
(2000) 09 NCDRC CK 0075

In the National Consumer Disputes Redressal Commission

EXECUTIVE DIRECTOR, ORISSA AGRO INDUSTRIES
CORPORATION

APPELLANT

Vs

Kanhu Charan Das

RESPONDENT

Date of Decision : 06-09-2000

Acts Referred:

Citation : 2001 1 CPC 376 : 2001 1 CPJ 552 : 2001 1 CPR 460

Hon'ble Judges : D.M.Patnaik , Arati Mohanty , Pramodnath Das J.

Final Decision : Appeal allowed

Judgement

1. THE present appeal is against the order dated 21.8.1996 of the District Forum, Balasore directing the appellant-Agro Industries Corporation to repair the power tiller or to replace the engine of the same model and make and also award compensation of Rs. 5,000/-.

2. WE have heard the learned Counsel for the appellant Mr. Baug and the learned Counsel for the complainant Mr. R.K. Patnaik at length. Both of them advanced extensive argument. While it is the contention of Mr. Baug that the case was falsely started against the Agro Industries Corporation, it is the contention of Mr. Patnaik that no such fraud has been committed by the complainant and in fact he approached the District Forum alleging deficiency in service by the appellant-Corporation who was the dealer and supplied the power tiller but did not attend to rectify the defect pointed out by the complainant.

It is not disputed that the power tiller was purchased by the complainant from the appellant for valuable consideration. It is the case of the complainant that though it was purchased in the month of January, 1994, the power tiller went defective in the month of September, 1994 and it was intimated to the appellant but they did not attend to rectify the defect.

3. THE written version of the appellant was that they received the intimation from the complainant about the defect in the month of September, 1994. Though according to them there was no such defect yet, on the complaint lodged by the

complainant, they instructed their mechanic to attend the power tiller at the village of the complainant. But later-on when the mechanic reached the village he did not find the power tiller with the complainant for which he could not take up any repair work. It was alleged by the appellant that infact the power tiller was removed from the village of the complainant and was given on hire basis to work at distant places at Midnapur in West Bengal and other places. In support of this allegation the complainant was himself responsible for removal of the power tiller to another place and that the appellant lodged an FIR relating to the theft of the power tiller. Mr. Baug the learned Counsel for the appellant has filed today a xerox copy of the seizure list indicating therein that the power tiller bearing Engine No. A/193-3048 was seized from the house of the complainant K.C. Das. He has also strenuously urged that on the face of such fraud committed, the District Forum committed gross error in not taking into account the conduct of the complainant in pressing his case falsely.

4. THE crux of the point of the case is the seizure list proves that the power tiller is available now presently with the complainant. So far as the allegation of commission of theft by the complainant or of any fraud is concerned, we have not felt it necessary for giving a decision or an observation on that score and the matter has to be left open for the Appropriate Authority to investigate the same and find out guilt of perpetrator the offence. So far as the present Forum is concerned we are only to see the legality or otherwise of the order of the District Forum granting relief, which is challenged before us. The complainant came forward with a case that in the month of January, 1994 he purchased a power tiller and the same developed certain defect in the month of September, 1994. We are surprised to note that the nature of the defect has not been disclosed in the complaint petition itself. There is no material to hold that actually what was the nature of defect. Nothing has been pleaded so far as the intimation to the appellant as the dealer to rectify the defect is concerned. We hold that though the complainant informed them, they infact came but could not repair the same may be because the power tiller was not available at the particular moment. We do not comment anything regarding the theft of the power tiller at that precise moment. Fact remains that this was not available. In the absence of any particular defect and any material on record what was the nature of the defect and further considering the materials placed before us, we do not find that the Agro Industries Corporation committed any deficiency in service not being able to attend to rectify the defect because of the non-availability of the power tiller at the moment of their inspection. Therefore, we do not find any deficiency in service. We allow this appeal and set aside the order of the District Forum. No cost. Appeal allowed.