

(2016) 02 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

Case No : 1593 of 2007

MOH. SEIKH SALIM

APPELLANT

Vs

1. LAXMI NARAYAN & ORS.

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : 2016 2 CPR 51

Hon'ble Judges : V.B. Gupta, Prem Narain

Advocate : R.K. Bhawnani

Judgement

1. Petitioner/Opposite Party No.1 being aggrieved by impugned order dated 6.3.2007 passed by State Consumer Disputes Redressal Commission, Chhattisgarh, Raipur (for short, "State Commission") has filed present petition under Section 21(b) of Consumer Protection Act, 1986 (for short, "Act").

2. Respondent/Complainant has filed a consumer complaint against Petitioner/Opposite Party on the ground, that it purchased a tractor trolley from the petitioner. However, same was not new as its tyres were old and it had certain other functional defects. Cost of trolley was Rs.1,20,000/-. Besides second hand trolley having been supplied to the respondent, agricultural implements were not supplied to him, though cost of these implements amounting to Rs.14,000/-was realized from the respondent.

3. Petitioner in its written statement has stated, that he supplied tractor and other material to the respondent who has given certificate of full and final settlement and has taken all the material along with tractor.

4. District Consumer Disputes Redressal Forum, Dhamtari (for short, "District Forum") vide order dated 04.08.2006, allowed the complaint and passed following directions ;

"1. The OP No.1 will give the registered trolley No.CG05B8967 Chassis No.297 to

complainant within 30 days from the date of order.

2. OP No.1 will also give price of labourer and Datari of Rs.14,000/- to the complainant and interest from 18-01-2005 @ of which bank is taking within 30 days.

3. The OP No.1 will also pay Rs.1,000/- as cost of suit ."

5. Being aggrieved, petitioner filed appeal before the State Commission which partly allowed the same. It modified the order of District Forum and passed following directions ; " On the complainant/respondent no.1 returning the trolley supplied to him, to the appellant; the appellant/ dealers shall pay to the complainant/respondent no.1 Rs.1,00,000/- (Rupees One lac). The amount above shall be returned to complainant within a period of one month from the date of this order and returning of the trolley, whichever is later, failing which the appellant shall pay interest @ 9% p.a. from the date of default. The appellant/ dealer shall also be liable to pay to the complainant/respondent no.1 the cost of this litigation including that of the complaint as well as of this appeal, which is quantified at Rs.3,000/- (Rupees three thousand) only ."

6. Hence, this revision.

7. Notice of revision petitioner was issued to the respondents. Earlier respondent no.1 had put in appearance through counsel but later on, his Advocate sought discharge from this case. Thereafter, notice was issued to respondent no.1. In response, respondent no.1 filed his counter affidavit stating that appropriate orders may be passed according to facts and circumstances of the case.

8. On the other hand, respondents no.2 and 3 did not appear despite service. Hence, they were proceeded ex parte.

9. We have heard learned counsel for petitioner and gone through the record.

10. It is submitted by learned counsel, that as per order of the State Commission, respondent no.1 has not returned trolley, till date. The petitioner has filed an affidavit in this regard.

11. State Commission, in its impugned order observed: " 5. We have considered submissions as above. There appears to be no effective denial by the appellant regarding the assertions of the complainant/ respondent no.-1 that Datari and leveler worth Rs.14,000/- were not supplied to him by the appellant/dealer. It further appears that the complainant's other grievance was that tractor trolley supplied to him was second hand and that it was not functioning properly.

6. It may be noticed in the above context that in the bills dated 18.01.2005 issued by the appellant/ dealer, the chassis number of the trolley is mentioned as NI-304. Further, in the certificate of registration, the chassis number of the said trolley was stated as N.I.-297. The discrepancies as above substantiate the allegation of the

complainant /respondent no.1 that the trolley supplied to him was not the same, as was promised to be supplied and in fact was second hand and mal-functioning one. In the circumstances, it is clear that the appellant has not been fair to the complainant/respondent and not only failed to supply the Datari and leveler but also supplied a second hand trolley to the complainant. It is not in dispute that price of the trolley as realized by the appellant was Rs.1,20,00/-. The questions as above have been duly considered by the District Forum.

7. It appears that the complainant has been using the trolley for about 2 years. In view of the circumstances of the case, it appears just and proper to direct that the complainant shall return the trolley supplied to him by the appellant/dealer and on his doing so appellant/ dealer shall pay to the complainant /respondent no.1 an amount of Rs. 1,00,000/-, which would include price of the lever, Datari as well as trolley ."

12. Thus, we do not find any illegality and ambiguity in the findings of the State Commission. The only grievance of petitioner remains, that respondent no.1 has not returned the trolley as per impugned order. Therefore, petitioner is not liable to pay the sum of Rs.one lakh.

13. Since, respondent has chosen not to comply the impugned order passed by the State Commission and has not returned the trolley to the petitioner so far, therefore petitioner shall not be liable to pay the sum of Rs.1 lakh to the respondent, till respondent return the trolley to the petitioner.

14. With these observations, present petition stand disposed of.

15. No order as to cost.