

(2007) 11 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

Case No : 260 SC of 2001

KISAN KRISHI YANTRA UDYOG

APPELLANT

Vs

ASHARAF GRAMODYOG SEVA SAMITI

RESPONDENT

Date of Decision : 15-11-2007

Acts Referred:

Citation : 2008 3 CPJ 478

Hon'ble Judges : Bhanwar Singh , R.N.Prasad J.

Advocate : M.H.Khan , P.N.Shukla

Judgement

1. THIS appeal arises out of the judgment dated May 13, 1998 passed by the District Consumer Forum, Rae Bareilly thereby granting the complaint of the respondent M/s. Asharaf Gramodyog Seva Samiti for recovery of Rs. 72,000 along with interest at the rate of 18% per annum. The appellants, M/s. Kisan Krishi Yantra Udyog, the manufacturer of mustard oil machine, have challenged the judgment on the ground of there being no competence for the District Consumer Forum concerned to take cognizance of the complaint. In addition it is submitted that even on merit the complaint was devoid of force.

2. ON the other hand issue of delay in filing the complaint has been raised by the learned Counsel for the respondent. Shortly stated the complaint was filed by M/s. Asharaf Gramodyog Seva Samiti for recovery of the price of the machine in question which had developed a defect during the course of its use. The appellants had put in appearance before the District Consumer Forum, but following the sudden and sad demise of the then President, District Consumer Forum, Rae Bareilly, the post of President had fallen vacant. Following this unfortunate happening the District Consumer Forum was rendered functionless but in due course of time had resumed its functioning and the two Members in the absence of the President started conducting judicial work. No doubt the appeal was filed some three years after the judgment has been delivered, but besides that the appellants have pleaded ignorance of the judgment. Legality of the verdict vis-a-vis the competence of the District Consumer Forum has been hit

on the ground that the issue involved related to a commercial activity. If we look at the complaint filed by the respondent/complainant, we find it rendered on unambiguous terms that the Samiti had purchased the machine for profiteering purpose. In the term "profit", commercial activities imply. What further relevant to note is that the appellant while filing its written statement before the District Consumer Forum clearly mentioned in para 1 of its version that the complaint was not maintainable and cognizable by the District Consumer Forum, Rae Bareilly as the machine was admittedly purchased for commercial activities and to earn profit. There was no rebuttal of this submission made by the appellants in their written statement. We cannot act upon conjectures and surmises that Asharaf Gramodyog Seva Samiti was constituted for upliftment of the unemployed individuals living in a particular area of District Rae Bareilly. In this context it would be also significant to mention that not an iota of word regarding the individual livelihood has been averred in the complaint. What further detrimental to the complainant's case is that neither the constitution of the Gramodyog Seva Samiti nor the Articles of Association has been adduced in evidence or filed before us to prove the complainant's case that the Samiti was constituted for earning livelihood for a few individual members. The legal position on the issue is that if one single individual purchases a machine for earning his own livelihood, it cannot be termed as a commercial activity, but if a member or more individuals assemble together and constitute a Committee or Samiti and start a business for earning profits, we are afraid the status of such Samitis will not bring it within the ambit of a single individual excepting such assembly from commercial activity. Therefore, we are of the considered opinion that it being a case of the machine having been purchased for commercial activity, the District Consumer Forum, Rae Bareilly was not competent to take cognizance of the matter.

The other issue of delay becomes irrelevant as in view of the above finding, the judgment in appeal is devoid of merit.

3. THE third issue pertaining to the merit of the case, though may not call us to delve upon it, but what would be relevant to mention is that no expert opinion had been obtained or filed in support of the complaint case that the machine in question did not correspond to the specifications prescribed for functioning of such machines nor there was any report on record to substantiate the complainant's version that the machine had some inherent defects. The crux of the discussions made above is that the judgment in appeal deserves to be set aside. Accordingly this appeal succeeds and is hereby allowed. The judgment in appeal is set aside and the complaint of the respondent is dismissed. Appeal allowed.