

(2011) 05 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

LALLAN KUMAR

APPELLANT

Vs

Ratan Kumar Mukherjee

RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:

Citation : 2011 0 NCDRC 290 : 2011 2 CPR 56 : 2011 3 CPJ 6

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Final Decision : Revision petition stands disposed of

Judgement

1. THE complainant/petitioner in this case purchased a pair of shoes on 25.11.2003 from the local Bata shoe store but found the same defective and hence requested the OP shoe store to change it. On 5.12.2003 with the consent of the petitioner, the OP changed the shoes with a pair of chappals and the complainant agreed to that. Since the price of the shoes was Rs.124.95 paisa and that of the chappals was 74.95 paisa, according to the complainant there was difference of Rs.50/- in the two prices. THE OP did not return the amount of Rs.50/- on that day on the ground of non-availability of the amount with him but granted a hand receipt for this amount. It is the case of the petitioner that in spite of several demands, the OP did not return the balance amount of Rs.50/- to him and hence a complaint came to be filed before the District Forum for recovery of Rs.50/- with 12% interest and compensation of Rs.5,000/-. THE District Forum vide its order held that no case of deficiency was made out in the complaint. It further held that this case is one of recovery of Rs.50/- from the OP as the balance amount and hence beyond the purview of the Consumer Protection Act. THE District Forum further held that for recovery of the amount the proper forum is civil court and hence on this ground, dismissed the complaint. When the matter was carried by the complainant to the State Commission in appeal, the order of the District Forum was upheld and the appeal of the complainant was dismissed since no deficiency or negligence had been alleged in the complaint, petition or in the memo of appeal against the OP respondent. It is against this order dated 25.10.2005 passed by the State Commission that the present revision petition has been filed by the complainant.

2. WE have heard Shri Kishore Rawat, Advocate who was appointed amicus curiae in this case. No one appeared for the respondent though some time back, the respondent filed his written objections to this petition which have been perused by us. The broad facts of the case are not under dispute. The short issue which has arisen for our consideration is as to whether the claim for payment of the balance amount of Rs.50/- made by the petitioner is a simple claim for recovery to be decided by the civil court or it is a part of a consumer dispute to be dealt with by the consumer fora. Learned amicus has submitted that exchange of the defective pair of shoes with a pair of chappals and payment of the difference in the prices of the two items were part of the agreed solution between the two parties when the petitioner had approached the OP with his complaint regarding the defect in the shoes supplied to him by the OP. This being the undisputed factual position, return of the amount of Rs.50/- was inseparable part of the agreement arrived at between the two parties with reference to the alleged deficiency in service on the part of the OP. In the circumstances, both the fora below erred in ignoring this aspect of the complaint while holding it to be a simple case of recovery of the amount to be dealt with by a civil court. He further drew our attention to the following order of this Commission passed on 19.10.2006 while admitting this revision petition:- If the respondent pays unadjusted amount of the price of shoe while supplying chappals along with compensation for mental agony and cost etc. of Rs.2,000/- to the petitioner within a period of two months, the respondent need not appear. In his written objections, the respondent has not disputed or denied the initial transaction of sale of the shoes and later return thereof and its exchange with the chappals but has simply submitted that the matter regarding realization of Rs.50/- is outside the purview and jurisdiction of the Consumer Protection Act. We agree with the submissions made by learned amicus and hold that the complaint of the petitioner regarding payment of Rs.50/- is not to be treated as an isolated or standalone transaction but is part of the agreement between the two parties with reference to the alleged defect in the shoes sold by the OP to the petitioner. It is to be appreciated that the sanctity or solemnity of this agreement between the two parties certainly got violated on the refusal on the part of the OP to pay back the balance amount of Rs.50/- and to this extent, there was deficiency on the part of the OP/respondent and hence it is very much within the purview of the Consumer Protection Act. We, therefore, taking note of the order dated 19.10.2006 passed by this Commission in the matter, direct the respondent to pay to the petitioner the unadjusted amount of Rs.50/- of the price of the shoes (while supplying chappals) along with Rs.2,000/- by way of compensation for mental agony, harassment including the cost of litigation within a period of two months. The revision petition stands disposed of in terms of these directions.