

(2016) 12 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

Case No : 822 of 2016

CHAIRMAN, COIR FOAM INDIA PVT. INDIA

APPELLANT

Vs

DEEPAK GAUTAM & ANR.

RESPONDENT

Date of Decision : 22-12-2016

Acts Referred:

Citation : 2017 1 CPR 229

Hon'ble Judges : V.K. Jain

Advocate : Deepak Gautam

Final Decision : Petition dismissed

Judgement

1. The complainant/respondent purchased two mattresses from respondent no. 2 Shiv Shakti Traders. The said mattresses had been manufactured by the petitioner Coir Foam India Pvt. Ltd. The springs of the mattresses were found protruding outside the mattresses rendering it difficult for the complainant to sleep on them. He therefore, made a complaint in this regard to the petitioner, which deputed an employee namely Mr. Amit to visit the premises of the complainant and check the mattresses. The case of the complainant is that the aforesaid employee of the petitioner acknowledged that the mattresses were defective and promised to get the same repaired, whereas the case of the petitioner is that on checking, the mattresses were found to be in perfect condition and therefore, no repair was required. Since neither the mattresses were repaired nor replaced, the complainant approached the concerned District Forum by way of a complaint impleading the seller as well as the manufacturer as the OPs in the complaint.

2. The complaint was resisted by the petitioner primarily on the ground that no defect was found in the mattresses sold to the complainant.

3. The District Forum vide its order dated 09.01.2014, gave the following directions to the petitioner:

1. Pay to the complainant a sum of Rs.12,800/- alongwith interest @ 10% per

annum w.e.f. the date of filing of this complaint i.e. 09.08.2011 till payment.

2. Pay to the complainant a sum of Rs.10,000/- as compensation for the pain and agony suffered by him.

3. Pay to the complainant a sum of Rs.2,500/- as cost of litigation.

Being aggrieved by the order of the District Forum, the petitioner company approached the concerned State Commission by way of an appeal. The said appeal having been dismissed for want of prosecution, the petitioner is before this Commission by way of this revision petition.

4. Considering the small amount involved in this complaint, I have heard the learned counsel for the parties on merits. It is not in dispute that the mattresses sold to the complainant had been manufactured by the petitioner company. It is also not in dispute that the complainant had made a complaint to the petitioner company vide his letter dated 24.03.2011 alleging therein that the springs of the mattresses were pinching on his backbone and as a result, he was unable to sleep on them. It is also not in dispute that one Mr. Amit was deputed by the petitioner company to visit the premises of the complainant and inspect the mattresses sold to him. The only dispute is as to whether the mattresses were found defective or not.

5. The complainant filed his own affidavit to prove the alleged defect in the mattresses. The petitioner company however, did not file either any inspection report or any affidavit of Mr. Amit to controvert the aforesaid affidavit of the complainant. As a result of which the deposition of the complainant with respect to the defect in the mattresses remained wholly un rebutted. The petitioner company did not give any explanation for not filing the affidavit of Mr. Amit in support of his case that on inspection of the mattresses by Mr. Amit, the same were found to be in perfect condition. In these circumstances, the District Forum, in my view, was fully justified in relying upon the affidavit of the complainant. It has also come on record that on 22.04.2012, the petitioner had offered to replace the mattresses. The said offer also indicates that the mattresses were found to be defective and that precisely was the reason why the offer to replace them was made. Therefore, the order passed by the District Forum is fully justified on merits.

6. For the reasons stated hereinabove, I hold that the order passed by the District Forum does not call for any interference by this Commission in exercise of its revisional jurisdiction. Hence, no useful purpose will be served by restoring the appeal filed by the petitioner before the State Commission and directing the said Commission to decide the appeal on merits. The revision petition is therefore, dismissed with no order as to costs.