

**BEFORE THE HON'BLE STATE CONSUMER DISPUTES REDRESSAL
COMMISSION, MAHARASHTRA, MUMBAI**

Appeal No. A/14/758

**(Arisen out of order dated 23/07/2014 passed in complaint No.333/2004 by
District Mumbai Suburban)**

1. M/s.Nimesh Enterprises
Rashmi Palace, Behind Shanti Aashram,
Borivali (W), Mumbai – 400 103.

2. Mr.Balchandra Mhatre
Partner of M/s.Nimesh Enterprises
Rashmi Palace, Behind Shanti Aashram,
Borivali (W), Mumbai – 400 103.

.....Appellant (s)

Versus

Mhatre Palace Co-op. Hsg. Soc. Ltd.
106 Link Road, I.C. Colony,
Borivali (W), Mumbai – 400 103.

.....Respondent (s)

BEFORE:

**Justice A.P. Bhangale PRESIDENT
D.R. Shirasao JUDICIAL MEMBER**

For the Appellant: Mr.Pranil Sonawane, Advocate for appellants.

For the Respondent: Ms.Sumedha Rao, Advocate for respondent.

ORDER

Per Justice Mr.A.P. Bhangale, Hon'ble President

Heard Mr.Pranil Sonawane, Advocate for appellants and Ms.Sumedha Rao, Advocate for respondent.

2. By this appeal, original opponent Nos.1&2 questioned validity and legality of the impugned judgment and award on the ground that the Learned District Forum, Mumbai Suburban had no pecuniary jurisdiction to entertain the complaint with prayers exceeding limit of Rs.20 Lakhs. Prayers are as follows:-

a) *Obtain the Occupation Certificate for the Mhatre Palace*

- building within 2 months from the date of the order, failing which, the OPs to pay the complainant society, Rs.3,800/- p.m. till the date of obtaining the Occupation Certificate.*
- b) Refund to the complainant society the amount of Rs.1,04,538/- collected for formation/registration of the society along with 18% interest from January 1, 1998 till the date of payment.*
 - c) To pay to the BMC all the taxes due along with interest thereon within two months from the date of the order.*
 - d) To pay Rs.1,75,000/- as compensation for failure to operate the second elevator plus to repair and maintain the 1st elevator to the satisfaction of the complainant society.*
 - e) To pay to the complainant society the amount of Rs.4,42,624/- being the refund of the extra water charges and taxes paid, along with 18% interest p.a. thereon from the dates of respective payment till realisation.*
 - f) To give conveyance of the land and the building thereon, in favour of the complainant society within 3 months from the date of the order and failing which the OPs to pay to the complainant society penalty of Rs.7,600/- p.m. till the date of giving conveyance.*
 - g) To pay to the complainant society Rs.2,40,789/- being maintenance charges for the 2 flats in the custody of the OPs.*
 - h) To complete the Fire Hydrant system in accordance with the norms within 2 months.*
 - i) To provide Electric Meters as per the original building plan and with adequate ventilation within 2 months from the date of order.*
 - j) To provide for Garden & Children playing equipment within 2 months from the date of order.*

- k) *To pay adequate cost for pursuing this complaint.*
- l) *Any other relief as the Hon'ble Forum may deem fit and proper.*

3. Although in Para 8 of the complaint, complainant mentioned that claim of the complainant is less than Rs.20 Lakhs, prayers above included demand for all taxes paid by the society to the BMC apart from demand at the rate of Rs.3,800/- per month for delay in obtaining Occupancy Certificate by the builder and sum of Rs.1,04,538/- together with interest @ 18% p.a. from 01/01/1998 till date of payment and sum of Rs.1,75,000/- as compensation for failure to operate second elevator and failure to repair and maintain first elevator to the satisfaction of the society and sum of Rs.4,42,624/- as refund of extra water charges and taxes paid together with interest @ 18% p.a. from the date of payment till realisation and conveyance of the land and building, failing which demand of penalty at the rate of Rs.7,600/- per month till the date of giving conveyance and sum of Rs.2,40,789/- as maintenance charges for two flats which were in the custody of the opponent. In the complaint proceeding, no Statement of Claim was filed so as to enlighten the District Forum about exact valuation for all prayers and reliefs demanded.

4. According to Learned Advocate for the appellants false statement is made regarding pecuniary jurisdiction of the Learned District Forum stating that total claim is less than Rs.20 Lakhs. Reference is made to ruling of Hon'ble Supreme Court in the case of *Dr.Jagmittar Sain Bhagat V/s. Dir. Health Services, Haryana & Ors., reported in AIR 2013 SC 3060*, whereby it is observed that conferment of jurisdiction is a legislative function. It can neither be conferred with consent of parties nor by a superior Court. If Court passes decree having no jurisdiction over the matter, it would amount to nullity as matter goes to roots of cause. Such

an issue can be raised at any stage of proceedings. Thus, according to Learned Advocate for the appellants, the award as it is exceeding sum of Rs.20 Lakhs passed by the District Forum without pecuniary jurisdiction to pass such an award itself is unacceptable as award ab initio cannot be enforced against the opponents.

5. Reference is also made to judgment of Hon'ble Supreme Court in the case of *Balavant N. Viswamitra & Ors. V/s. Yadav Sadashiv Mule (Deceased by LRs.) & Ors., reported in AIR 2004 SC 4377*. Learned Advocate for the appellants has also argued that ten storey building of the complainant-society (stilt + 10) consisting of 40 flats and as such despite fact that Occupancy Certificate for the building is prayed for as also penalty for failure to obtain Occupancy Certificate, no statement of claim was filed. Thus, according to Learned Advocate for appellants prayers read together in the complaint without statement of claim is a deliberate omission on the part of complainant to bring the claim within pecuniary limits of the Learned District Forum.

6. We have perused the averments made in the complaint with prayer clauses mentioned above and the award passed. Learned Advocate on behalf of respondent/complainant argued that it is discretion of the District Forum to award reasonable rate of interest though demand was made at the rate of 18% p.a. in respect of each prayer. However, when we have questioned as to whether complainant is satisfied with the claim below Rs.20 Lakhs, Learned Advocate for respondent/complainant is reluctant to answer the question. In our view, it is obligatory upon the complainant to put specific valuation in the complaint in respect of each prayer made in the complaint. When objection was taken regarding pecuniary jurisdiction, it was duty of the Learned District Forum to record finding in respect thereof having regard to the prayers made in the complaint.

7. Considering the averments made in the complaint in totality and also the fact that no Resolution was placed before the Learned District Forum passed by the society for to maintain the complaint, the Learned District Forum could not have proceeded further to decide the complaint on merits without having addressed on the issues of maintainability of the complaint. Having heard respective submissions at the Bar, we are satisfied that the Learned District Forum had no pecuniary jurisdiction to entertain and decide the complaint considering totality of prayers made. Therefore, we have no hesitation for aforesaid reasons to set aside and quash the impugned judgment and award. However, with liberty for the complainant to lodge the complaint before the State Commission or the National Commission as complainant may advised depending upon gross valuation to be disclosed. Appeal stands disposed of accordingly. No order as to costs. Copies of the order be furnished to the parties.

Pronounced
Dated 4th December 2017.

[Justice A.P. Bhangale]
PRESIDENT

[D.R. Shirasao]
JUDICIAL MEMBER

dd.