

(1999) 04 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

G.VENKATA SUBBAIAH (COOK)

APPELLANT

Vs

K.GOWTHAM REDDY

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Citation : 2000 1 CPJ 446

Hon'ble Judges : S.Parvatha Rao , Mamata Lakshmana J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal preferred by the first opposite party in OP No. 56/1996 questioning the order of the Nellore District Forum in that O.P. dated 24.7.1997 directing him to pay Rs. 50,000/- to the complainant with interest @ 12% per annum from 14.11.1993 till the date of payment and also to pay damages of Rs. 5,000/- and costs of Rs. 500/-. The complaint against the second and third opposite parties was dismissed by the District Forum, they are the second and third respondents in this appeal, but the appeal is not being pressed against them. The complainant is the first respondent in this appeal.

2. IT is the case of the complainant that the brother of the appellant i.e., G.V. Krishnaiah was the owner of an Ambassador car bearing registration No. APU 8145 and that he was using it as a taxi. The complainant was hiring that car to go to Hyderabad from Nellore and other places and paying hire charges. Mr. G.V. Krishnaiah approached him for an advance of Rs. 50,000/- to modernise his car by installing a diesel engine and promised to hire the car after modernising to the complainant and to adjust the hire charges against the loan amount. On that basis the complainant advanced a sum of Rs. 50,000/- to Krishnaiah. On 14.11.1993 Krishnaiah executed a document in his favour and handed over the C-Book of the car to him. After the car was repaired and modernised the complainant was taking the car for tours. According to the complainant the loan amount was still outstanding when G.V. Krishnaiah died on 11.5.1994. According to the complainant the appellant clandestinely took the possession of the car without his knowledge and was using it as a taxi at Gudur after G.V. Krishnaiah

died. When the complainant told the appellant about the advance given by him to his brother G.V. Krishnaiah and to arrange for hiring the car to him for his tours the appellant refused to do either. He also forged documents with the connivance of opposite parties 2 and 3 creating evidence to show that he was the owner of the car. IT was under those circumstances that the complainant approached the District Forum. The appellant appeared before the District Forum and contended that no consumer dispute was made out on the facts narrated by the complainant. He contended that G.V. Krishnaiah owned a car bearing No. APU 8145 and that he was not running it as a taxi but was using it as a regular owner car. He also denied that G.V. Krishnaiah was hiring the car to the complainant and that G.V. Krishnaiah borrowed Rs. 50,000/- to modernise his car.

The record of the District Forum in OP No. 56/1996 is before us. To establish his case the complainant filed a promissory note dated 14.11.1993 and also the photo copy of the C-Book for the car bearing No. APU 8145. He also filed an affidavit of one Koppala Venkata Rao who claimed to be the nephew of late G.V. Krishnaiah and stated in that affidavit that G.V. Krishnaiah was a taxi driver and that he was keeping his taxi APU 8145 at Taj Mahal Hotel, King Koti Road, Hyderabad and that it was being engaged by his customers till his death on 11.5.1994. The District Forum believed the case set up by the complainant in toto. It rejected the contention of the appellant that the dispute raised was not a consumer dispute by holding that non-performance of any contract amounted to deficiency in service under the Consumer Protection Act, 1986 ("the Act" for short) and on that basis allowed the complaint as stated earlier.

3. WE find that the District Forum erred in assuming jurisdiction in this matter. The only document filed by the complainant to establish that Rs. 50,000/- was advanced by him to G.V. Krishnaiah is xerox copy of the promissory note (marked as Ex. A1) dated 14.11.1993 executed by late G.V. Krishnaiah in favour of the complainant. It was clearly stated therein that for changing the engine and for several repairs of his car APU 8145 G.V. Krishnaiah took a loan of Rs. 50,000/- from the complainant and that he would pay interest thereon @ 18% per annum and that he would repay the principal and interest on demand. Ex. A1 establishes that a sum of Rs. 50,000/- was lent to G.V. Krishnaiah under an ordinary promissory note. There is no material whatsoever filed by the complainant to establish that any service was agreed to be rendered by G.V. Krishnaiah. The complainant had not filed any affidavit of his own before the District Forum. Even the affidavit of Mr. Koppala Venkata Rao only established that G.V. Krishnaiah was running the car as a taxi. There is nothing to establish that the car was being hired by the complainant as taxi to go on his tours. Under the circumstances we fail to see how the District Forum could conclude that there was any hiring of services for consideration by the complainant and that G.V. Krishnaiah agreed to give his car till the loan was discharged towards the taxi fare. Moreover admittedly G.V. Krishnaiah died on 11.5.1994. There is nothing to establish that the appellant was the hirer of services of G.V. Krishnaiah. There is no basis made out to proceed against the appellant for recovering the sum of Rs.

50,000/- owed by G.V. Krishnaiah. As we see, it is a simple case of pronote loan and the complainant is only trying to recover his debt amount covered by the pronote. The Tribunals under the Act cannot be approached for recovering promissory note debts. The order of the District Forum is, therefore, without jurisdiction. In the result, the order of the District Forum is set aside and the complaint is dismissed and the appeal is accordingly allowed. No costs. Appeal allowed.