

A

HUDA AND ANR.

v.

BABESWAR KANHAR AND ANR.

NOVEMBER 22, 2004

B

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

C

Urban Development—Haryana Urban Development Authority—Allotment of residential plot stipulating that if non-acceptance not given within 30 days earnest money to be forfeited—Allottee sending by registered post his non-acceptance but due to postal holiday and closure of HUDA office receipt of letter delayed—Held, besides s. 10 of the General Clauses Act, there is general principle that a party prevented from doing an act by some circumstances beyond his control, can do so at first subsequent opportunity—Allottee entitled to refund of earnest money with 9% interest—General Clauses Act, 1897—S. 10—Consumer Protection Act, 1986—S. 12.

D

Limitation—Period prescribed for performance of an act in a court or officer expiring on a holidays—Held, the act should be considered to have been done within that period if it is done on the next day on which the court or office is open—General Clauses Act, 1897—S. 10.

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Legal Maxims :

(1) *Lex non cogit ad impossibilia; and*

(2) *Actus curiae nemi nem gravabit—Applicability of.*

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Sambasiva Chari v. Ramaswami Reddi, (1998) 8 Mad. Law Journal 265 and Hossein Ally v. Donzelle, ILR 5 Calcutta 906, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7522 of 2004.

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From the Judgment and Order dated 4.2.2004 of the National Consumers Disputes Reddressal Commission, New Delhi in R.P. No. 3378 of 2003.

Satinder S. Gulati and Dr. Kailash Chand for the Appellants.

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Respondent No. 1-in-person.

H.K. Puri, Manish Kumar Saran and V.K. Verma for the Respondent A
No. 2.

The Order of the Court was delivered by

ARIJIT PASAYAT, J. : Leave granted. B

The controversy in this appeal lies within a very narrow compass. The respondent No. 1 applied for allotment of a plot in response to an advertisement issued by the Haryana Urban Development Authority (in short 'HUDA'). The application was for allotment of a residential plot measuring 250 square yards, and deposit of Rs. 46,625 was made on 26.12.2000. The HUDA intimated respondent No. 1 by letter dated 30.10.2001 that plot No. 2205 in Sector 65, Faridabad has been allotted to him. The respondent No. 1 purportedly, on the basis of Clause-4 of the letter, sent a registered letter on 28.11.2001, intimating HUDA that he is not interested in accepting the allotment. The letter was received on 03.12.2001 by HUDA. Referring to Clause-4 of the letter, HUDA directed forfeiture of the earnest money deposited. A complaint under Section 12 of the Consumer Protection Act, 1986 (in short 'the Act') was lodged by respondent No. 1 before the District Consumer Disputes Redressal Forum, Faridabad (in short the 'District Forum'). By order dated 31.03.2003, the District Forum directed refund of the amount deposited along with 12% interest with effect from the date of deposit till realisation. The matter was carried in appeal before the State Consumer Disputes Redressal Commission, Haryana, Chandigarh (in short the 'State Commission') by HUDA. By order dated 09.06.2003, the State Forum reduced the interest to 10% but otherwise affirmed the order of the District Forum. The matter was carried in revision before the National Consumer Disputes Redressal Commission (in short the 'National Commission'). By the impugned order dated 04.02.2004, the revision has been dismissed. C
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Learned counsel for the appellant-HUDA submits that there was clear stipulation about forfeiture in case the intimation regarding non-acceptance is not given within 30 days. Therefore, according to him, the forfeiture was in order and the direction for refund within interest is not sustainable in law. G

The respondent No. 1, who appears in person, submitted that the non-acceptance was conveyed by letter dated 28.11.2001. The HUDA office was H

A closed on 01.12.2001 and 02.12.2001. 30.11.2001 was a postal holiday and, therefore, on the next day after the closure period, i.e. 03.12.2001, the letter was served on HUDA and therefore the orders of the Forums below do not suffer from any infirmity.

B What is stipulated in Clause-4 of the letter dated 30.10.2001 is a communication regarding refusal to accept the allotment. This was done on 28.11.2001. Respondent No. 1 cannot be put to loss for the closure of the office of HUDA on 01.12.2001 and 02.12.2001 and the postal holiday on 30.11.2001. In fact he had no control over these matters. Even the logic of Section 10 of the General Clauses Act, 1897 can be pressed into service.

C Apart from the said Section and various provisions in various other Acts, there is the general principle that a party prevented from doing an act by some circumstances beyond his control, can do so at the first subsequent opportunity (see *Sambasiva Chari v. Ramaswami Reddi*, (1898) 8 Madras Law Journal 265). The underlying object of the principle is to enable a

D person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then the act should be considered to have been done within that period if it is done on the next day on which the court or office is open. The reason is that law does not compel the performance of an impossibility. (See *Hossein Ally v. Donzelle*,

E ILR 5 Calcutta 906). Every consideration of justice and expediency would require that the accepted principle which underlies Section 10 of the General Clauses Act should be applied in cases where it does not otherwise in terms apply. The principles underlying are *lex non cogit ad impossibilia* (the law does not compel a man to do the impossible) and *actus curiae nemi nem*

F *gravabit* (the act of Court shall prejudice no man). Above being the position, there is nothing infirm in the orders passed by the Forums below. However, the rate of interest fixed appears to be slightly on the higher side and is reduced to 9% to be paid with effect from 03.12.2001, i.e., the date on which the letter was received by HUDA.

G The appeal is, accordingly, disposed of.

R.P.

Appeal disposed of.

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