(1990) 10 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

HARYANA CREDIT And LEASING LTD. APPELLANT

Vs

KRISHAN MUNJAL RESPONDENT

Date of Decision : 10-10-1990

Acts Referred:

Citation : 1991 0 CPC 13 : 1991 1 CPJ 93 : 1991 1 CPR 467 : 1993 2 CLT 465

Hon'ble Judges : S.S.Sandhawalia , Tikka Singh J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the judgment of District Forum, Hissar, whereby the appellants have been directed to pay compensation to the tune of Rs. 5,000/- to the respondent.

2. AT the appellate stage, the facts which would call for pointed notice, lie in a narrow compass. M/s. Haryana Credit and Leasing Limited claim to be a prestigious concern, dealing in the financing of cars, motor cycles, scooters and electronics etc. at Hissar. On the 6th December, 1989 they advertised in the local press for arranging the booking of the new Maruti 1000 car with M/s. Maruti Udyog limited against a deposit of Rs. 6,000/- only for each booking, and undertaking to loan the requisite balance of Rs. 19,000/- to the prospective customers. The offer was to be open for seven days and for 1000 bookings only. The respondent - Shri Krishan Munjal of Hissar along with many others, was attracted by the offer, and in response thereto he duly deposited Rs. 6,150/- with the appellant-Company on the 11th December, 1989. Receipt No. 174 of even date (agreement No. 195) for the said amount, which included processing charges etc., was duly issued to him by the appellant-Company. The complainant-respondent''s specific allegation was that for the first time he received the appellant-Company''s letter dated 9th January, 1990 (though it purported to be the third reminder) informing him that because of some problems of the Multi-national Banks, including the City Bank, the Reserve Bank of India had directed to stop the booking of Maruti Cars immediately, and, consequently, his car could not be booked under the Company''s finance scheme. The said letter also

mentioned that the appellant- Company had earlier written to him to collect his amount, but it was the firm stand of the respondent that he had not received any previous communication thereto. Thereafter, the respondent contacted the Manager of the appellant-Company, who attempted to explain that since the Company''s quota of booking was reduced from 1000 to 300 only, the respondent''s car could not be booked. Later, the appellant-Company on the 22nd January, 1990 sent a draft of Rs. 6,150/- after canceling his earlier receipt dated 11th December, 1989. On these facts, the complainant-respondent alleged misconduct and breach of faith against the appellants, whereby he had been deprived of booking the Maruti 1000 cars and put to a loss of nearly 1 lakh of rupees, if he were to purchase the said car in the open market.

In response to the notice issued by the District Forum, the appellant-Company admitted the issue of the advertisement in the press and also the receipt of Rs. 6,150/- from the complainant-respondent on the relevant date. However, their plea was that in all such cases for booking, the concerned individual was required to comply with terms and conditions for advancing the loan of Rs. 19,000/-, so as to complete the amount of Rs. 25,000/- to book the car with Maruti Udyog. This had to be done only when the applicant proved his creditworthiness for the balance amount. It was alleged that the complainant- respondent did not execute the required documents for the advance of Rs. 19,000/- and the booking was closed on 13th December, 1989 and a letter was sent to him on that date, informing him that his proposal had been rejected. Subsequently, letters dated 24th December, 1989 and 9th January, 1990 were despatched, asking him, inter alia, to collect his amount, and on his failure to do so, a bank draft dated 22nd January, 1990 was sent to him. The complaint was, consequently, alleged to be frivolous and vexatious, which merited dismissal.

3. ON the aforesaid pleadings and the materials brought on record on behalf of the parties, the District Forum rightly highlighted that therein they were required to examine the conduct of the parties for three days only, i.e., with effect from 11th December, 1989, when the deposit was made to 13th December, 1989, when the booking was allegedly cancelled, and fix responsibility accordingly. It came to the finding that from the relevant file No. 195, pertaining to the deal, it was obvious that the case was cancelled without processing it at any stage, and, further that the appellants should have accepted the deposit of Rs. 6,150/- only when the loan for the balance amount of Rs. 19,000/- had been sanctioned. Consequently, it was concluded that the case was not only of negligence, but of misconduct and being fully covered by the relevant provisions of the Act, the reasonable amount of compensation was assessed at Rs. 5,000/- and directed to be paid to the respondent. Mr. Harsh Aggarwal, learned counsel for the appellants, had ingeniously attempted to argue that the default, in essence, was that of the respondent and not of the appellant-Company. It was contended that the respondent had to execute a number of documents after first establishing his creditworthiness, which he failed to do, and hereby compelled the appellants to cancel the transaction. The larger stand taken before the Forum on behalf of the

appellants, was sought to be reiterated by their learned counsel.

4. THE submissions aforesaid have to be appraised against the backdrop of undisputed facts. It is significant to highlight that the admitted position is that on the 11th December, 1989, the appellants duly accepted the deposit of Rs. 6,150/-, including the processing charges and issued the relevant receipt of even date. A little more than a day had hardly elapsed, when, on the appellants'' own showing, on the 13th December, 1989, they forthwith cancelled the booking and even informed the respondent to the same effect by a letter of that date. THE District Forum was, therefore, eminently correct that on the pleadings what primarily required examination was the conduct of the parties within less than three days. Even when pointedly asked, the learned counsel for the appellants could show nothing, whatsoever, from the record that at any stage after the acceptance of the deposit on the 11th December, 1989, the respondent was called upon or required to execute any further document etc., or that he had, in any way, defaulted in doing so. THE appellants'' contention that the respondent, in essence, had failed to do his part, is, thus, untenable. Equally valid is the Forum''s conclusion based on the record that the appellants should have accepted the deposit of Rs. 6,150/- only after they had satisfied themselves to sanction the loan of the balance amount of Rs. 19,000/-. The case of the respondent is further amply buttressed when the relevant file No. 195 of the appellants, which dealt with the transaction, is closely examined. There is nothing therein to even remotely suggest or indicate that the respondent was called upon to do anything more or that he had in any way defaulted, or refused to execute any documents. The Forum''s conclusion that all the printed forms etc. were lying unfilled and crossed with red lines, indicating that the case was cancelled without any processing at any stage, is thus an impeccable one, which merits affirmance. Lastly, in this context what seems to clinch the issue is the appellants'' own admission in their letter dated 9th January, 1990. Therein it has been said in unmistakable terms as under: "This is to inform you that because of some problems on the Multi-national Banks, including City Bank were asked by the Reserve Bank of India to stop the finance on Maruti Cars immediately. Because of this sealing your car could not be booked under our finance scheme." The above communication gives the lie direct to the basic contention of the appellants that the cancellation was due to the default of the respondent. On their own showing the appellants had expressly mentioned that the booking was cancelled because of the alleged action of the Reserve Bank of India, directing the Multi-national Banks, including the City Bank, to stop the finance of Maruti Cars immediately. Faced with the above, Mr. Harsh Aggarwal, indeed, had little to say or explain away the totally damaging statement of the appellants themselves in their own communication.

5. FOR the foregoing reasons, the basic contention on behalf of the appellants must necessarily be rejected.

6. IN fairness to Mr. Aggarwal, it must also be noticed that in the end he

somewhat halfheartedly contended that the respondent was not a "consumer" and the matter was thus outside the purview of the Act This submission must, obviously, fail on a twin ground. Firstly, the issue whether the respondent was a consumer or not was preliminary in nature, and in the detailed reply of the appellants in the Forum, no such plea, whatsoever, was taken, and, in any case, was not urged or pressed before the District Forum. IN strictness, therefore, no such arguments can at this stage be entertained. Secondly, on the appellants'' own showing, they are a prestigious financing concern and their whole pleading is directed to the effect that the contract was basically a financing transaction. That being so, the case would clearly fall within the definition of "Service" in Section 2(1)(o) of the Consumer Protection Act, 1986 and the respondent was clearly a consumer, availing those services. Lastly, a halfhearted grievance was made that the compensation awarded was on the higher side. We are unable to find any merit in the same. The respondent has clearly averred that he may well be put to loss of a lakh of rupees nearly, if he were to buy the Maruti 1000 Cars in the open market. The District Forum on a consideration of all aspects has assessed a modest sum of Rs. 5,000/- only by way of compensation, and we find not the least justification interfering with the quantum thereof.

In the end result, the appeal is hereby dismissed without any order as to costs. The appellants will now proceed to comply with the direction of the District Forum and pay the compensation directly to the complainant-respondent or deposit the same with the District Forum within 30 days from today, failing which the District Forum will ensure compliance under Section 27 of the Act, they have already observed to their order under appeal. Appeal dismissed.