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(2015) 07 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

Case No : 3332 of 2011

KANHAIYALAL RAWAT APPELLANT

Vs

DEALER ANGAD TRACTOR RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 15, Section 17 - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 07 NCDRC CK 0076

Hon'ble Judges : J.M. Malik

Advocate : Mohd. Ani sur Rehman, Janak Tiwari

Judgement

1. Shri Kanhaiyalal Lal Rawat, the complainant, purchased one tractor from Maa Chandi Tractors, Navkar Parisar, Pulgaon Road, Durg through Shri Narendra Kumar Chandrakar dealer from Angad Tractors on 20.11.2007. The said tractor was financed by Durg Rajnandgaon Gramin Bank, Branch Gurur. The complainant felt that the tractor was of old model. Shri Narendra Kumar Chandrakar gave a written statement that the tractor, which was given to the complainant, was of new model. It was also mentioned that if tractor was found to be of old model then the opposite party will give new tractor to the complainant otherwise legal action may be taken against him. He gave the warranty of two years. The complainant was informed that the tractor was of 2007 model. However, it is transpired that the tractor was of 2003 model. The OP cheated the complainant and did not give the caze wheel worth Rs.9,500/- and Riper costing Rs.56,000/- though the amount was given to him. The vehicle was defective from the very start. It was repaired and dealer, Shri Narendra Kumar Chandrakar promised that he would change the vehicle

but the needful was never done. The petitioner had to suffer huge loss in agriculture. Notice was also given for replacement of the vehicle on 3.2.2008 but it was replied only on 15.12.2008 wherein the claim of the complainant was

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denied. Consequently, the complainant filed a case before the District Forum claiming Rs.3,13,000/-, costs of the tractor, loss of agriculture in the sum of Rs. 2 lakh, Rs.3000/- as costs of the suit, total amount being Rs.5,16,000/- alonwith 13% interest from the above said opposite party.

2. The OP contested this case. The main plea taken by it is that the case is barred by time, which was filed on 22.3.2010 without any application for condonation of delay.

3. We have heard the learned counsel for the parties. Learned counsel for the petitioner/complainant has placed reliance on the following documents. The written statement made on Indian Non-Judicial Stamp Paper in the sum of Rs.50/- appears to be a crucial document, which mentions about the following statement: "I Gajendra (Narendra) agreed that the tractor which I am selling whose Chasis No. is 5240D00615 is new, if it is found of old model then I will give new tractor if I will not give the new tractor then legal action may be taken. The Guarranty (Warranty) is of two years.

Witness Ghurau Ram Chandi Tractor Durg Near Jalaram Vatika Gajendra Chandrakar"

The same is the translated copy of Hindi version.

4. This is an indisputable fact that Shri Gajendra alias Narendra is the person mentioned on the title of this case. The said document is supported by the statement/affidavit made by the sole witness. It was also brought to my notice that the complainant has produced the affidavit of one Shri Itwari Ram Sahu. Paras 2,3,4 and 5 of his affidavit are reproduced as under:- "2. That I am the authorized mistry of Angat Tractor Co. I on 22-10-2010 on request of complainant Kanhiyalal when to his house for repairing the tractor. The complainant asked me to tell me the engine no. and chesis no. and model.

3. That I inspected the said tractor very minutely and after checking it I found that the said tractor is of model 2004 and it engine No. D-53800615 and chesis No. is D0524200615 and in the RC book which was available with the complainant the model No. was of 2005.

4. That the present vehicle of the complainant is of 2004 model and in RC book the model is of 2005, there is much difference.

5. That in the said tractor previously also I have done the repairing work and at present the said tractor is in the stop condition."

5. Undoubtedly, the complainant has produced cogent solid and unflappable evidence, yet, all these documents of infinite importance pale into insignificance because the complainant has approached the fora in a lackadaisical manner. It was falsely argued that the petitioner is illiterate person. At the time of final arguments, the complainant was present in person. He admitted that he has studied upto 11 standard. The sale document is of th utmost importance. It

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clearly, specifically and unequivocally mentions that the year of manufacture of the tractor in question was May, 2005. Even an illiterate person can also read this document. This document has turned the tables on the complainant/petitioner. It must be borne in mind that the petitioner has purchased the vehicle on 16.11.2007. Although, he was aware that the vehicle was manufactured in the year 2005 from the very start, yet ,he did not voice any protest till he sent the notice on 3.2.2008. He waited and filed the case before the District Forum on 22.3.2010. The case is clearly barred by time. The cause of action had arisen on 26.6.2007/16.11.2007. The silence on his part is pernicious. He did not file the complaint immediately and waited for a period of about three years. Even the warranty period had elapsed. The case is clearly barred by time.

6. Moreover, the defence set up by the respondent that he filed the case after receipt of the notice on payment of balance amount from the bank, assumes importance. The complaint itself mentions that the petitioner had received notice from the Bank on 1.2.2009 for the amount of Rs.1,20,622/-. In order to avoid the payment and save his own skin, it appears that he preferred to file this case. His case would have been a very strong case, had he filed it immediately after he came to know that the year of manufacture was different.

7. This view finds further support from the fact that mechanic was called to find out the year of manufacture after a lapse of three years. The State Commission made the following observations: "Right from the first day of purchase of tractor, the complainant was knowing that the manufacturing year of the tractor was 2005, but it was never used before. The complainant was using the tractor for three years and started leveling allegation of cheating and of selling an old tractor after a long period, which cannot be said fair

on the part of the complainant. It appears that the allegations have been made on account of some ulterior motive might be to avoid recovery of loan amount, as argued by counsel for the appellant."

8. The revision petition is lame of strength and therefore, it is dismissed.

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