

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



Experion Developers Private Limited Vs. Himanshu and Sonali Dewan and Ors.

Brief Facts

The present case revolves around the "Windchats" housing project in Gurugram, in which the appellant served as developer and the respondent as buyer. The issue arose as a result of the appellant's desire for additional payment as a result of a wider sale area, to which the respondent consented. The property was purchased between December 2017 and August 2018. However, on February 25, 2022, the respondents filed a consumer complaint with the National Commission, citing similarities with the decision in Pawan Gupta vs. Experion Private Limited.

The appellant claimed that this complaint is beyond the statute of limitations, which expired almost three years ago. Respondents argue that the pandemic-induced suspension of the restriction period (from 15.03.2020 to 28.02.2022) should be considered, and they emphasized the lack of evidence about communication about the area increase. They also questioned the veracity of the architect's post-dated reports. The National Commission decided in the respondents' favor, ordering a refund and corrective actions. This decision prompted the appellant to seek redress from the Supreme Court.

The Court considered whether dismissal of an appeal could be considered res judicata. And, also whether the merger theory generally apply to inferior court judgments, regardless of the superior court's jurisdictional scope or the relevance of non-speaking orders as precedents?

Decision

According to the apex court, "cause of action" exists when the appellant communicates the demand to the respondent. The court, however, did not interfere with the National Commission's right to excuse the delay. The court also ruled that the Pawan Gupta decision would only apply as res judicata in that specific case. The court underlined that a previous dismissal cannot serve as a binding precedent in the current case because precedents do not settle factual issues.

The court further examined that the merger theory is founded on the idea that a single effective decree or order should control a specified subject matter. When a lower court's decree or order is challenged in a higher court, the lower court's decision remains binding but its finality is questionable. Once the problem is addressed by the higher court, its decree becomes final and binding, including the lower court's ruling. However, this theory is not generally applicable and is dependent on the nature of the higher court's jurisdiction and the extent of the challenge.

The prior dismissal was based on insufficient evidence given by the appellant and was limited to the facts of that particular instance. The court emphasized that this decision did not take into account subsequent further evidence. As a result, the National Commission must review the appellant's arguments without regard to res judicata or binding precedent. The court's statements on the limitation period are final, but its comments on acquiescence/estoppel and merits are subject to reconsideration by the National Commission.

As a result, the court reversed the National Commission's ruling and remanded the matter for reassessment.

Link of the Order

<https://ibbi.gov.in/uploads/order/4a59034aafd97564d8bc317d637f1d04.pdf>



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