
(2000) 02 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

KHANDELWAL PHOTOSTAT AND TYPE CENTRE

APPELLANT

Vs

KORES India Limited

RESPONDENT

Date of Decision : 14-02-2000

Acts Referred:

Citation : 2000 1 CPR 8 : 2000 2 CPJ 12

Hon'ble Judges : Sardar Ali Khan , R.L.Sudhir J.

Final Decision : C.A. rejected

Judgement

1. THIS order will dispose of an application filed by the applicant under Section 12-B of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the Act) against the abovementioned respondent. The facts of the case are briefly as under :

2. THE applicant, which is a Photostat and Type Centre at Kherli (Alwar), Rajasthan, purchased from Kores India Limited (hereinafter referred to as the respondent) an Automatic Plain Paper Copier Machine for the sum of Rs. 43,100/-, which was duly paid by the applicant. THE machine carried a warranty for a period of six months. THE warranty card starts from 2.3.1990, i.e. the date of installation of the machine. It has been alleged by the applicant that the machine in question started immediately after the installation and the machine has gone out of order number of times and the service engineer of the respondent did attend to the machine always after a gap of at least three weeks of the complaint and the machine never worked satisfactorily. This process continued throughout the period until on 24th June, 1990 and thereafter the service engineer of the respondent told the applicant that his future complaints would not be attended as the period of free service was over. THE applicant was shocked to hear this reply and he showed the guarantee card to the service engineer of the respondent wherein guarantee started for six months from 2.3.1990. It was stated by the service engineer that the warranty card is given only for satisfying the customer at the time of purchase. THE applicant having no other alternative entered into the service contract with the respondent on

24.6.1990 and deposited Rs. 4,715/- for this purpose. THE said service contract made effective w.e.f. 2.8.1990. It has also been alleged by the applicant that even after the service contract the machine went out of order and remained unattended weeks together inspite of the complaints lodged in time. The applicant also met the Branch Manager of the respondent at Jaipur number of times in regard to unsatisfactory service of the machine in question. The machine continued to give trouble in time and again and the copies also continued to be dim and illegible.

After receiving the application of the applicant notice under Section 12-B was issued returnable on 12.2.1993. Since none was present on that day, the proceedings were set ex parte against the respondent and the applicant was directed to file the evidence by way of affidavit within a week. Accordingly the ex parte order was pronounced on 9th March, 1993. The ex parte decree was passed by the Commission against the respondent and in favour of the applicant observing that the machine was a dead wood for the applicant for all practical purposes; that the applicant was forced to enter into service agreement with the respondent even for the period covered by the warranty and it was observed that more or less the transaction was a total loss to the applicant. However, this ex parte order was recalled vide Commission's order dated 17.1.1994 and the compensation application was restored to its original number and the case was directed to be listed for issues.

3. IT transpires that the reply to the compensation application was filed on 9.2.1994 alongwith certain annexures. In the reply all the averments were denied and the prayer was made that in view of the preliminary objections and the reply, the applicant is not entitled to any compensation and the application being false, frivolous and vexatious is liable to be dismissed. After completion of the pleadings the following issues were framed on 18th March, 1994 : (1) Whether the compensation application is not competent in law for the reasons stated in the reply filed by the respondent ? (2) Whether the respondents are or have been indulging in the unfair trade practices, as claimed in the compensation applications ? (3) If the answer to the foregoing issue is in the affirmative whether the unfair trade practices are prejudicial to public interest or the interest of the consumer or consumers generally ? (4) Whether the applicant has suffered any loss as a result of the unfair trade practices ? (5) To what relief, if any, is applicant entitled ?

4. AFTER framing the issues the case was listed for the evidence of the applicant to be filed by way of an affidavit. The affidavit was treated as examination-in-chief and the witness AW 1 was cross-examined by Mr. M.L. Sachdev, Advocate for the respondent. The affidavit was marked as Ex. AW 1/1. In the meanwhile the admission/denial of the documents was also taken place before the Court Master. These documents were marked as AW 1/2 to AW 1/6. The denial documents were also marked for identification as K-1 to K-13. The cross-examination was concluded on 22nd July, 1996 and two news Exhibits AW 1/5

and AW 1/6 were also marked and the evidence was closed. Accordingly after closing the evidence of the applicant, the respondent was directed to file its evidence by way of an affidavit within six weeks. After adjournments RW 1 Shri Uma Shankar Tiwari was cross-examined by Mr. A.P. Singh, Advocate for the applicant with reference to his affidavit which has been marked as Ex. RW 1/1 collectively. After closing of the evidence by the respondent the case was directed to be listed for final arguments. The arguments were heard on 24.9.1999 and the orders were reserved with a liberty to both the parties to file their written submissions. Written submissions have been filed by both the parties. Now the question for consideration is that whether the compensation application is not maintainable in law in view of the reasons stated in the reply of the respondent. In this connection the applicant has stated in his application that his case, which he filed before the Rajasthan District Consumer Forum, Jaipur, was dismissed on the ground that the applicant is not a consumer. But he failed to say this fact in his affidavit filed with the application. The case of the applicant was thus dismissed on jurisdiction with liberty to seek remedy in Civil Court.

5. THE respondent has raised objection that the compensation application is not maintainable on the same subject-matter as it has already been dismissed by the District Forum, Jaipur on the ground that the applicant is not a consumer. THE respondent has cited the following judgments on res judicata in this matter : (1) AIR 1960 SC 941 (943), Satyadhyam Ghosal v. Smt. Deorajin Debi : "It was held that when a matter - whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher Court or because the appeal was dismissed or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11, C.P.C." (2) AIR 1972 SC p. 295 (297), Sat Pal v. Sudershan Lal : "It was held that it is well established that the general principle of res judicata... applies to quasi judicial decisions of Tribunals other than Civil Courts". "THE effect of res judicata is, however, confined to the matter which was directly and substantially in issue in the former litigation inter parties..." (3) AIR 1984 SC p. 589, Jai Kishan Dass v. Smt. Nirmala Devi : "It was held that finding in earlier litigation between the parties would operate as res judicata..."

6. THE respondent has also referred to the decision of this Commission comprising the Hon'ble Chairman and Mr. R.K. Anand in C.A. No. 34/98 in the matter of : Rakesh Soni v. Akash Electronics and Software. In this case it has been held that since the material on record clearly shows that the applicant has already moved the competent Forum under the C.P. Act on the same subject-matter and on the same cause of action for claiming compensation and since, as transpiring from the material on record, the application moved before the competent Forum under the C.P. Act is earlier in point of time, this compensation application should be held as not maintainable before this Commission. The compensation application of the applicant has already been rejected by the

District Consumer Forum, Jaipur which was filed by him on the same facts under the Consumer Protection Act, and, therefore, is covered by the above mentioned judgments and is not maintainable. In that view of the matter the compensation application in question is liable to be rejected. It is hereby dismissed with a liberty to the applicant to approach the Civil Court to get his grievance redressed. No order as to costs. C.A. rejected.