(1990) 11 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

B.P.JAIN APPELLANT

Vs

SUBHASH CHADHA RESPONDENT

Date of Decision : 13-11-1990

Acts Referred:

Citation : 1991 1 CPJ 692

Hon'ble Judges : R.N.Mittal , B.L.Anand , Avtar Pennathur J.

Final Decision : Complaint dismissed

Judgement

1. BRIEFLY the case of the complainant is that he is carrying on the business of silk and cotton fabrics and madeups in the name of style of M/s The Choice Exports. He, on the basis of an export order, exported natural silk fabrics to M/s London Textiles and Fibres, PB 52589 Houston, TX, USA under Airway Bill No. 214-1188-5020 dated 30.12.85 for a sum of Rs. 1,99,999/equivalent to US $ 15,800/-. The consignee did not take the delivery of the documents as well as of goods.

2. THE respondent Shri Subhash Chadha came to know about the fate of the goods and he approached the complainant for purchase of the said consignment lying at Houston, USA. He agreed to purchase the same. THE complainant obtained the permission of Reserve Bank of India and requested his bankers to effect the necessary change in favour of the respondent. His banker after obtained instructions of the respondent sent the documents to the banker of the respondent; namely First Investor Co., 10 Wall Street, New York, USA with the direction to hand over the documents against payment to the respondent. It is alleged that the complainant received a letter dated 27.12.86 addressed by the respondent to his (respondent) banker, namely First Investor Co., with a copy endorsed to the complainant instructing his banker to make the payment of the said documents/bill of exchange to the complainant''s banker and that he (respondent) would collect the documents when he would be in US A. On receipt of the said letter the banker of the complainant started requesting the banker of the respondent to effect payment to them but there was no response from the

banker of the respondent. The complainant, on enquiry, came to know that the respondent managed to get the delivery of the documents from his banker without making payment to them. It is alleged that in this way the respondent played a fraud upon the complainant. Reserve Bank of India and also on his banker.

It is further averred that the respondent, while in India, issued a cheque dated 24.4.87 for a sum of US $ 15,800/(equivalent to Rs. 1,99,999/-) drawn on Irwin Trust, 1 Wall Street, New York, USA with a monogram of First Investor Co. Cash Management on the left side in the name of the complainant towards payment of the said consignment with the assurance that the cheque would be encashed immediately on presentation. The complainant deposited the cheque with his banker but it was dishonoured. Consequently, he served on the respondent a legal notice dated 17.4.90 under a registered cover. But inspite of that no payment has been made to him. He has prayed that a decree for recovery of a sum of Rs. 1,99,999/with interest @ 25% p.a. from the date of sending the documents to the respondent i.e. 6.12.86 till the date of payment alongwith costs be passed in favour of the complainant and against the respondent.

3. A notice was issued to the respondent, Sh. Munish Bhaskar, who appeared on 21.8.90, on which date the case, was adjourned to 18.9.90. On that date no one appeared on behalf of the respondent and consequently he was proceeded against ex parte. The case was adjourned to 25.9.90 for evidence of the complainant. On that date he filed his own affidavit and some documents. The first question that arises for determination is, whether the State Commission has got the jurisdiction to try the complaint. It is needless to say that the State Commission has jurisdiction to decide the complaints filed by a complainant. The word complainant has been defined in the Act as (i) the consumer; or (ii) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for time being inforce; or (iii) the Central Government or any State Government. It is now to be seen whether the complainant in the present case is a consumer or not. The word ''consumer'' has been defined in section 2(1)(d) of the Act and it means any person who (i) buys any goods for a consideration........, but does not include a person who obtains such goods for resale or for any commercial purposes; or (ii) hires any services for a consideration...... a bare reading of the section it is clear that the complainant in this case does not fall within the aforesaid definition. According to the allegation in the complaint he has sold the goods to the respondent. If a person sells the goods to another person the former does not become consumer and therefore he is not covered by the definition of the word ''complainant''. It is also worth mentioning that a person, who purchases goods for resale or for commercial purposes also cannot termed as a ''consumer'' as the Act is not applicable to commercial transactions. In the present case, the transaction is a commercial one.

4. AFTER taking into consideration the facts and provisions of law, we are of the

opinion that the complainant is not entitled to file this complaint for recovery of the price of goods. For the aforesaid reasons we do not find any merit in the complaint and dismiss the same with no order as to costs. Complaint dismissed.

