

(2014) 07 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

ANIL MITTAL

APPELLANT

Vs

Skoda Auto India Pvt Ltd, Nummer Eins Motors (India) Pvt
Ltd

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Citation : 2014 0 NCDRC 438

Hon'ble Judges : AJIT BHARIHOKE , Rekha Gupta J.

Advocate : ARVIND GUPTA , SAVITA SINGH , VIPIN SINGHANIA

Judgement

1. REVISION petition nos. 690 -691 of 2011 has been filed against the judgment and order dated 07.09.2000 passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai ("the State Commission") in First Appeal nos. 937 and 1316 of 2008.

2. THE brief facts of the case as per the petitioner/ complainant are as under: The petitioner has purchased a car SKODA Octavia Ambient through respondent no. 2 Nummer Eins Motors (India) Pvt. Ltd., for a total amount of Rs.11,32,666/- which includes, the cost of insurance, registration on 06.02.2003, the said vehicle bearing Chassis no. TMBCE K1U12 A0090 86. Engine no. AEG 634829 and Registration no. MH 04 BN 3863. The said vehicle was taken against car finance from Bank.

3. THE said car was purchased out of loan Rs.10,15,005/- taken from the HDFC bank. After delivery of the car, the petitioner found several complaints including some strange noise from the rear side of the car and a very low pick up. The petitioner brought the same to the notice of respondent no. 2.

4. RESPONDENT no. 2 rectified the minor problems and also stated that they have rectified the noise coming from the rear side of the car, low pick up and other complaints and the same was delivered back. After delivering the car, the petitioner found that the complaint of the noise was still subsisting. He brought the same to the notice of the dealer, i.e. respondent no. 2 and the car was

delivered to the dealer's workshop on few occasions again. The petitioner states that the dealer could not rectify the said complaint. Such nature of complaint can arise if there is any defect or leakage in the combustion chamber. In the month of September 2003, while the said complaint had yet to be attended, in less than six months of purchase of the car the Air Conditioner started malfunctioning. In response to the said letter, the company admitted the problems and informed the petitioner that they are taking up the matter with the dealer.

5. THE petitioner stated that since taking of the delivery, in February 2003 itself, the petitioner was not satisfied with the performance of the car as the vehicle was giving one or the other problem and he could not enjoy the use of the said vehicle. Out of seven months upto August 2003, at least three months the car was in the workshop of the dealer, i.e., respondent no. 2.

6. THE petitioner therefore, humbly prayed for the following amongst other relief: (a) Direct the respondent to replace the car by delivering a new car free of cost or to refund the money being sum of Rs.10,47,516/- as also the cost of registration and insurance cost with interest @ 15% from the date of purchase till realisation; (b) Direct the respondent to compensate the petitioner for the cost of conveyance, to the tune of Rs.75,347/- as also Rs.5,00,000/- towards mental torture and physical hardship and interest being paid on loan for the purchase; (c) Direct the respondent to jointly and severally pay Rs.25,000/- towards the legal notice fee and cost of these proceedings other expenses incurred with interest from the date of filing of this complaint till realisation; (d) Such other relief or grants as the Hon'ble Forum may deem fit and proper in the circumstances of the matter.

In their written statement the respondent no.1/ OP no. 1 have stated that the present complaint was not maintainable within the meaning and provisions of the Consumer Protection Act, 1986 and Rules made thereunder as there was no negligence and/ or deficiency in service and/ or unfair trade practice on the part of the respondents. The respondents duly discharged their contractual obligations wherever existed, under the warranty as per terms and conditions. Petitioner failed and neglected to place any material on record in support of his case for any alleged deficiency, negligence and/ or unfair practices and claiming replacement of vehicle and/ or compensation.

7. THE vehicle in question was duly attended during the warranty period and the demanded repairs were carried out to the entire satisfaction of the petitioner. Technically qualified and experienced staff of the respondent no. 2 inspected the vehicle and at no time did they find any manufacturing defect in the said sophisticated vehicle. The complaint is therefore, liable to be dismissed ab initio.

8. IT was true that the petitioner purchased a "Skoda Octavia" car from respondent no. 2 on 06.02.2003 as per invoice dated 01.02.2003. Being a sophisticated vehicle, the petitioner should have taken care to first study all technical aspects of this modern car and also ensure that the same was not

driven by any driver who was not possessed with thorough knowledge of its technical aspects. Despite this, with a view to establish a cordial customer relation of the petitioner, the respondent no. 2 ensured that all requests of the petitioner were complied with immediately though they were not duty bound to do so in law. Rests of the averments being false for the aforesaid reasons are hereby denied. Every time when the petitioner reported any complaint relating to the said vehicle, whether genuine or imaginary, the respondent no. 2 took every such complaint seriously and attended to the same with utmost urgency to the entire satisfaction of the petitioner. What was shocking was that despite signing satisfaction note of each such repair, the petitioner took a somersault every time for the reasons best known to him. If any genuine complaint/ defect existed in the said vehicle, it was open for the petitioner to get the vehicle tested in a recognised laboratory and furnish a genuine test report to enable the respondents to initiate appropriate actions thereon. Unfortunately, however, the alleged complaint of the petitioner were imaginary in nature for which there can be no solution in reality.

9. DISTRICT Consumer Disputes Redressal Forum, Central Mumbai District ("the District Forum") vide its order dated 29.09.2007 allowed the complaint and gave the following orders: (i) The opponent shall pay to the complainant the cost/ value of the car Rs.11,32,266/- as on dated 06.02.2003, along with 9% interest up to the full payment of car. (ii) Opponent pay to the complainant Rs.10,000/- for physical and mental harassment. (iii) Opponent shall pay to the complainant Rs.3,000/- cost of the case. (iv) Opponent no. 1 and 2 are collectively/ jointly responsible for the full payment.

10. AGGRIEVED and dissatisfied with the order of the District Forum both the respondents and also the petitioner filed appeals before the State Commission. The State Commission vide order dated 07.09.2009 while dismissing the First Appeal no. 1316 of 2008 of the petitioner and allowed the appeal of the respondent and dismissed the complaint. Hence, the present revision petition. The main grounds for the revision petition are that: The State Commission has wrongly considered the evidence on record and has committed a grave illegality and irregularity by giving findings to that effect and thus making liable the order passed by the forum to be assailed in this revision petition.

The State Commission has failed to exercise the jurisdiction vested in it in as much as it has held that the petitioner is liable to get the entire amount refunded with interest. The State Commission failed to take into consideration the evidence brought on record by the petitioner. The State Commission has failed to apply his mind to the present case and has committed illegality in following the principles of law to the facts of the present case and or the same is contrary to the facts of the present case and hence arrived at a totally wrong and arbitrary decision.

11. ALONG with the present revision petition, the petitioner has filed an application for condonation of delay. However, in the entire application for

condonation of delay, the number of days of delay have not been mentioned. The reasons given in the application for condonation of delay are that: The impugned order was passed by the State Commission on 07.09.2009 and was delivered to the counsel for the petitioner on 05.10.2009. The counsel for the petitioner handed over the same to his clerk for delivering the same to the petitioner. The clerk misplaced the order and did not inform the counsel nor to the petitioner.

Thereafter, in the month of July, the petitioner called up his counsel for the certified copy of the order. On inquiry it was discovered that the order copy was obtained in the month of October 2009 only but the clerk misplaced it. Hence, immediately they applied for the duplicate copy. The duplicate of the order was delivered to the counsel for the petitioner on 21.08.2010 and was sent to the petitioner with an opinion to file revision petition against the order in the month of October 2010.

Due to Diwali vacation, the petitioner could pay any heed to the case till November. Thereafter, the case papers were sent by the dealing counsel for the necessary action. The dealing counsel contacted the advocate in Delhi and sent the full file with an instruction to draft the revision petition in the month of December 2010. After examining the case papers the Advocate in Delhi asked for further documents and translation of the order of the District Forum which took some time. Thereafter the revision petition was immediately drafted and sent for approval to the petitioner and the dealing Advocate and the same was returned back duly approved to the Delhi Advocate in the second week of February 2011 and in the process the delay caused.

12. WE have heard the learned counsel for the petitioner as well as respondent no.1 and have also gone through the records of the case carefully. As per the office report, if the delay is calculated from the date of the order, i.e., 07.09.2009, then there is a delay of 449 days. Calculated from the date when the counsel received the copy of the order on 05.10.2009, there is a delay of 421 days. While it is stated in the application for condonation of delay that the counsel for the petitioner handed over the same (order) to the clerk for delivering the same to the petitioner and the clerk misplaced the order and did not inform the counsel or the petitioner, there is no affidavit by the clerk to this effect. Further, the petitioner has nowhere mentioned that when and how he got the knowledge regarding disposal of the case. He merely mentions that he called up the counsel somewhere in the month of July and asked for a certified copy of the order. In the entire application for condonation of delay no reasons have been given to explain the day to day delay of 421 days.

13. AT the same time, it is also well settled that "sufficient cause" with regard to condonation of delay in each case, is a question of fact.

14. THE Apex Court In Anshul Aggarwal v. New Okhla Industrial Development Authority, 2011 4 CPJ 63, has laid down: "It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the

Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the Consumer Foras".

In Balwant Singh Vs. Jagdish Singh and Ors., (Civil Appeal no. 1166 of 2006), decided by the Apex Court on 08.07.2010 it was held: "The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005."

15. IN Ram Lal and Ors. Vs. Rewa Coalfields Ltd., 1962 AIR(SC) 361, it has been observed; "It is, however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a discretionary jurisdiction vested in the Court by S.5. If sufficient cause is not proved nothing further has to be done; the application for condonation has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant."

16. ACCORDINGLY , we find that there is no "sufficient cause" to condone the inordinate delay of 421 days, from the date the order was received by the Petitioner's counsel, in filing the present revision petition. The application for condonation of delay is without any merit as well as having no legal basis and is dismissed. Consequently, the present revision petition being time barred by limitation and is dismissed with cost of Rs.5,000/- (Rupees five thousand only). Petitioner is directed to deposit the cost by way of demand draft in the name of "Consumer Legal Aid Account" of this Commission within four weeks from today. In case the petitioner fails to deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation.

17. LIST on 22nd August 2014 for compliance.