

(2004) 08 NCDRC CK 0099

In the National Consumer Disputes Redressal Commission

BALAJI TIMBER DEPOT

APPELLANT

Vs

A.P. RAMALINGAM

RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:

Citation : 2004 3 CPR 142 : 2004 4 CPJ 78 : 2005 1 CLT 390

Hon'ble Judges : A.Raman , R.Vanaroja J.

Final Decision : Appeal allowed

Judgement

1. WE do not accept the verdict of the lower Forum since we are convinced that non-application of mind and failure to appreciate the fact has brought about the verdict by the lower Forum. The complainant has purchased certain materials i.e., timber for making door frames, window frames from the opposite party. According to the complainant, they were of inferior quality and when the frame was being sawn for fixing, it broke down and, therefore, the complainant has chosen to come forward with this complaint.

2. THE lower Forum accepted the complainant's case merely because the complainant is a Government servant and his version should be accepted. One of the reasons put forward by the lower Forum is that the complaint must be true because the complainant had claimed only one of the items supplied by the opposite party was of inferior quality and if really the complaint was filed with a view to make money, he could have as well stated that all the materials he purchased from the opposite party were of inferior quality. This is not the way to proceed in a matter or assess materials in that fashion. The only point is whether the materials supplied by the opposite party were of inferior quality as alleged by the complainant. The complainant would say that he purchased materials on 16.6.1998. It is only on 29.6.1998, he chooses to send a notice through the Consumer Protection Council. The complainant admittedly engaged a carpenter for making the door frames and the window frames. The carpenter has given an affidavit which has been filed by the opposite party wherein he has stated that when he put to chisel to make the door frame, one end of it broke down.

Therefore, it is clear from this affidavit that the breaking of the material was not due to any deficiency in quality but because of the chiselling. Therefore, in the face of the affidavit of the carpenter, who was admittedly engaged by the complainant to do the work and in the absence of anything in the affidavit of the carpenter to say that the quality of the material was bad, the lower Forum was not justified in accepting the complaint. The lower Forum has rejected the affidavit simply because that the carpenter must be a person obliged to the opposite party. There is nothing on record to suggest the same. At the earliest point of time when the notice was given by the complainant through the Consumer Protection Council, he has stated that the 4 frames were done and while the 5th frame was being prepared and the chisel was put to it, only then he came to know that the wood was of inferior quality, having been moth-eaten. The carpenter also says that only when the 5th frame was made, it broke down at the time of chiselling. If really the quality of wood supplied was bad, it would not have been possible to complete the frame work in the other 4 frames. Therefore, it is clear that either because of carelessness or other reason the portion of the wood was affected while chiselling and it was not due to any decay in the wood. Therefore, in such circumstances, we are of the view that the lower Forum has failed to appreciate the importance of affidavit filed by the carpenter who admittedly undertook the work and, therefore, it follows that the order passed by the lower Forum cannot be sustained.

In the result, this appeal is allowed without costs. The order passed by the Lower Forum is hereby set aside. The complaint will stand dismissed but in the circumstances without costs. Appeal allowed.