

**(1990) 08 NCDRC CK 0001**

**In the National Consumer Disputes Redressal Commission**

ANGELA FONSECA

APPELLANT

Vs

CORAL LAWNS

RESPONDENT

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**Date of Decision :** 30-08-1990

**Acts Referred:**

**Citation :** 1991 0 CPC 521 : 1991 2 CPJ 670 : 1991 2 CPR 5

**Hon'ble Judges :** G.G.Loney , M.G.Gavai , Elipe Dharma Rao J.

**Final Decision :** Appeal allowed

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**Judgement**

1. BEING aggrieved by the impugned order, the appellant has come up in appeal against the order passed by the District Forum, Bombay. The facts of the complaint in the case are simple. The appellant had booked the premises of the Respondent for the marriage of her daughter to be celebrated on 4.1.1990 and paid a sum of Rs. 2,500/- on 31.5.1989 as an advance for which the Respondent had issued her a receipt dated 31.5.1989. Within about a week after booking the premises the appellant found that the date fixed was not suitable to her prospective son-in-law who was in U.S.A. and she requested for an earlier date in December 1989. This was not agreed to by the respondent as it was not feasible for them. Thereupon the appellant requested for the return of the deposit money, which was refused. The appellant made several attempts to persuade the respondent to return the deposit, individually and through the good offices of the Consumer Guidance Society but these failed and the respondent took the plea that since it was mentioned in the deposit receipt that "advance once paid will not be refunded" the appellant was bound by this contract and that the respondent had no legal liability to pay back the money and that the money was forfeited to the respondent since the appellant had not struck up to-the contract.

2. THE District Forum, Bombay held in its finding that it was mentioned in the receipt given for the advance of Rs. 2,500/- issued by the respondent that the advance once paid will not be refunded, the receipt was held to be a contract document and as such the District Forum held that there was a contract between the Appellant and Respondent. In not refunding the deposit money, there was no

breach of contract on the part of the respondent. The District Forum has not also accepted the plea of the appellant about the unfair trade practice indulged in by the Respondent in their refusal to refund the deposit. The Forum has taken the view that there is no prescribed code of conduct for business man and they are at liberty to follow their own rules. Taking this view, the District Forum came to the conclusion that the respondent was not liable to pay the deposit and dismissed the complaint.

In our view, it is necessary to take a closer view of the deposit receipt. It was issued by the respondent on 31st May, 1989. It stated that the deposit money was for booking of the lawns on 4.1.1989. We are bringing up this matter of entry in the receipt voucher particularly because so much reliance has been laid on it by the District Forum and the respondent. It has been given the sanctity of almost a contract between the appellant and the respondent. We would like to ask how could such an incorrect document be given the sanctity of contract. The document is a money receipt only and does not show the nature of a contract

3. THE reasoning of the respondent that the mere mention of the words "advance once paid will not be refunded" is binding on others or has any legal status is erroneous. If such a view is accepted persons who render such services would be able to dictate any conditions they like or please and the needy consumer would be helpless. If any such conditions are laid, it has to be seen whether they are in accordance with principles of equity and certainty they cannot be arbitrary. In the present case, considering all the circumstances which compelled that appellant to cancel the booking and the other facts which are not disputed, the refusal of the respondent to refund the deposit, was unreasonable, inconsiderate, arbitrary and illegal. We have no doubt that their refusal to pay back the deposit amounted to unfair trade practice. We do not agree with the view of the learned District Forum expressed in its judgment and set aside their order dt. 21.5.1990 for the reasons detailed above. The appellant has prayed for certain relief's in her complaint, besides the return of the deposit money of Rs. 2,500/-. In her further statement in response to the notice of the District Forum, she had also claimed for interest on the above amount as also compensation for the mental torture she received at the hands of the respondents. In our view considering the highhanded and arbitrary attitude shown to the appellant, who was required to go from pillar to post to get her grievance redressed, the appellant must have been put to lots of mental stress and agony and she deserves compensation for this suffering. We therefore order that the respondent should return the deposit money of Rs. 2,500/- to the appellant. The aforesaid amount shall carry interest from 31.5.1989 at the rate of Rs. 8% till realization. We also order that compensation of Rs. 1,000/- be paid to the appellant by the respondent, for the mental torture suffered by her. The claim to be settled within a period of one month from the date of this order.

4. THUS the order of the District Forum, Bombay which is the subject matter of this appeal is hereby set aside and the appeal is allowed in terms mentioned

above. Appeal allowed.