pay the cost of construction in 7 installments and that the opposite party had to complete the construction and hand over the possession of the house to the complainant within 7 months from the date of payment of the 1st installment. As per Ex.A2 construction agreement the first installment of Rs.2 lakhs was paid by the complainant on 2.6.2010 (it is wrongly noted as 21.6.2010 in the complaint). Further from the endorsement found on the reverse of Ex.A2 construction agreement it can be seen that the complainant had paid a total of Rs.12,50,000/- and the same was received by the opposite party leaving a balance of Rs.4000/- which the complainant would claim to have paid in cash but denied by the opposite party.*

*7. From the above it emerges that the first payment of installment was paid on 2.6.2010 and as such the opposite party ought to have completed the within 7 months from thereon, that is on or before 2.1.2011 and handed over the possession to the complainant.*

***8. The complainant in her complaint would plead that the opposite party had not completed the construction within the agreed time and hence she had to take possession of the house on her own. But she did not state on which date she took possession of the house herself. But the opposite party would plead in the written version as if he had completed the construction on 12.1.2011 and handed over the keys of the house to the complainant and had deposed in the Proof Affidavit that he had completed the construction of the house and handed over the possession to the complainant on 13.1.2011. But the complainant had not deposed in her Proof Affidavit as to when she took possession of the house on her own. Hence we have to hold that the complainant had not proved that there was delay in completing the construction on the part of the opposite party.***

***9. Regarding the defective construction the Learned District Forum has relied upon the engineer report under Ax.A4 Advocate Commissioner's report under Ex.C1, The Learned District Forum has accepted the commissioner report under Ex.C1 for the reason that the opposite party had not chosen to file any objection to the said report.***

***10. When the appeal was ripe for arguments the Learned Counsel appearing for appellant / opposite party has filed an application seeking the permission of this commission to file his objection to the commissioner's report under Ex.C1 filed by the Advocate Commissioner before the Learned District Forum. This petition is resisted by the complainant on various grounds. Hence this petition is numbered as CMP.355/2019 and heard along with this appeal for dismissal. First of all there is no provision in the Consumer Protection Act, 1986, to file such a petition and that is the reason why the petitioner has not quoted any provision of law in the petition. On this score alone this petition deserves dismissal.***

***11. A perusal of the affidavit filed in support of this petition shows that the reason for not filing the objection to the commissioner's report is stated in para 6 of the affidavit to the effect that due to want of legal advice the petitioner was not able to file his objection to the report under EX.C1 before the Learned District Forum. There cannot be any quarrel on the proposition that ignorance of law is not an excuse. Similarly the reason that a party was not rendered proper legal advice by his own advocate cannot be also an excuse. Hence the only reason mentioned in the affidavit falls to the ground. Hence we are of the view that the petition seeking permission to file objection to the commissioner's report under EX.C1 in the Appellate Forum cannot be allowed. Hence the petition is dismissed without cost.***

***12. As already noticed the Learned District Forum has founded its conclusion on the contents of Ex.C1 Report and held that there were defects in the construction carried***

*out by the opposite party which would require Rs.4,25,000/- to rectify.*

*13. As has been rightly held by the Learned District Forum it has acted upon the Commissioner report under Ex.C1 for the purpose of holding that there were defects in the construction which would require a particular amount to rectify. We don't find any reason to differ from the reasoning recorded by the Learned District Forum.*

*14. There are two engineer reports in respect of the same subject namely the nature of construction carried out in the subject house and the probable cost of removing the defects. One is Ex.A4 and the other is Ex.C1 Advocate Commissioner's Report. But we are of the view that only Ex.C1 report has to be preferred to Ex.A4 for the following reasons.*

*a) Ex.A4 is the report of a civil engineer which came into existence prior to filing of the complaint at the instance of the complainant and hence it is in a way self serving document.*

*b) Ex.A4 is not in full shape (i.e) the last page of Ex.A4 had not been signed by the author. Only the first page was signed and the remaining pages are unsigned.*

*c) In Ex.A4 report the total value of incomplete RCC Building's is stated as Rs.2,14,908/- for which details are provided in page no.4. But in respect of the value of the incomplete building additional works arrived at Rs.49,258/- there are no particulars given in page no.5. Further Ex.A4 report is bereft of particulars as to the formula adopted in arriving at the cost of building the unfinished works.*

*d) Per contra Ex.C1 report was filed by the advocate commissioner appointed by the Learned District Forum who inspected the subject building along with a qualified Civil Engineer In the presence of both parties. Further Ex.C1 is a detailed technical report.*

*15. Hence as per Ex.C1 the cost required to complete the Incomplete construction is Rs.6,83,346/-. But the Learned District Forum had deducted the cost of removing the defects as advised by the engineer in Ex.A4 namely Rs.2,58,166/- from the cost stated in Ex.C1 and arrived at the balance of Rs.4,25,186/-. After rounding of it comes to Rs.4,25,000/- which the Learned District Forum,, has arrived as the cost required to remove the defects in the construction or to complete the incomplete*

***works. We cannot understand this formula adopted by the Learned District Forum and the same cannot be accepted. The Learned District Forum should have either accepted A4 report or Ex.C1 report for the purpose of arriving at the probable cost required for completing the incomplete works.***

***16. Further in para 12 of its order the Learned District Forum has stated that in Ex.C1 Commissioner's Report some Incomplete works were mentioned which did not form part of the construction agreement between the parties under Ex.A2. It is true that the engineer who estimated the cost of carrying out works to complete the construction had taken in to account certain items of construction which did not find a place in the construction agreement under Ex.A2. A combined reading of Ex.A2 and Ex.C1 would show that the cost of carrying out the incomplete works may not be around 2.58 lakhs so as to deduct the same from Rs.6,83,346/-. Hence even after deducting the cost of carrying out incomplete works in respect of the works not covered in Ex.A2 from the estimated cost of Rs.6,83,346/- mentioned in Ex.C1 the cost required would be more than Rs.4,25,000/- as arrived at by the Learned District Forum. Nevertheless we are of the view that we need not labour much on that as the complainant has not challenged the quantum of relief awarded to him.***

***17. Hence we hold that we need not disturb the finding of the Learned District Forum as regards the reliefs granted to the complainant towards the cost of completing the incomplete works.***

***18. The Learned District Forum has granted Rs.25,000/- as compensation for the mental agony and other hardships besides litigation cost of Rs.5000/- to the complainant. Considering the facts and circumstances of this case we are of the view that the same is just and reasonable.***

***19. Based on the discussions held above we hold that there was deficiency in service on the part of the opposite party in not fully completing the construction as per the specifications mentioned in Ex.A2 construction agreement and point no.1 is answered accordingly.***

***20. We further hold that the complainant is entitled to the reliefs granted by the Learned District Forum and point no.2 is answered accordingly.***

***In the result the appeal is dismissed. No order as to costs.”***

8. Being dissatisfied by the Impugned Order dated 20.12.2019 passed by the State Commission, the Petitioner /OP has filed the instant Revision Petition bearing no.570 of 2020.
9. I have examined the pleadings and other associated documents placed on record, including the orders of both the learned Fora and rendered thoughtful attention to the arguments advanced by the learned Counsels for both the parties.
10. The contentions and arguments of Petitioner/OP are centred on the assertion that the report of the Advocate Commissioner is not based on the true facts and the same is not acceptable and the learned Fora below have erred in relying on the same. He sought to set aside the impugned orders passed by the fora below.
11. On the other hand, the learned Counsel for the Respondent/ Complainant has argued in favour of the concurrent findings of the Fora. He sought to uphold the concurrent findings of the Fora and dismiss the Revision Petition with cost. He has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Rajiv Shukla Vs. Gold Rush Sales and Services Limited and Ors., 2022 (9) SCC OnLine SC 31.***
12. It is a matter of record that as per the Commissioner's report, some works were incomplete works and pending as per agreement executed between the Parties. It is also not refuted by the Petitioner/ OP. Hence, the Respondent/ Complainant filed complaint seeking directions to the Petitioner/OP to pay compensation.
13. The learned District Forum passed a detailed and well reasoned order based on evidence and arguments advanced before it. The learned State Commission, after due consideration of the pleadings and arguments, determined that no intervention is warranted on the District Forum's order except some modifications to the tune of quantum of compensation and passed a well-reasoned order.
14. It is a well settled position in law that the scope for Revision under Section 21(b) of the Consumer Protection Act, 1986 and now under Section 58(1)(b) of the Act, 2019 confers very limited scope and jurisdiction on this Commission. In the present case, there are concurrent findings of the facts and the revisional jurisdiction of this Commission is very limited. After due consideration of the entire fact and material on record, I do not find any illegality, material irregularity or jurisdictional error in the impugned Order passed by the learned State Commission warranting interference in revisional jurisdiction under the Act. I

place reliance on the decision of the Hon'ble Supreme Court in the case of '**Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd., (2011) 11 SCC 269**'. Further, in '**Sunil Kumar Maity vs. SBI & Anr. Civil Appeal No. 432 of 2022 Order dated 21.01.2022**' the Hon'ble Supreme Court held as follows:-

***“9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required. ....”***

15. Similarly, in a recent order the Hon'ble Supreme Court in **Rajiv Shukla Vs. Gold Rush Sales and Services Ltd. (2022) 9 SCC 31** has held that:-

***As per [Section 21\(b\)](#) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record.***

16. Based on the deliberations above, I do not find any merit in the present Revision Petition and the same is, therefore, dismissed.

17. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs.

18. All pending Applications are also disposed of accordingly.

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**AVM J. RAJENDRA, AVSM VSM (Retd.)  
 PRESIDING MEMBER**