

(2005) 11 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

M. SURYABHASKARAN

APPELLANT

Vs

M.V.N.MOHAN

RESPONDENT

Date of Decision : 25-11-2005

Acts Referred:

Citation : 2006 1 CPC 424 : 2006 1 CPJ 57 : 2006 1 CPR 61

Hon'ble Judges : M.B.Shah , P.D.Shenoy J.

Final Decision : R.P.disposed of

Judgement

1. HEARD the learned Counsel for the parties. This revision petition is filed against the judgment and order dated 15.9.2003 passed by A.P. State Consumer Disputes Redressal Commission in FAIA No. 1747/2003.

2. THE Complainant is a poor lady who took advantage of Prime Minister's Rozgar Yojna [PMRY for short] and placed an order for supply of a Cannon Copier NP 270 with complete outfit and stabilizer for a sum of Rs. 99,150 on 13.12.1996. Entire amount was paid by the Complainant in December 1996. In January 1997, the copier machine was installed in the premises. However, it failed to work after 9 days. THEREAFTER, respondent No. 2, the supplier of the machine, took the machine back and placed a second hand copier which also failed to work after 23.2.1997. THE Complainant wrote letters and thereafter filed a complaint under Consumer Protection Act. After hearing the parties, the District Forum accepted the contention of the Complainant and found that the copier machine supplied by the respondent was defective. Finally, it passed an order on 8.7.1999 directing the opposite parties to install a new Cannon Copier and to pay Rs. 10,000 as compensation for the loss suffered by the Complainant with Rs. 2,000 as costs. In the alternative, it was ordered that respondents shall pay Rs. 97,500 with interest at the rate of 15% p.a. from 6.12.1996 till realization and to pay a sum of Rs. 10,000 as general damages and also to pay Rs. 2,000 towards costs.

Against that order, Mr. M.V.N. Mohan (respondent No. 1 herein) preferred FA No. 408/1999 before the State Commission. That appeal was dismissed on 23.4.2003

by the State Commission by holding that it was admitted that opposite party instead of Cannon Copier NP 270 supplied Cannon Copier 3225 which fails to function and replaced by another machine which also failed to function.

3. AGAINST that order, respondent No. 1 has not preferred any revision petition. Thereafter Complainant filed Execution Petition PP No.14/1999 before the District Forum, Kakinada. In the Execution Petition, the District Forum tried to work out with the first direction of replacement of the machine but that did not work out. Therefore, the District Forum proceeded with the execution of the second alternative relief granted by it and held that second respondent had deposited only Rs. 62,500, therefore, it shall deposit the remaining amount otherwise Non-Bailable Warrants shall be issued against the opposite parties. It would be open to the Complainant to withdraw the amount of Rs. 62,500 in part compliance of the District Forum's order dated 8.7.1999. Thereafter, Mr. M.V.N. Mohan preferred P.A.I.A. No. 1747/2003 before the State Commission. The State Commission, in Execution directed that the first relief which was granted by the District Forum of changing the machine should be implemented. It, therefore, passed the order to the effect that amount of Rs. 40,500 shall be refunded by the Complainant [i.e., after deducting the damages Rs. 10,000, Rs. 2,000 as costs and additional Rs. 10,000] to opposite party No. 1. Against that order, this Revision Petition is filed.

4. LEARNED Counsel appearing on behalf of the petitioner submitted that the impugned order passed by the State Commission is on the face of it illegal and erroneous. Petitioner is a poor woman who took the benefit of PMRY Scheme and sought to purchase the Cannon Copier which failed to work within 9 days of its installation. Thereafter, again the same was replaced by a defective machine which has resulted in heavy loss to the Complainant. It is his contention that Andhra Bank from where the Complainant has taken loan had issued a letter dated 2.6.2003 to the effect that liability of the Complainant was to the tune of Rs. 1,85,569 till that date. That liability was towards PMRY loan for purchase of the copier machine. He, therefore, submitted that the order passed by the State Commission in Execution Petition was totally unjustified. Considering the aforesaid facts, in our view, the order passed by the District Forum in Execution Petition requires to be maintained. By this time, it would be practically impossible for the petitioner to restart the business and, therefore, the order passed by the District Forum requires to be restored. However, order directing the opposite parties to pay the balance amount with interest at the rate of 15% requires to be modified and is modified by holding that opposite party shall pay the remaining amount with 12% interest as directed by the District Forum, that is to say, the alternative relief granted by the District Forum is restored with modification with regard to the rate of interest. We make it clear that Complainant shall pay the interest at the rate of 12% on Rs. 97,500 from 1.1.1998 till 24.6.2003. Thereafter, for the balance amount of Rs. 35,000, the opposite party shall pay interest till its payment. This is required to be stated because it is admitted by the parties that the amount of Rs. 62,500 was deposited in Execution Petition by

opposite party No. 1 and the same has been withdrawn by the Complainant. As soon as the amount is paid, Complainant shall return the machine which is lying with her to the respondents.

5. THE Revision Petition is disposed of accordingly. THERE shall be no order as to costs. R.P. disposed of.