(2014) 10 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

FORCE MOTORS LIMITED — APPELLANT

Vs

Branch Manager, Punjab And Sind Bank — RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Citation : 2014 4 CPJ 738

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

Final Decision : Petition allowed

Judgement

1. THE present revision petition, under Section 21(b) of the Consumer Protection Act, 1986 (the Act) is directed against the order dated 5.9.2012 passed by the State Consumer Disputes Redressal Commission, Bihar (hereinafter referred to as "the State Commission") in first appeal No. 468/2000 whereby the State Commission dismissed the appeal filed on behalf of the petitioner and affirmed the order of the District Consumer Disputes Redressal Forum, Patna (hereinafter referred to as "the District Forum) dated 18.3.1999 in complaint No. 321/1998 holding the petitioner (manufacturer) and respondent No. 2 (dealer) jointly and severally liable for alleged deficiency in service on the part of the dealer (respondent No. 2) in not delivering the vehicle in question, even after receipt of the costs of the vehicle.

2. THE facts in brief are, The Complainant -Punjab & Sind Bank, at Frazer Road, Patna paid a cheque for a sum of Rs.3,87,626/ - on 2.1.1997 towards the purchase of a Cash Van model F -307, manufactured by the OP -2/Petitioner - Force Motors Ltd. (formerly known as M/s. Bajaj Tempo). The cheque was made in favour of its authorised Dealer, the OP -1 M/s. Auto Sales, Patna, who assured for delivery of the said Van as per specifications of the bank, within a month of the full payment. Thereafter, the dealer (OP -1) failed to supply the van. OP -1 neither refunded money nor paid interest for the delay as assured Hence, the Complainant -Bank filed a case of deficiency in service against both the OPs i.e. Manufacturing Company (OP -2) and the Dealer (OP -1) before District Forum claiming the refund of the deposited amount, with interest, along with other

compensation. District Forum decided the complaint ex parte and allowed the complaint. District Forum ordered both the OPs jointly and severally to refund the deposit of Rs.3,87,626/ - with 18% interest p.a. from the date of deposit till the date of payment as also to pay compensation to the tune of Rs.50,000/ -. The OP -2, the manufacturer, preferred the first appeal, which was dismissed by the State Commission.

3. HENCE , aggrieved by the order of State Commission, the OP -2 filed this revision. Heard the learned counsel for the parties and perused the material on record. The counsel for petitioner vehemently argued that, both the fora below failed to appreciate that the relationship between the OP -1 and 2 was on a "Principal to Principal" basis and that the petitioner/OP -2 was bound to supply the vehicle, only when the payment of the price of the vehicle is remitted to it by the Dealer. In the present case the cheque was paid in favour of the dealer OP -1 for the supply of the vehicle, the same was not been remitted to the petitioner, also the dealer did not place any booking order received from the complainant. The counsel therefore challenged the maintainability in discharging of his responsibility to the complainant. He also argued that, the complaint was not a Consumer, as the van was to be used for commercial transaction.

4. THE counsel for complainant -Bank contended that, both, the manufacturer and its dealer, are equally necessary parties, to the sale of a particular vehicle. In case, if a vehicle is booked through its authorized dealer and it is not provided or delayed, the company cannot escape from its liability on the ground of "principal -to -principal" relationship. It should be borne in mind that, while purchase of such vehicle, a customer makes a choice on the basis of name and brand of the manufacturer company in market, and not by the name of any dealer. Regarding maintainability of complaint as a Consumer, the counsel relied upon the judgment of Hon''ble Supreme Court in the case "Karnataka Power Transmission Corporation & Anr. Vs. Ashok Iron Works Private Limited" : (2009) 3 SCC 240. Hence, the counsel for the complainant contended that the case of the complainant is covered within the four corners of the word "consumer" as defined in Section 2(1)(d)(ii) and the explanation appended to it, of the Consumer Protection Act, 1986. The main question swirls around, whether the complainant/ bank is a Consumer? The bank is a commercial establishment. The purchase of Cash van was to carry of cash, there was no question of livelihood. In Monstera Estate Private Limited vs. Ardee Infra. Pvt. Limited, IV 2010 CPJ 299 (NC), there was delay in possession. The complainant was a private limited company. The complainant was nominated for allotment of showroom. Possession was not given. Sale deed was not executed. The complainant alleged deficiency of service. It was held by this Commission that even if the private limited company was treated as person, purchase of shop could not be for earning its livelihood. Purchase of shop was not of commercial purpose. In M/s. Purusharth Associates Pvt. Ltd. Vs. M/s. Uppal Housing Ltd. Plaza & Anr., this Commission in Consumer Complaint No. 112 of 2012, on 05.07.2012, Hon''ble Mr. Justice J.M. Malik observed in paras 11 and 12 of the judgment, as under: "11. Learned counsel for

the complainant argued that these flats will be used for the officers of the Company. Learned counsel for the complainant could not deny that those officers would transact the commercial activity. A bare -look on this Resolution clearly goes to show that these flats would be meant for commercial purposes."

12. The complaint being not maintainable, is therefore, dismissed. Nothing will debar the complainant to seek remedy before the appropriate Forum, as per law.

The above -mentioned case (M/s. Purusharth Associates Pvt. Ltd.) was dismissed in limine. Aggrieved by that order, the complainant approached the Apex Court. The Hon''ble Supreme Court in Civil Appeal Nos. 8990 -91/2012, vide its order dated 07.01.2013, dismissed the same.

5. IN Subhash Motilal Shah (HUF) & Ors. Vs. Malegaon Merchants Co -op. Bank Ltd., the petitioner, ''HUF'', had opened a current account to be used for commercial purpose. It was held that it was not a ''consumer'', by this Commission, vide its order dated 12.02.2013 and the SLP filed against the said order, was dismissed by the Hon''ble Apex Court in Civil Appeal No. 39200/2013, dated 13.01.2014.

6. THEREFORE , relying upon the judgments mentioned supra, the bank is not a Consumer, hence, the complainant -bank cannot seek its remedy through the Consumer Fora. In view of above, the revision petition is allowed and dismiss the complaint. However, the complainant is given liberty to get its grievances redressed from the appropriate forum, as per Law. It can seek help from the authority reported in the case of "Laxmi Engineering Works Vs. P.S.G. Industrial Institute [: (1995) 3 Supreme Court Cases 583]" in respect of limitation.