

CASE NO.:
Appeal (civil) 5861 of 2002

PETITIONER:
Haryana Urban Development Authority

RESPONDENT:
Mukesh Kumar

DATE OF JUDGMENT: 24/09/2004

BENCH:
S.N. VARIAVA & A.K. MATHUR

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

Delay condoned.

Before this Court a large number of Appeals have been filed by the Haryana Urban Development Authority and/or the Ghaziabad Development Authority challenging Orders of the National Consumer Disputes Redressal Commission, granting to Complainants, interest at the rate of 18% per annum irrespective of the fact of each case. This Court has, in the case of Ghaziabad Development Authority vs. Balbir Singh reported in (2004) 5 SCC 65, deprecated this practice. This Court has held that interest at the rate of 18% cannot be granted in all cases irrespective of the facts of the case. This Court has held that the Consumer Forums could grant damages/compensation for mental agony/harassment where it finds misfeasance in public office. This Court has held that such compensation is a recompense for the loss or injury and it necessarily has to be based on a finding of loss or injury and must co-relate with the amount of loss or injury. This Court has held that the Forum or the Commission thus had to determine that there was deficiency in service and/or misfeasance in public office and that it has resulted in loss or injury. This Court has also laid down certain other guidelines which the Forum or the Commission has to follow in future cases.

This Court is now taking up the cases before it for disposal as per principles set out in earlier judgment. On taking the cases we find that the copies of the Claim/Petitions made by the Respondent/Complainant and the evidence, if any, led before the District Forum are not in the paper book. This Court has before it the Order of the District Forum. The facts are thus taken from that Order.

In this case, the Respondent was allotted a plot bearing No. 1849, Sector-14(P), Hisar on 21.8.1986. The Respondent paid substantial amounts but the possession was not delivered. The Respondent thus filed a complaint. On these facts, the District

Forum awarded interest @ 15% p.a. on the entire deposited amount from the date of allotment till offer of possession.

The State Forum dismissed the Appeal and confirmed the Order of the District Forum. The Appellants went in Revision before the National Commission. The National Commission dismissed the Revision.

As has been stated in so many matters, the Order of the National Commission cannot be sustained. It cannot dispose of the

matters by confirming award of interest in all matters irrespective of the facts of that case. If facts of a case so justify the National Commission may award compensation/damages on principles set out in Balbir Singh's case (supra). The Order of the National Commission is set aside.

We are informed that the Appellants have offered possession on 1st May 1998. Counsel had no instructions whether Respondent had taken possession or not. Undoubtedly the Respondent will be entitled to take possession, if he has not already taken possession. Appellants will deliver possession without demanding any further or other amounts.

We are informed that the Respondent has paid a sum of Rs.1,24,123/-. Appellants have paid to the Respondent a sum of Rs.24,109/- on 12th December 2003. As we are unable to understand and Counsel has no instructions to be able to explain on what basis this amount of Rs.24,109/- has been paid, we direct that Appellants shall now recalculate interest at the rate of 12% from date of each deposit till payment. As Appellants could not deliver possession they are not entitled to claim interest even on delayed payments. If Appellants have deducted TDS, they shall now repay that amount with interest thereon at 12% per annum from date it was so deducted till payment.

Such recalculation to be made within 15 days from today and the amounts found due and payable to the Respondent to be paid to him within 15 days thereafter. A compliance report to be filed in this Court within one month from date. A copy of the recalculation to be annexed to the compliance report.

We clarify that this Order shall not be taken as a precedent in any other matter as the order is being passed taking into account special features of the case. The Forum/Commission will follow the principles laid down by this Court in Balbir Singh's case (supra) in future cases.

With these observations, the Appeal stands disposed of with no order as to costs.