
(1994) 03 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

BIPIN CHANDRA SARMA

APPELLANT

Vs

FRENCH MOTOR CAR CO.LTD

RESPONDENT

Date of Decision : 19-03-1994

Acts Referred:

Citation : 1994 3 CPJ 6 : 1994 3 CPR 443

Hon'ble Judges : S.N.Phukan , A.C.Bora J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the judgment dated 5.8.92 passed by the District Forum, Kamrup in CPC Case No. 51 of 1991.

2. THAT the appellants case before the District Forum was that, he booked a Tata Vehicle with the respondent French Motor Car Co. Ltd., and the respondents in turn promised to supply a Truck Chassis for a consideration of Rs. 3,45,010/- by issuing a Quotation dated 23.1.91 as the price of the Chassis with equipments and tools. The respondents also promised to supply the Chassis within a period of one month from the date of getting payment of the consideration amount. THAT the appellant made payment of Rs. 2,80,000/- on 21.3.91 by draft and payment of Rs. 65,000/- by Cheque and the balance of Rs. 10/- was paid in cash on 23.3.91. In spite of receiving the full payment towards the price of the Chassis the respondents deliberately and purposefully refrained from making delivery of the Chassis in time. Respondents thereafter issued a fresh invoice dated 19.8.91 for an amount of Rs. 3,79,203/- towards the price of the aforesaid Chassis, showing therein the amount for Rs. 3,45,010/- already paid by the appellant with a balance Rs. 34,193/- to be paid by the appellant. Having no alternative the appellant paid this additional amount on 20.8.91 from the Bank, and the Chassis was finally delivered to him on 21.8.91. In spite of the repeated pursuance, letters and notices by the appellant, the respondents have committed deficiency in service in giving late delivery of the Vehicle causing pecuniary loss and mental agony, and accordingly the appellant has prayed for the following reliefs in his complaint. (i) To refund the excess price of Rs. 34,193/- paid by the complainant

along with interest damages @ 18% w.e.f. 20.8.91. (ii) Interest as damages on Rs. 3,45,010/- for the period of delay in delivery i.e. from 21.3.91 to 21.8.91 at the rate of 18%. (iii) Compensation for the loss of business for four months at the rate of Rs. 10,000/- per months. The net earning from the business out of this truck amounts to between 10,000/- and Rs. 14,000/- per month. The monthly installment the complainant is required to pay to the Bank is Rs. 8,000/-. (iv) Any other relief or reliefs to which the complainant is entitled under the law and equity".

No oral evidences have been adduced by the parties in this case. We have carefully gone through the Complaint Petition and written objection filed on behalf of the Opposite Parties Nos. 1, 2, 3. In their written objection the opposite parties have denied the allegations brought-forward in the Complaint Petition. We have heard the argument advanced by the learned Counsels of both the parties and carefully gone through the Judgment of the District Forum.

The first question to be decided is whether the Proforma invoice vide Annexure-1 of the complaint constituted a promise on the part of the Respondents-Opposite Parties to deliver the Vehicle within one month of its execution. A party claiming relief founded on promise must prove it by adducing tangible evidence and reliable documents. In the instant case, the complainant has failed to prove. A bare reading of the invoice clearly indicates that its validity is for one month from the date of its issue in order to facilitate the party to obtain Bank Finance, and not a commitment for delivery of the Vehicle. As the invoice is dated 23.1.91, the validity period is upto 23.2.91, but the complainant has paid the Invoice amount on 23.3.91 which is after expiry of the period of validity. The Appellant's contention that the Respondents at least were bound to deliver the Vehicle within one month from 23.3.91 cannot be accepted. A plea of promise carries with it an element of reciprocity and we agree with the finding of the District Forum that in the instant case, the complainant has not performed his part of duty diligently in not paying the Invoice amount in time.

3. THE next contention of the appellant that the respondents deliberately delayed the delivery of the vehicle in order to make unlawful gain cannot also be accepted. We do not find any malicious intention nor any deficiency of service on the part of the respondents in making the delivery as late as 21.8.91. We are satisfied with the pleadings of the respondents in their written objection that during the relevant time as the 40GB Tata Truck Chassis was not available, an offer was made of a 30GB Chassis to the complainant, but on his refusal he was duly compensated by the Opposite Parties-Respondents in making payment of interest amounting to Rs. 15,312/- of the intervening period. THE respondents are entitled to charge the price of the Vehicle as prevailing on the date of which delivery is made and which is clear from the terms of the Invoice itself. THERE are no ground to disbelieve the reasons of price increase on 5.8.91 as stated in the written objection and as such we cannot agree with the contention of the complainant that the price increase has been affected for collateral purposes. In

the result we find no merit in the appeal to interfere with the judgment and order of the District Forum. The appeal is accordingly dismissed. We make no order to costs. Appeal dismissed.