

(2013) 05 NCDRC CK 0070

In the National Consumer Disputes Redressal Commission

Branch Manager, New Ravindra Tractors

APPELLANT

Vs

BABU RAM , Regional Manager, Escorts Ltd. , Area Manager,
Escorts Ltd , The Manager, Kotak Mahindra Bank Ltd

RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 362 : 2013 2 CPJ 608

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Final Decision : petition dismissed

Judgement

1. BOTH the fora below have given concurrent findings in favour of the petitioner and against the respondents/OPs. Aggrieved by those orders, the petitioner has filed the present revision petition.

2. SHRI Baburam was the owner of Mahindra Tractor bearing registration No.HR-05-4156. He contacted Branch Manager, New Ravindra Tractors, Link Road, Dyal Singh College Lane, Karnal, OP1 for sale of said Tractor. OP1 assessed the value of the said Tractor in the sum of Rs.85,000/-. In the meantime, the respondent No.1/complainant purchased Farmtrac-30 Tractor from OP1 on 27.01.2005 for a sum of Rs.3,05,000/-. The complainant paid Rs.75,000/- to OP1 in cash and he took loan in the sum of Rs.2,30,000/- from Kotak Mahindra Bank Ltd, OP4. The delivery of the said Tractor was given to the complainant by OP1 after getting the same insured with ICICI Lombard General Insurance Company, Karnal, , but OP1 did not issue any sale letter, insurance policy and any other documents for the registration of the said Tractor. The new Tractor purchased by the respondent No.1/complainant was found to be defective. Due to non-supply of requisite documents, the complainant could not ply the Tractor and had to hire another Tractor for his agricultural work, loading and unloading his products which has caused him damages to the tune of Rs.4,50,000/- besides the payment of huge interest to OP-4 with whom the tractor in question was hypothecated. The complainant filed complaint before the District Forum with the following prayers:- "a) Opposite parties may kindly be directed to pay

Rs.4,50,000/- to complainant on account of damages, mental pain, agony, harassment, for hiring other tractor for agricultural purpose for loading and unloading of crops; b) Opposite parties may kindly be directed to pay interest to complainant on the borrowed amount of Rs.2,30,000/-; c) That opposite parties may kindly be also directed to replace the said damaged/defective farm tract - 30 bearing Engine No.2003755 with new one immediately, without any delay; d) any other relief to which the complainant is found entitled may also be awarded ".

The OP/petitioner No.1 has contested this case. It was argued by the petitioner "s counsel that although, complainant has stated that Rs.85,000/- was not paid to him, yet, he did not make a prayer in this regard. Petitioner has denied all the allegations. Petitioner has stated that old tractor was not sold to it. Counsel for petitioner argued that there is no proof of handing over the old tractor to the petitioner. There is no document to support this contention. He further pointed out that sale documents were handed over to the petitioner immediately and if the Commission so desires, it can provide the duplicate documents at this stage.

3. ALL these arguments leave no impression upon us. The facts of this case speak for themselves. The petitioner has tried to wrench the facts from their real significance. The new tractor was handed over to the petitioner on 27.01.2005. OP4 had financed the said tractor and had paid Rs.2,26,550/- through Demand Draft dated 11.03.2005, i.e. after a period of one-and-a-half month. Consequently, OP1 had deposited a sum of Rs.32,662/- in the Central Bank of India to pay off the loan advanced by LY MY Branch of D.C. Office. Petitioner had also paid insurance amount in the sum of Rs.5,243/- for getting the insurance cover note regarding the insurance of the tractor in question. The insurance cover goes to show that the tractor was insured w.e.f. 02.02.2005 to 01.02.2006. The record also reveals that the complainant had paid Rs.75,000/- in cash vide Ex.C-12, dated 27.01.2005. The District Forum observed as under :-
"It is not understood why all these favours were done to a stranger, i.e., to the complainant when he was neither friend of OP-1 nor relative nor known to it and that too, without any guarantee and such conduct of OP-1 itself belies its plea that it had not purchased the old tractor of the complainant for Rs.85,000/-. It appears that OP-1 is not coming forward with the true facts and is also hiding the reality of its collusion with OP-4. The conduct of OP-1 and OP-4 is not beyond suspicion and there is no cogent evidence in support of their respective contentions ". " So, in view of the above observation, we dispose of this complaint with the direction to OP-1 to supply the requisite documents relating to the sale of the tractor in question to the complainant and to refund the above said amount of Rs.85,000/- to him. OP-1 is further directed to remove the defects in the tractor by replacing defective parts. The order shall be complied with within a period of 30 days of the receipt of copy of this order failing which the above said amount of Rs.85,000/- shall carry interest at the rate of 10% p.a. from the date of legal notice Ex.C2, i.e. from 07.11.2006 till payment. There shall be no order as to costs. As OP-2 and OP-3 have no role to play in the matter so complaint against them is hereby dismissed with no order as to costs ".

4. IT is also difficult to fathom that on the one hand OP-4 had sanctioned a loan of Rs.2,30,000/- in favour of the complainant on an agreement dated 02.02.2005, but on the other hand OP-4 could not explain as to why only Rs.2,26,550/- was financed. It is difficult to fathom as to why the sum of Rs.3,450/- was paid less to complainant. OP1 had received full price of the Tractor but while working in cahoots with OP4, they tried to cheat the complainant by manipulating the true facts. The complainant has pointed out a number of defects in his Tractor, qua his affidavit. The respondents did not contest this fact seriously. Under these circumstances, we find no fault with the observation made by the State Commission, which runs as follows : "The next argument raised on behalf of the appellant was that the documents of the tractor were supplied to the complainant at the time of delivery of the tractor. This contention on behalf of the appellant is also not sustainable in the eyes of law because it is admitted fact that the complainant had purchased the new tractor by raising loan of Rs.2,30,000/- from the bank and the registration of the vehicle was not handed over to the complainant unless necessary entry of hypothecation was not incorporated in the registration certificate. Normally, dealers send the documents of the vehicle to the bank to get the vehicle registered, attached with a form prescribed for the purpose so that the hypothecation entry can be incorporated in the registration certificate. Therefore, plea of the appellant that the documents were handed over to the complainant is not sustainable in the eyes of law. Thus the District Consumer Forum was justified in issuing direction to the appellant-opposite party ".

The petitioner has not approached the fora/Commission with clean hands. He has tried to put the real facts under the hat. Without getting registration with the authority, the vehicle is of no use. The District Forum has also taken a lenient view and did not impose any costs upon the petitioner, in keeping the vehicle idle for a sufficient period. The conduct of the petitioner proves the case against it. Since it was keeping the old vehicle, otherwise there was no reason to spend money on behalf of the complainant who was a stranger. A complaint is to be read holistically as a composite document Mere non-mention of payment of Rs. 85,000/- in the prayer clause does not lead us to wink at the entire version.

5. ALL these facts and circumstances tip the scale in favour of the complainant. In view of the foregoing reasons, the revision petition is dismissed.