(1998) 06 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

G. SADANANDAN PILLAI APPELLANT

Vs

S.BABU RESPONDENT

Date of Decision : 15-06-1998

Acts Referred:

Citation : 1999 1 CPJ 696

Hon'ble Judges : L.Manoharan , K.M.Latha J.

Final Decision : Order confirmed with modification

Judgement

1. THE second opposite party in O.P. no. 517 of 1996 of the District Forum, Kollam, is the appellant. THE complainant/1st respondent purchased an auto rikshaw from the appellant/second opposite party as per Ext. Al agreement dated 20.4.1995. According to the complainant when the vehicle was take to Karunagappally the same was seized by the police, saying that the same has no permit to ply within the jurisdiction of Karunagappally and it could ply only at Kottarakkara. THEreupon the complainant approached the A.M.V.I. to get the permit transferred to Karunagappally and then it was revealed that the vehicle cannot be plied without paying entry tax. THE vehicle had changed hands on more than one occasion. Initially, it was purchased by the first opposite party/ second respondent from Pondicherry. He sold it to the third opposite party who later sold the same to the second opposite party/appellant, the vendor of the complainant/1st respondent. From the said narration it is clear that the vehicle having been purchased from outside Kerala, i.e., from Pondicherry, entry tax had to be paid here. But none had paid the same. And the complainant was forced to pay entry tax Rs. 3,675/- and penalty. THE complainant in addition claimed that he had to pay hire purchase amount to the tune of Rs. 25,000/- and also claimed compensation for non-user to the tune of Rs. 30,000/-. In addition claim was made for compensation towards mental agony. He made a consolidated claim of Rs. 65,000/- as compensation.

2. THE second opposite party/appellant filed his version wherein he contended that the complainant is not a consumer and also maintained that the Forum has

no jurisdiction to entertain the complaint. He also denied the liability to pay compensation on any of the heads claimed by the complainant. Evidence was taken by the District Forum and ultimately the District Forum directed the second opposite party/ appellant to pay Rs. 3,675/- and another sum of Rs. 1,000/- towards entry tax and penalty which the complainant had to pay, and a sum of Rs. 5,000/- as compensation, with direction to pay the same within a period of one month from the date of the order. The learned Counsel for the appellant submitted that inasmuch as the Court has refused to pay compensation for non-user and also payment of Rs. 25,000/- allegedly towards hire purchase arrears, what remained was only in the nature of a breach of contract and consequently it was not a matter which could fall within the jurisdiction of the Forum. In support of the same the learned Counsel relied on the decisions in II (1991) CPJ 427 (NC), M/s. Suraj Steel, Hazaribagh v. R.P. Sharma, wherein it is observed that the matter involved therein was purely in the realm of breach of contract and hence cannot be considered as a consumer dispute. The other decision relied on by the learned Counsel is the one reported in I (1996) CPJ 299 (NC), Executive Engineer, Gosikhurd Dam Division, Wahi (Pavani) v. Shri Hariganga Cement Ltd. Nagpur, there it was a breach of agreement to supply non- levy cement inasmuch as the quantity agreed upon was not supplied. The National Commission held that the matter involved was only a breach of contract for failure to supply the full quantity of goods agreed to be supplied and consequently the same is not a consumer dispute.

On the other hand the learned Counsel for the respondent relied on the decision reported in 1997 (1) CPR 93, R. Sudarsana Babu v. The Kerala State Housing Board, wherein this Commission held that suppression of material fact would amount to unfair trade practice and the seller is bound to disclose any material defect in the property. Reliance was also made by the learned Counsel on the decision in III (1997) CPJ 40 (MRTP)=1998 NCJ 101, N.K. Mittal and Another v. M/s. Unique Corporation and Another. There the respondents made false promise that financial assistance would be provided on mortgage of immovable properties, and thereafter failed to provide financial assistance despite having sanctioned the loan after physical inspection of the properties to be mortgaged, it was held that, false representation concerning the use and benefits of its financial services would fall under the MRTP Act, 1969.

3. IN this regard Ext. Al agreement executed by the 1st respondent and the appellant is of importance. Among other things the appellant had undertaken, he is responsible for all liabilities and cases connected with Police, RTO etc. as on 20.4.1995 and for any such liability incurred thereafter, the complainant shall be liable. As indicated, the complainant had to pay Rs. 3,675/- towards entry tax and Rs. 1,000/- towards penalty for non-payment of the entry tax in time. These payments were made by Exts. Al and A3 respectively to get the vehicle released from the police who had seized the same. True, it may not be a defect in the property that was sold. Bul certainly it had immediate connection with its user. Since the vehicle was purchased from Pondicherry, without paying the entry tax

it could not be plied anywhere in the territory of Kerala. Therefore, undertaking to the effect implying, on the date of sale there existed no liability and later it was discovered that entry tax had not been paid and the vehicle was seized by the authorities on that ground, will have a nexus with the user of the vehicle that was sold. It was on account of the non-payment of the aforesaid entry tax the vehicle could not be plied as a result of the seizure. Evidently it is not exclusively and purely in the realm of breach of contract, as the undertaking had implication and inexorable connection with the user of the property. If there is representation as to the user of the property which turned out to be false, that being a deceptive practice would amount to unfair trade practice within the meaning of Section 2(1)(r)(iv), consequently the Forum would get jurisdiction. The next contention of the learned Counsel is that the award of Rs. 5,000/- for mental agony cannot be sustained particularly in the context that no compensation was awarded for non-user. We consider that taking into account the character of the relief now granted, the amount awarded for the mental agony is on the higher side, particularly, when the case of the complainant for recovery of compensation towards non-user was refused. Taking into account all the above aspects, we consider that it would be just to award interest @ 18% from the date of payment of the aforesaid two items, i.e., entry tax and penalty on 7.7.1997 till recovery. The direction to pay Rs. 5,000/- in addition to the said two items is set aside. We modify the direction of the District Forum to that extent only. We confirm the direction to pay Rs. 3,675/- and Rs. 1,000/-. In this appeal we direct the parties to suffer their respective costs. Order confirmed with modification.

