

(2013) 03 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

Contour Holiday Resorts Private Ltd.

APPELLANT

Vs

K.N Bhuvanendranatha Kamath Kanjirathimmootil

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Citation : 2013 0 NCDRC 197 : 2013 2 CPJ 245

Hon'ble Judges : V.B.GUPTA , R.GUPTA J.

Advocate : JOGY SCARIA

Judgement

1. BEING aggrieved by order dated 21.10.2011, passed by Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram. (for short, "State Commission ") petitioner has filed this revision petition.

2. BRIEF Facts are that on 11.1.08, respondent/complainant booked Contour Convention Centre for conducting marriage of his daughter to be held on 18.5.2008. Out of the rental of Rs. 50,000/- he paid a sum of Rs. 25,000/- as advance on the same date and receipt was obtained. The marriage invitation card was printed and sent to the relatives and friends. On 16.2.2008, respondent received a letter from the petitioner/opposite party informing that the auditorium has been given on hire to somebody else for 18.5.2008. A Pay Order for Rs. 25,250/- was also enclosed. However, name was wrongly mentioned deliberately in the pay order. Mr. Somanadhan Nair, retired principal of N.S.S. College, Changanacherry met the respondent and offered him compensation to shift the venue of the marriage from the Contour Convention Centre for which respondent did not agree. Alongwith letter of the petitioner, there was also a copy of caveat as petitioner apprehended that respondent may approach the court of law. Respondent filed a suit before Munsiff court for permanent prohibitory injunction reserving the right to move the appropriate Forum. But same was dismissed as matter related to breach of contract. The respondent had to conduct marriage in a comparatively small hall in a hurry. The loss and mental agony caused to respondent and his family cannot be expressed in the terms of the money. Respondent felt humiliated in front of all the invitees, friends, relatives and the in

laws family. Thus, he was unable to conduct a smooth and nice marriage function of his only daughter who is a professional engineer. The act of the petitioner amounts to deficiency of service, unfair trade practice and due to petitioner "s wrongful and deficient act, respondent has suffered great mental agony and as such is entitled for compensation. Accordingly, respondent filed complaint and sought a compensation of Rs.2,00,000/- apart from return of the amount paid. Petitioner in its written version took the plea that construction of particular auditorium along with a Hotel Complex was expected to be completed in November, 2007. It is further stated that during October, 2007, petitioner in course of his business trip to Bangalore met one Muraleedhar, a businessman at Bangalore who contacted him as he wanted the auditorium for conducting his daughter "s marriage on 18.5.2008. He paid an advance of Rs.25,000/- also, but due to his busy business schedule petitioner forgot to inform the above booking to his office at Changanacherry. Whenever he was away, he used to entrust signed blank cheques and signed letter heads at his office at Changanacherry, which is managed by a chartered accountant. It was without having knowledge of the booking of Mr. Muraleedhar, his office staff provided a booking to the respondent in January, 2008. Immediately, on knowing about the above booking, he took steps to cancel the same and return the amount. The matter was also informed to Mr. Somanathan Nair, the retired principal of N.S.S.College, who is a near relative of Mr. Muraleedhar. As Mr Muraledhar has booked the auditorium in October, 2007, he had no other alternative but to provide the auditorium to Mr. Muraleedhar. Rest of the allegations of the complaint were denied.

3. DISTRICT Forum, vide order dated 26.2.2011, allowed the complaint and granted following reliefs to the respondent ; " (a) Opposite party is ordered to pay the petitioner an amount of Rs.75,000/-as compensation for the loss and sufferings sustained to the petitioner due to the breach of agreement between the petitioner and opposite part ; (b) Opposite party is ordered to refund the petitioner the advance amount of Rs.25,000/- with interest at the rate of 9% from the date of booking till realization and (c) Opposite party is ordered to pay an amount of Rs.3,000/- to the petitioner as litigation cost ".

4. AGGRIEVED by the order of District Forum, petitioner filed appeal before the State Commission which dismissed the same. Hence, this revision.

5. WE have heard the learned counsel for the petitioner and gone through the record.

6. LEARNED counsel for petitioner could not point out as to what legal issue is involved in this revision petition. The only plea of petitioner "s counsel before this Commission is that, fora below did not consider the arguments advanced on behalf of the petitioner. Present revision petition has been filed under Section 21(b) of the Consumer Protection Act, 1986,(for short, "Act "). It is well settled that powers of this Commission as a Revisional Court are very limited and have to be exercised only, if there is some prima facie jurisdictional error in the impugned order.

7. GROUND " E " of present revision states ; "That because the Hon "ble Forum should have understood that after getting to know of the lapse the Petitioner quickly swung into action tendered an apology and informed well in advance to the Respondent regarding the unavailability of the auditorium on the scheduled date. Everything was done to rectify the wrong doing in the most cogent manner. It is humbly pleaded that this happened due to the preoccupation of the Petitioner and there is no sort of foul play as alleged by the Respondent. But sadly the Respondent had other things in mind that was to harass the Petitioner unnecessarily even after accepting the compensatory amount ".

8. THUS , petitioner itself admits that auditorium was not made available to the respondent on the scheduled date. In this regard, District Forum in its order held ; "Admittedly marriage of the petitioner 's daughter was not conducted as agreed between the petitioner and the opposite party at the convention center of the opposite party name " Contour Holiday Resort " According to the opposite party he has no personal dealings with the petitioner in connection with the disputed booking of the auditorium either on 11.1.2008 or any other date with regard to the marriage of the petitioner 's daughter. Opposite party contended that opposite party on 14.2.2008 issued a letter to the petitioner stating the inability to conduct the marriage of petitioner 's daughter as per booking on 11.1.2008. Original letter produced is marked as Ext.A3. In Ext. A3, opposite party stated that the booking of the marriage of the petitioner 's daughter was done at office of the opposite party on 11.1.2008. The receipt of advance issued by the opposite party to the petitioner is produced and the same is marked as Ext. A1. Opposite party has not disputed the signature of the opposite party in Ext. A1. According to the opposite party he used to keep with his chartered accountant friend signed blank cheque and signed letter heads of the company for day to day functioning of his office. Without knowing the personal booking of the opposite party, with the said Muraleedhar at Bangalore, office of the opposite party accepted the booking of the petitioner. From Ext.A1 documents it can be seen that the signature of the opposite party was in the left side top corner. No prudent man will keep blank signed letter head by signing it on the top left corner. So by perusing Ex A1 we are of the view that Ext. A1 receipt was given by the opposite party himself. The other stories as stated by the petitioner in his affidavit and during cross-examination is only a conducted story for the purpose of this case. Furthermore, admittedly the marriage of the petitioner 's daughter, to be conducted on 18.5.08, is the first marriage convened in the Contour Holiday Resorts. So, being an opening ceremony function opposite party as the owner will be cautious about its booking. The case of opposite party that he forgot with regard to the earlier booking, with one Muraleedhar at Bangalore, due to his busy business schedule is not much probable and believable. So, we disagree with the argument put forth by the learned counsel for the opposite party. According to the opposite party there is no other alternative other than to provide the auditorium to said Muraleedhar and furthermore opposite party informed the petitioner within two weeks of the booking about the inability for

giving the auditorium to the petitioner. In our view the act of the opposite party amounts to an inadequacy in the quality, nature and manner of performance which is required to be maintained to be undertaken to be perform in pursuance of a contract and definitely that act of breach amounts to deficiency in service. The other question to be decided is with regard to the quantum of damages to be allowed. Petitioner is wealthy and affluent person of Changanacherry and a local businessman. So while fixing the quantum of damages the feelings and status of the petitioner in the society is to be considered. Furthermore, admittedly the petitioner was compelled to take a comparatively small hall that the opposite party convention center. Definitely due to the act of the opposite party the petitioner was forced to conduct marriage of his daughter in a hurry. Being a father, petitioner has his own ambitions, desires and colourful thoughts of the marriage of his daughter. Without saying the petitioner's daughter and his near relatives both ashamed and insulted in front of all invitees, friends, relatives and in-laws in their family. So, in our view the petitioner is entitled for un-liquidated damages. According to the opposite party alongwith a letter opposite party at the earliest sent a pay order for the advance amount with its interest to the petitioner. So, the petitioner is not entitled for the compensation other than refund of the advance amount. The pay order issued by the petitioner to the opposite party is produced and is marked as Ext. B4. From Ext. B4, it can be seen that the name of the petitioner as shown in the pay order is not correct. So the pay order cannot be said to be proper and valid. From the available evidence it can be seen that there was litigation between the petitioner and opposite party followed by the booking of the auditorium. So, without saying what had happened caused much hardship and sufferings to the petitioner is to be heavily compensated. So, point No. 1 is found accordingly ".

Statecommission while affirming the order of District Forum, in its Impugned order observed ; "The evidence adduced consisted of the proof affidavit filed by the respective sides and Exts. A1 to A4, B1 to B8. As noted by the Forum. Ext. A1, Receipt dated 11.1.2008, contains the signature of the opposite party/ managing director. The case of the complainant that he paid the amount of Rs.25,000/- to the managing director was believed in the above circumstances. The complainant has also produced Ext. A2 invitation letter of the marriage wherein the venue is mentioned as Contour Convention Centre. Evidently the complainant was put to a lot of difficulties as he has to intimate a fresh venue of the marriage to the proposed invitees. The case of the opposite party that he had already provided booking to Mr. Muraleedharan was rightly disbelieved by the Forum. The act of the opposite party unilaterally canceling the booking apparently for accommodating a business tycoon can not be justified on any grounds. The action of the opposite party has resulted in belittling the status of the complainant in the society and among his relatives, friends, and well wishers. In the circumstances, we find that no interference in the order of the Forum is called for. The order of the Forum is sustained and the appeal is dismissed. The opposite parties/ appellants are directed to make the payment within 2 months

from the date of receipt of this order, failing which the complainant will be entitled for interest on the amount of compensation as well as the amount of Rs.25,000/- @ 12% from 21.10.2011, the date of this order ".

9. IT is manifestly clear from the record that booking done by respondent for marriage of his daughter was unilaterally cancelled by the petitioner just to accommodate another business associate. We can well imagine the trauma, pain and sufferings undergone by the respondent (being father of a daughter whose marriage was fixed) when venue of the marriage booked earlier was cancelled arbitrarily by the petitioner. It is not that respondent alone has undergone the mental agony due to illegal act of the petitioner but his other family members also on the solemn occasion of marriage have undergone trauma, pain and sufferings. The mental agony and sufferings undergone on such occasion by a family cannot be measured just in terms of money alone. The only purpose of the petitioner in cancelling the booking of respondent was just to oblige another business associate. This, act on the part of the petitioner was most inhuman and cruel.

10. THUS , no jurisdiction or legal error has been shown to call for interference in the exercise of power under section 21 (b) of the Act, since two fora below have given cogent reasons in their order, which does not call for any interference nor they suffer from any infirmity or revisional exercise of jurisdiction. It is not that every order passed by the fora below is to be challenged by a litigant even when the same is based on sound reasoning. The present case is a fit case, where punitive damages must be imposed upon the petitioner and same should be awarded to the respondent.

11. ACCORDINGLY , we dismiss the present revision petition with punitive damages of Rs.50,000/- (Rupees Fifty Thousand Only) to be paid to the respondent. Petitioner is directed to deposit the amount of punitive damages by way of demand draft in the name of respondent with this Commission, within four weeks from today. The amount of punitive damages shall be paid to the respondent only after expiry of period of appeal/revision preferred, if any. In case, petitioner fails to deposit the punitive damages within the prescribed period, then it shall be liable to pay interest @ 9% p.a. till its realization.

12. LIST for compliance on 26.4.2013.