
(2003) 07 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

LADOO RAM TOSHNIWALA

APPELLANT

Vs

RAJASTHAN LAGHU UDHYOG NIGAM LTD.

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Citation : 2004 3 CPJ 623

Hon'ble Judges : M.A.A.Khan , Sushma Tanwar J.

Final Decision : Appeal dismissed

Judgement

1. THIS is complainant's appeal from order dated 6.7.1995 whereby the District Forum, Chittorgarh dismissed his Complaint No. 183 of 1994. The relevant facts are these: In order to manufacture "Plastic Dana" at his Reprocessing Plant, known as M/s. Kalika Industries, Chittorgarh, the appellant had applied on 5/6.2.1987 to respondent No. 1 to procure for him the machineries, as specified in the application, under its Hire-purchase Scheme. On appellant's having accepted the terms and conditions of the scheme, respondent No. 1 placed an order with respondent No. 3 on 2.11.1987 to supply the required Machineries to the appellant at Chittorgarh through respondent No. 2.

2. THE appellant, vide agreement entered into with respondent No. 1 on 16.12.1987, agreed to pay to the said respondent a total amount of Rs. 3,50,568/- in six-monthly instalments of Rs. 24,774/- each, as hire money, to be finally considered as "Hire-purchase price". THE required machineries were duly delivered to the appellant on 26.5.1988. The case put forth by the appellant in his complaint, however, was that when the machineries, as supplied by the respondents to him, were put to use it transpired that (i) the bearing bush were not upto the standard, (ii) the electric motors and other machineries were not of Crompton make; and (iii) the machineries were not ISI marked. Since such defects were not removed/repared by the respondents despite repeated requests, he filed the complaint claiming Rs. 40,000/- for repairing expenses and Rs. 30,000/- as business loss.

The respondents contested the complaint on several grounds, including the

complaint not being maintainable for the reason that the appellant was not a "consumer" within the meaning of the term defined in Section 2(1)(d)(i) of the Consumer Protection Act, 1986 (the "Act") and that a similar complaint filed on the basis of same facts and same cause of action before the District Forum, Udaipur had already been dismissed. On merits it was averred that all the machineries, as supplied by respondent No. 3 to the appellant, were according to the specifications mentioned in his application and at the time of taking delivery thereof and also at subsequent stages when those were physically checked and inspected by the officers of the respondents, the appellant recorded his satisfaction about their working and functioning. It was further averred that since the appellant had paid nothing towards his liability under the agreement, the respondents required him to pay the Hire-purchase price of the machineries, whereupon the appellant filed false and frivolous complaints, first before the D.F., Udaipur and on the dismissal thereof the second before D.F., Chittorgarh.

3. ON a critical examination of the material placed before it the District Forum, in its detailed and reasoned order, held that the respondents did neither sell defective goods nor render deficient after-sales service to the appellant and dismissed the complaint. We heard the appellant and the learned Counsel for the respondents and carefully examined the record of the District Forum. We find not the least force in this appeal.

4. WE find that he in his application had not specified the make of the machines, required and desired by him, and that before accepting the proposal of the appellant, the respondents had fully apprised him of the terms and conditions of their Hire-purchase Scheme. Such terms and conditions clearly provided that the appellant would take the delivery of the goods after his having thoroughly satisfied himself about their quality specification, suitability, fitness, etc. The delivery memo dated 26.5.1988 bears the certificate of the appellant of is having checked the machineries and found them in working order to his satisfaction. Besides this certificate in the delivery memo, the appellant had issued a separate typed certificate with affidavit to that effect on the same date. The machineries were inspected by the officers of respondent Nos. 1 and 2 on 28.8.1988 and the unit was found functioning. The appellant had certified of its functioning as satisfactory. Whatever minor problem with a particular spare part in the machineries was noticed respondent Nos. 1 and 2 had duly required respondent No. 3 to remove the same and that was removed. We further find that on the basis of the satisfactory functioning of the unit the appellant had applied to the Industries Department for issue of permanent registration of his industrial unit and such registration was also recommended by the concerned authority. With such working condition of the machineries in question the appellant had applied for and received also the amount of subsidy at Rs. 21,756/- vide cheque No. 702058 dated 25.4.1989. Despite such facts about the machineries in question and their functioning satisfactorily, the appellant had not paid the instalments of the Hire-purchase price to respondent No. 1 and instead, even removed some of the machineries from their site. When pressed for realisation of the unpaid

instalments, the appellant filed Complaint No. 413 of 1989 before the District Forum at Udaipur (when District Chittorgarh was within the jurisdiction of that Forum) and got the same dismissed on 16.3.1991 by constantly remaining absent for five consecutive dates and then filed the present complaint on 26.9.1991 on the same facts and same cause of action. The present complaint was thus not only barred by limitation but also by principles of res judicata, which is though not applicable as such to the proceedings under the Consumer Protection Act, 1986 but the principle whereof are required to be applied hereto to check abuse of the process of law under this Act. In any case, on merits too we are clearly of the opinion that on facts and in law there were no reasonable grounds to hold that the respondents had either sold defective goods to the appellant or rendered deficient services to him in any manner. The appeal, therefore, deserves to be dismissed. In the result this appeal fails and is dismissed with cost on parties. Appeal dismissed.