

(2012) 08 NCDRC CK 0104

In the National Consumer Disputes Redressal Commission

Frontier Pest Control Ltd

APPELLANT

Vs

Pardeep Mehta

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 418 : 2012 2 UC 1511 : 2012 4 CPJ 65

Hon'ble Judges : Anupam Dasgupta , Suresh Chandra J.

Advocate : H.Chandra Sekhar , Rajiv Duggal

Judgement

1. CHALLENGE in this revision petition is to the order dated 14.10.2010 passed by the State Consumer Disputes Redressal Commission, UT Chandigarh ("State Commission" for short) by which the State Commission upheld the order dated 19.11.2007 passed by the District Forum in consumer complaint No.782/2007 and dismissed the appeal of the petitioner. Petitioner was the opposite party before the District Forum.

2. BRIEFLY stated, the complainant who is, respondent herein, had entered into an agreement with the petitioner/OP to give anti-termite treatment for the protection of his house from termite. The complainant had paid Rs.5,000/- for this treatment and he was assured by the OP that after the treatment, the house would be safe from termite infestation for five years. In pursuance of the said agreement, the petitioner completed the process of anti-termite treatment in the house of the respondent and undertook that in case the termite reappeared before March, 2008, the petitioner would repeat the said process/treatment of the affected portion of the said premises without further payment of any amount as per letter dated 18.4.2003. It was alleged by the respondent that the termite reappeared in the house during the period mentioned in the agreement and the respondent/complainant made many requests on telephone as well as through visits to the petitioner for providing treatment against the termite but even though the petitioner gave treatment 3-4 times but it did not have any effect on the termite infestation. Because of the failure of the petitioner to provide satisfactory service to the respondent, the wooden frames in the house of the

respondent got badly damaged by termite infestation. In view of this, respondent sent a legal notice dated 16.11.2006 to the petitioner but the petitioner failed to do the needful.

3. ALLEGING deficiency in service on the part of the petitioner, the respondent lodged a complaint with the District Forum in this regard. In spite of service of notice, none appeared on behalf of the petitioner and hence the petitioner was proceeded ex-parte by the District Forum. The complainant led his evidence in support of his contentions.

4. THE District Forum accepted the complaint and vide its order dated 19.11.2007, awarded a lump sum compensation of rupees one lakh to the complainant/respondent towards damages for loss of wood work, replacement of damaged woodwork and for mental agony alongwith cost of litigation of Rs.2,100/-. Aggrieved by this order, the petitioner filed an appeal before the State Commission which came to be dismissed by the State Commission vide its impugned order both on the ground of limitation as well as on merits. As stated above, the petitioner/opposite party has now filed the present revision petition against the order of the State Commission.

5. THE petitioner has given the following grounds in favour of its revision petition: (i) For a below overlooked the fact that the complaint of the respondent was time barred because the treatment was done on 16.4.2003 and the complaint was filed in the year 2007 which was far beyond the period of two years provided under the law for filing of such complaints. (ii) For a below have not appreciated the settled law laid down by the Apex Court in Bharti Knitting vs. DHL 1996 (4) SCC 704. In that case the agreement clauses bind both the parties and the parties cannot go beyond the agreement clauses. (iii) State Commission ought to have set aside the ex-parte order and remanded the matter to the District Forum since no opportunity was given to the petitioner by the District Forum. Rather than doing so, the State Commission erred in proceeding with the matter and passed the impugned order. (iv) There is no iota of evidence on record which would suggest that the respondent/complainant suffered any kind of loss due to ineffective anti-termite treatment. The respondent has simply placed on record an estimate of an Architect but the Architect neither tendered his affidavit before the District Forum nor did he depose before it. The estimate by itself does not prove the factum of financial loss. (v) The State Commission while dismissing the appeal on the ground of limitation has not appreciated the fact that the respondent has not given the correct name and designation of the person holding the post of Managing Director in the Company. The petitioner had not received the notice and was proceeded ex-parte wrongly by the District Forum. As soon as he came to know about the litigation, he engaged the lawyer and filed the appeal and hence the dismissal of the appeal on the ground of limitation was in violation of the principles of natural justice. (vi) Even if it is held that there was deficiency in service, the compensation awarded by the District Forum, Chandigarh is on the higher side and there is no justification as to how

and on what grounds compensation in terms of lakhs of rupees could be awarded against a product of Rs.2,500/-.

6. WE have heard Mr. H. Chandra Sekhar, Advocate counsel for the petitioner and Mr. Rajiv Duggal, Advocate for the respondent.

7. IT is not in dispute that there was an agreement between the parties for anti-termite treatment in the house of the respondent by the petitioner company. It is also not in dispute that in pursuance of this agreement, the initial treatment was done in April, 2003 and as per the admitted position, there was a mention in the agreement/letter of the petitioner that "...if any time/s after completion of the initial treatment aforesaid but before March, 2008 termites reappear in the said premises.." the petitioner will carry out the treatment again for which no additional payment will be required to be made by the respondent. A copy of the agreement has been placed by the petitioner at page 25 of the paper book. Learned counsel contended that the petitioner carried out the treatment during the period of agreement when intimation about the reappearance of the treatment was given but the petitioner cannot be held liable for such hefty compensation when it has fulfilled its commitment in terms of its undertaking in the agreement dated 18.4.2003. Learned counsel further submitted that even though the State Commission has observed that the chemical used by the petitioner for the anti-termite treatment was defective because of which the termites reappeared again and again and hence held the petitioner liable for deficiency in service, it is to be noted that no laboratory test was carried out in respect of the chemical used by the petitioner as required under section 13 (c) of the Consumer Protection Act 1986 and as such the view taken by the State Commission in this regard was without any proof regarding the chemical being defective. Regarding the delay in filing the appeal on account of which the State Commission dismissed the appeal on the ground of limitation, the counsel for the petitioner reiterated that the notice was sent in the name of a wrong person showing Mr. Sharma as the Managing Director of the petitioner company whereas the name of the Managing Director of the petitioner company is Shailendra Verma and hence it was not received by him. However, as soon as the petitioner came to know about the litigation, he made arrangement to file the appeal and as such in the circumstances the State Commission ought to have considered these aspects and remanded the matter rather than passing the impugned order against the petitioner company. Learned counsel relied on the ruling of the Apex Court in the case of S.N. Dutt Vs. Union of India [1961 AIR 1449]. In view of these aspects and also the other grounds mentioned in the revision petition, the impugned order is liable to be set aside since it cannot be sustained in the eye of law having been passed on wrong appreciation of facts and circumstances and also ignoring the legal position.

8. PER contra, the counsel for the respondent pleaded that the submission of the petitioner about the non-receipt of the notice sent by the District Forum is wrong because the certified copy of the receipt placed at Annexure R-2 indicates that

the notice was received under the seal of the petitioner company. He submitted that the complaint was against the petitioner company through its Managing Director whose name allegedly was mentioned wrongly as Sharma instead of Verma. However, neither it shall have any impact on the maintainability of the complaint against the petitioner nor the petitioner can be allowed to deny the receipt of the notice. Receipt of the notice by the petitioner has been specifically dealt with by both the District Forum as well as the State Commission. In view of this, the grudge and contention of the petitioner against the ex-parte order and dismissal of the appeal on grounds of limitation is baseless. The counsel also drew our attention to the certificate regarding the extent of damage placed by the complainant/respondent before the fora below. The petitioner himself has failed to lead any evidence against the contents of this certificate or the submissions made by the respondent regarding the damage suffered in respect of the wooden items which were given anti-termite treatment by the petitioner company. As regards the absence of any laboratory test report in respect of the quality of the chemical used by the petitioner, learned counsel contended that reappearance of termites in the premises in question is not under dispute because of which the petitioner admittedly carried out the treatment during the period. It clearly established that the chemical used by the petitioner company in the anti-termite treatment was ineffective. He further submitted that the contract entered into between the parties was in respect of anti-termite treatment by the petitioner company for consideration paid by the respondent and not for purchase of anti-termite spray/chemical as such by the respondent. In this view of the matter, the grievance of the complainant/respondent was in respect of the failure of the anti-termite treatment in controlling the termite infestation rather than in respect of the quality of the chemical used by the petitioner company. Keeping in view the inefficacy of the treatment carried out by the petitioner company under the agreement, there was nothing wrong with the conclusion drawn by the State Commission regarding the possibility of chemical used being of defective or of inferior quality and hence the provision of section 13 (c) of the Act does not apply to the facts of the present case.

9. WE have considered the rival contentions of the parties. In this case we find that based on the facts and circumstances and the evidence led by the parties, the Fora below have returned their concurrent finding of facts in favour of the complainant/respondent. We have no manner of doubt about the receipt of notice in the office of the petitioner company. Wrong mention of the name of the Managing Director would not affect the legality or maintainability of the complaint. The ratio laid down by the Apex Court in the case of S.N. Dutt vs. Union of India 1961 AIR 1449 relied upon by the counsel for the petitioner will not be applicable to the present case. While we do not see any wrong with the dismissal of the appeal by the State Commission on the ground of delay of 605 days which it refused to condone in the given facts and circumstances of this case, on merits also, we are of the considered view that the concurrent finding of the District Forum and the State Commission against the petitioner company is

fair and just. Having entered into an agreement to give anti-termite treatment in respect of particular premises and items kept therein, it was well assumed that the treatment for which the petitioner company had taken consideration would be an effective treatment and since admittedly the termite reappeared again and again and the free treatment given thereafter in pursuance of the agreement was totally ineffective, no fault could be found with the impugned order in upholding the order of the District Forum to award compensation in respect of the damage suffered by the respondent. We do not see any reason to interfere with the quantum of the compensation fixed by the Fora below. In the circumstances, there is no substance in the revision petition and the same stands dismissed with no order as to costs.