

(2017) 03 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

Case No : 4089 of 2012

BHAGWAN SINGH SHEKHAWAT

APPELLANT

Vs

M/S. R.K. PHOTOSTATE & COMMUNICATION & ORS.

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

Citation : 2017 1 CPR 643

Hon'ble Judges : K.S. Chaudhari

Advocate : H.S. BHATI

Judgement

1. This revision petition has been filed by the petitioner against the order dated 31.05.2012 passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, "the State Commission") in Appeal No. 787 of 2009 - Bhagwan Singh Shekhawat Vs. M/s. R.K. Photostat & Communication & r Ors. by which, appeal was dismissed.

2. Brief facts of the case are that Complainant/Petitioner purchased mobile set of Motorola on 27.11.2007 for Rs.8,000/- from OP No. 1/Respondent No.1 and OP No. 2 & 3/Respondent No. 2 & 3 are service provider. On 20.5.2008, complainant found that mobile set was not working properly due to manufacturing defect. Time to time, he approached OP No. 2 & 3 within warranty period to rectify the defect, but they have shown inability to rectify on the pretext of completion of warranty period. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP were proceeded ex-parte. Learned District Forum after hearing complainant dismissed complaint. Appeal filed by complainant was dismissed by learned State Commission vide impugned order against which, this revision petition has been filed along with application for condonation of delay.

3. Respondents did not appear even after service of notice and they were proceeded ex-parte.

4. Heard learned Counsel for the petitioner and perused record.

5. As per office report, there is delay of 42 days in filing revision petition and petitioner in the application submitted that delay occurred due to viral fever for a long period. As no one is to oppose delay, I deem it appropriate to condone delay for the reasons mentioned in the application and delay stands condoned.

6. Learned Counsel for the petitioner submitted that inspite of manufacturing defect in the mobile set, learned District Forum committed error in dismissing complaint on the pretext of non-joinder of manufacturer and expert report and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside and compensation be awarded.

7. It is not disputed that complainant has not impleaded manufacturer as OP. Learned Counsel for petitioner submitted that this Commission in I (2007) CPJ 69 (NC) - Blue Chip India Vs. Dr. Chandrashekara Patial observed that joinder of manufacturer as OP was not necessary. On the other hand, in 2015 SCC OnLine NCDRC 3226 - Rajendra Kumar Jain Vs. Radha Krishan Enterprises, I observed that without impleading manufacturer as a party complaint was not maintainable. Same view was taken by another coordinate bench in 2015 SCC OnLine NCDRC 4509 - Shashank Shekhar Vs. Mahesh Kumar. In the light of aforesaid latest judgments, I do not find any illegality in the order of learned State Commission in dismissing appeal as manufacturer was not impleaded as OP.

8. Admittedly, no expert opinion regarding defects in mobile set has been placed by complainant on record. Perusal of job card dated 7.6.2008 reveals that there was display problem meaning thereby, this problem occurred after more than 6 months. In next job card dated 30.10.2008 complainant disclosed problem of ringer and key pad meaning thereby, there was no display problem at that time. In next job card dated 27.11.2008 again complainant disclosed ringer problem. These problems can arise while regular use of mobile and as ringer problem arose after almost 11 months, it cannot be said that there was any manufacturing defect particularly in the absence of expert opinion.

9. In the light of aforesaid discussion, I do not find any illegality, irregularity or jurisdictional error in the impugned order and revision petition is liable to be dismissed.

10. Consequently, revision petition filed by the petitioner is dismissed with no order as to costs.