
(2006) 09 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

H.S.BAWA

APPELLANT

Vs

AMRIT SEAIR

RESPONDENT

Date of Decision : 13-09-2006

Acts Referred:

Citation : 2006 4 CPJ 213 : 2007 1 CLT 126

Hon'ble Judges : K.C.Gupta , MajGenS.P.Kapoor , Devinderjit Dhatt J.

Final Decision : Ordered accordingly

Judgement

1. THIS complaint was initially instituted in the Punjab State Consumer Disputes Redressal Commission, Chandigarh and subsequently it was transferred to this Commission vide order of the Hon''ble National Commission.

2. BRIEFLY stated the facts are that the complainant is a manufacturer and a reputed exporter of automobile parts and is running his business under the name and style of M/s. Bawa Engineers at 401, Industrial Area-A, Ludhiana. It was next averred that M/s. Rojo Agencies Pvt. Ltd. Melbourne, Australia purchased 40 cartons of trailer parts from the complainant vide invoice No. BE/EXP/20 dated 28.6.2002 for US dollars 24,000. The copy of the invoice is Annexure C-1.

It was further averred that complainant prepared shipping bill dated 6.7.2002 about the aforesaid consignment and got the same cleared from the Customs Department on 16.7.2002. The copy of the shipping bill dated 6.7.2002 is Annexure C-2.

3. IT was next averred that respondent No. 1 was having its branch office at Ludhiana and the complainant approached respondent Nos. 1 and 2 through respondent No. 3. Respondent No. 1 issued bill of lading No. DEL02/MEL/00173 dated 13.7.2002 to the complainant for shipment of the aforesaid consignment i.e. trailer parts but there was some clerical error and respondent No. 1 had issued another bill of lading with the same number on 19.7.2002 and again clerical mistake occurred and respondent No.1 finally issued bill of lading on 30.7.2002. The copy of the same is Annexure C-3. Respondent No. 1 had

accepted the shipment as a less than container load (LCL) shipment as mentioned in the bill of lading. According to normal practice, consignment should have reached M/s. Rojo Agencies Pvt. Ltd. Melbourne, Australia within 30 to 40 days but respondent No. 1 failed to deliver the said shipment to the consignee even after a period of more than three months and as a result the consignee Rojo Agencies cancelled the order vide fax letter dated 18.10.2002. The copy of the cancellation order is Annexure C-4. It was next averred that due to cancellation of the order, the complainant had suffered loss as detailed in para-12 of the complaint to the tune of Rs. 19,53,000. Therefore, he claimed the aforesaid sum along with interest @ 12% besides costs and damages to the tune of Rs. one lac. The said complaint was filed on 19.12.2002.

4. RESPONDENT Nos. 1 and 3 contested the complaint and filed separate replies. RESPONDENT No. 1 in its reply took one preliminary objection that it had got no branch office at Ludhiana and no part of cause of action had arisen within the jurisdiction of State Commission, so, the Commission had no territorial jurisdiction to try the complaint. It denied that the bill of lading dated 13.7.2002 was issued at Ludhiana office but it was issued from Delhi office. On merits, it denied the allegations of complainant and stated that there was no delay on its part and on the other hand stated that it had issued RFS bill of lading on LCL with the understanding that respondent No. 3 OSR Shipping and the complainant would bring further more cargo for consolidation of 1x20" box so, that the said cargo could be despatched and respondent No. 1 had been requesting respondent No. 3 to bring further cargo for consolidation and despatch but respondent No. 3 informed that the cargo had been detained by the customs vide their communication dated 24.10.2002 issued to ACTL, Faridabad. Therefore, there was no fault of respondent No. 1. It next stated that it had no knowledge about the detention of goods and it had received the communication dated 25.10.2002 from ACTL. It denied other allegations and stated that the complaint should be dismissed. Respondent No. 3 filed separate written reply and took identical pleas as had been taken by respondent No. 1. It also stated that it had been requesting complainant to bring further cargo for consolidation and despatching the shipment or return the bill of lading but in the meantime, it was informed by ACTL that the cargo had been detained by the customs vide their communication dated 24.10.2002 issued to ACTL, Faridabad. The complainant also filed rejoinder to the written replies of respondent Nos. 1 and 3.

5. PARTIES adduced their evidence by way of affidavits.

6. NOTICE issued to respondent No. 2 on 19.12.2002 through registered AD was not received back served or otherwise for a period of more than 30 days, as such presumption was drawn that it had been served. Since, none had entered appearance, so it was proceeded against ex parte on 23.1.2003. We have heard Counsel for complainant Mr. Sunil Chadha, Advocate, Counsel for respondent Nos. 1 and 3 Sh. Rakesh Batneja and carefully gone through the file.

Counsel for respondent Nos. 1 and 3 contended that Punjab State Commission or

this Commission had got no territorial jurisdiction to try the complaint as no part of cause of action had arisen within the jurisdiction of State Commission and no branch office of respondent No. 1 is situated at Ludhiana. Section-17, Sub-section (2) of the Consumer Protection Act, 1986 reads as under: " A complaint shall be instituted in a State Commission within the limits of whose jurisdiction- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or (b) any of the opposite parties, where there are more than one, at the time of institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises."

7. IT is not mentioned in the complaint as to how cause of action or part of cause of action had arisen at Ludhiana within the territorial jurisdiction of Punjab State Commission. IT is simply stated in para-4 of the complaint that for shipment of the aforesaid consignment to the consignee i.e. M/s. Rojo Agencies Pvt. Ltd. Australia, complainant approached the respondent Nos. 1 and 2 (opposite party Nos. 1 and 2) through respondent No. 3 (opposite party No. 3) and the respondent No. 1 having its branch office at Ludhiana initially issued bill of lading No. DEL02/MEL/00173 dated 13.7.2002 to the complainant for the shipment of the aforesaid consignment i.e. trailer parts. IT is not mentioned in this para that bill of lading was issued by respondent No. 1 at its alleged branch office, Ludhiana. In the rejoinder, in reply to the preliminary objection, the complainant denied that respondent No. 1 had no branch office at Ludhiana. IT next stated that there was an advertisement in a National Daily News Magazine in the name of "Exim India" wherein while giving its advertisement, respondent No. 1 Amrit Seair Express Pvt. Ltd. had shown one of its branch offices at Ludhiana i.e. respondent No. 2. The copy of the National Daily Exim India dated 16.9.2002 is Annexure C-11. IT also stated that Anil Kumar is the representative of respondent No. 1 at branch office of Ludhiana and a copy of the visiting card of Anil Kumar, representative of respondent No. 2 is Annexure C-12. A perusal of copy of the National Daily "Exim India" Annexure C-11 shows that there is an advertisement alleged to be given by Amrit Seair Express Pvt. Ltd. in which head office has been shown at 221, Sant Nagar, East of Kailash, New Delhi-110065 while one of its branches has been shown at Overseas Warehousing Building, Room No. 210, C-205, Focal Point, Ludhiana-141010. A copy of the visiting card Annexure C-12 has also been placed on file which is in the name of one Anil Kumar having the address as mentioned in the complaint of respondent No. 2. The status of Anil Kumar has not been mentioned in it. The advertisement is of 16.9.2002 while the complainant initially got booked goods with respondent No. 1 vide bill of lading dated 13.7.2002. No evidence has been led by way of some

newspaper cutting showing that respondent No. 1 had given advertisement before 13.7.2002 showing that it had branch office at Ludhiana. If, respondent No. 1 was having branch office at Ludhiana, then bill of lading would have been issued by the branch office, Ludhiana. A perusal of bill of lading C-3 shows that the same had been issued at 221, Sant Nagar, East of Kailash, New Delhi. There is no mention in it that it had branch office at Ludhiana. The head office has been mentioned at 221, Sant Nagar, East of Kailash, New Delhi-65 while registered office had been mentioned as 308, Neel Kanth Place, 191, Sant Nagar, East of Kailash, New Delhi. IT has been issued at New Delhi on 30.7.2002 on behalf of Amrit Seair Express Pvt. Ltd. Complainant also did not state as to why respondent No. 1 had not issued bill of lading at its alleged branch office at Ludhiana but the same was issued from New Delhi. No evidence has been produced on file to state that any document has been issued by its alleged branch office at Ludhiana. Complainant has not further led any evidence to show that the bill of lading or any other document had been issued by branch office of respondent No.1 at Ludhiana to some other parties. It appears that documents Annexure C-11 and C-12 had been fabricated to vest jurisdiction on the basis of branch office in Punjab State Commission. There is no affidavit as to what status Anil Kumar had in the alleged branch office at Ludhiana and further branch office at Ludhiana of respondent No. 1 was existing. No document has been produced from the owner of Overseas complex to show that Amrit Seair Express Pvt. Ltd. had branch office at Ludhiana. Admittedly the bill of lading was issued at New Delhi on behalf of respondent No. 1 and the goods were to be put in the container at ACTL, Sector-9, Faridabad. Thus, no part of cause of action had arisen at Ludhiana.

8. COUNSEL for complainant contended that the goods were manufactured at Ludhiana and the complainant was permanent resident of Ludhiana and goods were taken to Faridabad from Ludhiana for onward shipment to Melbourne, Australia, so State Commission had jurisdiction to entertain the complaint. We are afraid that mere manufacturing of goods or sending the goods from Ludhiana to Faridabad for loading does not mean that part of cause of action had arisen at Ludhiana. It is also not proved on file that respondent No. 1 had got its branch office at Ludhiana. Thus, State Commission, in view of Section 17, Sub-section (2) of Consumer Protection Act has got no territorial jurisdiction to try the complaint. Since, this complaint is not maintainable, so, we would not proceed to decide the complaint on merits. Hence, in view of the discussion above, the complaint is returned to the complainant for presentation to the proper Forum at Delhi or any other place. Copies of this order be communicated to the parties, free of charge. Ordered accordingly.