

(1995) 03 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

DEBOJIT GHOSH

APPELLANT

Vs

BALARAM BASAK

RESPONDENT

Date of Decision : 21-03-1995

Acts Referred:

Citation : 1995 3 CPJ 296 : 1996 1 CLT 662

Hon'ble Judges : A.K.Bhattacharjee , Sunil Kanti Kar , S.Dutta J.

Final Decision : Appeal dismissed with costs

Judgement

1. THIS appeal is against an order of the Calcutta District Forum dated 3.7.94 passed in C.D.F. Case No. 47/93 allowing the case of the respondent No. 1 filed in the said Forum. The case of the complainant was that he had purchased a Storewel Almirah from the O.P. No. 2 (the present appellant) at New Barrackpur, 24 Parganas (North) on 30.6.92 on payment of Rs. 5,750/-. It was agreed that out of the said amount Rs. 310/- would be paid back as commission. The almirah was required in connection with the marriage ceremony of the complainant's daughter. On receipt of the almirah it was detected that it was short of two shelves. As the appellant did not supply the shelves in question inspite of request from the Complainant, the latter was compelled to purchase two new shelves and fitted them in the almirah at a cost of Rs. 426.95P. The complainant claimed the amount of commission and the cost of the two new shelves and the fitting cost of Rs. 190/- from the appellant, but nothing was paid.

2. THE Godrej & Boyce Manufacturing Co. who is the manufacturer of the Storewel Model Almirah sold to the complainant was made a party in the complaint case but they denied having any connection with the appellant's company "National Sales" of New Barrackpur. THE father of the appellant was contacted, but the appellant was not traceable. According to the Godrej and Boyce Mfg. Co. there was no dealer or sub-dealer under them of the name "National Sales" and they had no responsibility in regard to the almirah sold by the appellant. THE Godrej and Boyce Mfg. Co. was accordingly declared by the Forum as an unnecessary party. From the judgment it appears that the

complainant approached the Calcutta Police and lodged a complaint with the S.P., 24 Parganas (North), but the police was of no help. The Calcutta District Forum also tried to apprehend the appellant by issuing a warrant of arrest, but he could not be arrested. He did not appear inspite of the service of notice upon him. The Forum thereafter heard the complainant, saw his documents and being satisfied with the genuineness of the complainant's grievance allowed his case and passed a decree for Rs. 917/- being the cost of the shelves and fitting charge and a compensation of Rs. 500/-. Thereafter the present appeal has been filed challenging the order of the District Forum.

In the Appellate Court he introduced a new case, i.e. the almirah in question was purchased from M/s. M.B. Trading Co. of 20, Old Court House Street (and not from his father's shop National Sales of 131/1, Chandrapulli Station Road (East), New Barrackpur on 9.7.92 (and not on 30.6.92 which is the date given by him on a stamped receipt) at a price of Rs. 6200/- and not at Rs. 5,750/- as admitted by him on the receipt) and the almirah though sold to Balaram Basak was to be delivered to one Kedar Nath Basak of 5/B, Jiban Krishna Mitra Road. The appellant, however, made no attempt to prove his new case. He did not site the M.B. Trading Co. to support his case although he induced the Commission to make the said firm a party. He did not explain why the stamped receipt given by him on 30.6.92 should be ignored. He did not show any cause as to why he absconded and evaded the warrant of arrest issued against him. He was not present on the date when the appeal was heard but managed to file a written argument without the permission of the Commission.

3. WE take strong note of the unusual levity with which cases are being filed before the State Consumer Dispute Redressal Commission. A person who avoided warrant of arrest and absconded after the notice was served has now come forward with a submission that he was not given an opportunity to contest the case. He has not challenged his own stamped receipt but has fabricated a new case in appeal. He has not examined any witness or filed any affidavit affirmed by any witness. There is no challan showing the delivery of the almirah to the Complainant or his representative which is a must in such cases of delivery. In stand a cash memo dated 9.7.92 has been produced. On the reverse of the cash memo there is an address of one Mr. P. Roy, Headmaster, Shyamchak High School. There is also an endorsement there to the following effect. "Bhilai Rajput Airlink L and Lr Export" Why should there be such endorsements on the cash memo ? In the cash memo the purchaser's name is Balaram Basak. Why then should the cash memo be in the possession of the appellant? If the appellant had a genuine case, why was not this case represented before the District Forum? WE have considered all the above questions and we are convinced that the appellant has no answer to these questions. WE are also satisfied that it is a most harassing and irresponsible appeal. The appeal is accordingly dismissed with a cost of Rs. 500/- (Rupees five hundred) payable to the contesting respondent No. 1 Balaram Basak. We also confirm the order passed by the Calcutta District Forum. The appellant Debojit Ghosh is accordingly

to pay Rs. 917/- and a compensation of Rs. 500/- as ordered by the Calcutta Distt. Forum and also Rs. 500/- as costs of this appeal to respondent No. 1 Balaram Basak positively within fifteen days from the date of communication of this order. Appeal dismissed with costs.