(2015) 07 NCDRC CK 0066

In the National Consumer Disputes Redressal Commission

Case No : 1266 of 2015

AMAR TRACTOR APPELLANT

Vs

ASHOK PRAHLADRAO PATIL & ANR ; AMAR TRACTOR PRIVATE LTD RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Citation : 2016 1 CPJ 357

Hon'ble Judges : V K Jain, B C Gupta

Advocate : Prachiti Deshpande

Final Decision : Petition dismissed

Judgement

[1] This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 05.02.2015, passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai, Circuit Bench at Aurangabad (hereinafter referred to as the State Commission) in Appeal No. 10/2012, vide which, while allowing the said appeal of the complainant, the order passed by the District Forum, Latur dated 14.11.2011, dismissing the consumer complaint no. 162/2008, was set aside.

[2] Briefly stated, the facts of the case are that the complainant / respondent No. 1, Ashok Prahladrao Patil, who is an agriculturist, purchased a tractor manufactured by respondent No. 2/OP-2 Amar Tractor Private Limited, Ludhiana, Punjab and sold by the petitioner/OP-1 after raising a loan of Rs. 2,15,000/- from the Bank of Maharashtra, Branch Chincholirao Wadi, Taluk and District Latur. A demand draft for Rs. 2,15,000/- dated 07.02.2008 was issued in favour of the petitioner/OP-1, who received the same on 11.02.2008. The complainant also paid a sum of Rs. 4,500/- in cash towards insurance of the tractor. However, the petitioner/OP-1 failed to supply relevant papers of registration and insurance to the complainant. As per the complainant, the said tractor was not working properly since beginning and hence, he took it to OP-1 and left it in his showroom on the assurance that the same will be repaired. However, despite

approaching OP-1 several times, the tractor had not been returned to him till date. The complainant also alleged that OP-1 had charged excess amount of Rs. 26,000/- from him over the estimate given. The complainant demanded that OPs should be directed to pay a sum of Rs. 2,15,000/- alongwith interest @15% p.a. from the date of deposit and also to take back the Malni yantra. In addition, a sum of Rs. 66,000/- should be awarded to him consisting of the following:- (a) Rs. 30,000/- for loss of Rs. 500/- per day for the period 14.04.2008 to 14.06.2008;

(b) Rs. 26,000/- charged in excess;

(c) Rs. 10,000/- for mental torture.

[3] The complaint was resisted by petitioner/OP-1 by filing written reply before the District Forum, in which they admitted that a demand draft had been issued by the Bank for Rs. 2,15,000/- in their favour on 07.02.2008. OP-1 stated that the tractor had been delivered on 21.10.2007 and Malni yantra was given on 12.11.2007 much before the receipt of the said demand draft. The tractor could not be registered because the requisite documents like residential proof etc. had not been filed by the complainant. OP-1, however, admitted that a sum of Rs. 4,500/- was paid in cash for insurance of the tractor by the complainant. OP-1 denied that the tractor was with them since 14.04.2008, but admitted in their reply that the tractor was left in their show-room on 14.05.2008. They also stated that the total price of Amar Tractor and Malni Yantra was Rs. 2,39,932/- including tax of Rs. 8,632/-. The complainant had also purchased Mogda, whose price was Rs. 18,720/- including tax of Rs. 720/-. In this way, the total price of all the parts purchased by the complainant was Rs. 2,39,932/- + Rs. 18,720/- = Rs. 2,58,652/-. A sum of Rs. 39,152/- was still payable by the complainant therefore, after deducting the amount of Rs. 2,15,000/- paid by demand draft and Rs. 4,500/- by cash. The OP-1 had, however, allowed a discount of Rs. 10,800/-, considering friendly relationship with the complainant, but the remaining amount of Rs. 28,352/- was still payable by the complainant. OP-1 had further paid, in addition, a sum of Rs. 15,000/- to the complainant in order to enable him to clear the loan account of the previous bank and get an additional loan of Rs. 2,15,000/-. OP-1 has stated that a sum of Rs. 28,352/- + Rs. 15,000/- = Rs. 43,352/- was payable to him and hence, the complainant could have taken away the tractor after paying the said amount.

[4] The District Forum after considering the pleadings of the parties dismissed the complaint, saying that there was no evidence of any manufacturing defect in the tractor and there was no deficiency in service on the part of the respondents. However, the appeal filed against this order was allowed by the State Commission and it was directed that a new tractor of the same model should be provided to the complainant within 30 days of the receipt of the order and a compensation of Rs. 66,000/- should be paid to the complainant alongwith interest @9% p.a. from the date of the complaint and a further sum of Rs. 10,000/- towards the cost of the proceedings should be given. The State

Commission, however, ordered the dismissal of the complaint against OP-2/ respondent no. 2, the manufacturer of the tractor. The State Commission stated in their order that as per the quotation, the price of tractor was Rs. 1,37,500/-, the price of the plough was Rs. 45,000/- and the price of the thresher was Rs. 65,000/-, the total for three items being Rs. 2,47,500/- as per the quotations given. The State Commission also expressed the view that the complainant could not have left the tractor with OP-1/petitioner for his failure to pay meagre amount of about Rs. 40,000/- only. It is against this order of the State Commission that the present revision petition has been filed.

[5] At the time of admission hearing before us, the learned counsel for the petitioner stated that there was no deficiency in service committed by petitioner/ OP-1, rather the complainant had failed to make payment of the requisite amount to the petitioner and left the tractor with them. She stated that the complainant had executed a promissory note, (copy of which is on record) dated 12.11.2007, in which it was stated that the complainant had received 3 items, namely, tractor, mogda and thresher, whose total value was Rs. 2,33,800/- excluding tax. The said items were purchased on credit for two months. The tractor was delivered on 21.10.07 while Malni yantra was delivered on 12.11.2007. It had also been stated in the said note that if the complainant failed to make payment of the items in time, he shall pay interest @18% p.a. on the amount involved. The order passed by the State Commission was, therefore, not based on a correct appreciation of facts and circumstances of the case and deserves to be set aside.

[6] During hearing of the case, the petitioner placed on record certain additional documents, one of which is a copy of an invoice indicating that a tractor costing Rs. 1,50,800/- and thresher costing Rs. 65,000/- were sold to the complainant for a total amount of Rs. 2,24,432/- including tax. There are two dates on these documents, i.e., 21.10.2007 and 11.02.2008. There is a copy of a sale certificate dated 11.02.2008, saying that the tractor was delivered on 21.10.2007. A copy of receipt dated 11.02.2008 issued by the petitioner has also been produced on record, saying that pay order No. 907256 dated 07.02.2008 drawn on the Bank of Maharashtra for a sum of Rs. 2,15,000/- was received by them. Copies of the legal notice sent by the complainant and reply to the legal notice sent by the petitioner have also been placed on record.

[7] The basic question that arises for our consideration is whether there has been any deficiency in service on the part of the petitioner/OP-1 towards the complainant/respondent -1, based on the facts and circumstances of the case. It is an admitted case of the parties that the tractor has been lying in the custody of the petitioner since a very long time. As per the version of the complainant, he left the tractor with the petitioner on 14.04.2008, whereas the petitioner has admitted in their own written reply that the said tractor has been lying with them since 14.05.2008. The petitioner has not been able to provide any satisfactory explanation as to why they are retaining the possession of the tractor for such a

long time. They have also not explained whether they have made any efforts to return the said tractor to the complainant, who claims that he left it with the petitioner on account of defects in the vehicle.

[8] In so far as, the promissory note is concerned, no evidence has been produced on record to prove the contents of the said promissory note. On the other hand, the petitioner himself has produced documents to show that a demand draft for Rs. 2,15,000/- was received by them from the complainant on 11.02.2008. The sale certificate as well as the invoice are also dated 11.02.2008. the version of the petitioner that the tractor was delivered to the complainant on 21.10.2007 does not find support from any material on record, because it is highly improbable that they delivered the tractor without receiving any payment form the complainant on 21.10.2007. The State Commission, after considering the pleas made by the parties rightly arrived at the conclusion that the complainant could not have left the tractor with the petitioner, just to avoid payment of a meagre amount of Rs. 40,000/- only. The State Commission also rightly concluded that the petitioner had wrongfully deprived the complainant from making use of the tractor for the cultivation of his land.

[9] Based on the discussion above, we do not find any merit in this revision petition as the impugned order does not suffer from any illegality, irregularity or jurisdictional error of any kind. The revision petition is, therefore, ordered to be dismissed at admission stage itself. There shall be no order as to costs.