

(2003) 09 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

M.V.N.MOHAN

APPELLANT

Vs

M.SURYABHASKARAM

RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Citation : 2003 4 CPJ 344

Hon'ble Judges : P.Ramakrishnam Raju , C.P.Suresh J.

Final Decision : Ordered accordingly

Judgement

1. THIS petition is filed by the opposite party No. 2 in C.D. No. 99/1997 on the file of the District Forum, East Godavari, Kakinada who suffered an order to replace the old Cannon Copier Machine by a new one and also to pay a sum of Rs. 10,000/- as general damages for the loss suffered by the complainant and also to pay costs of Rs. 2,000/-. THIS order dated 8.7.1999 was challenged in F.A. No. 408/1999 which was dismissed on 29.4.2003 confirming the order of the District Forum in all respects.

2. HOWEVER as the order of the District Forum is not complied by the petitioner the respondent/complainant filed P.P. No. 14/1999 and the warrants were issued. The question or the dispute between the parties is, since the petitioner failed to comply with the order passed by the District Forum as confirmed by the State Commission in time he should be debarred from complying with the first part of the order, namely production or supply of new machine or whether the complainant is entitled to insist on the alternate prayer of payment of money. The complainant can ask only rectification of defects in the goods, but the Forum can grant monetary compensation if the defects cannot be rectified, but the complainant cannot ask refund of money only.

Insisting alternate prayer would arise, provided the petitioner fails to honour the main prayer. As the petitioner is prepared to supply the new machine the question of alternate prayer does not arise. However as the petitioner failed to comply with the order of the District Forum in time he has to compensate the loss suffered by the complainant. It is next submitted by the learned Counsel for

the respondent/complainant that the cost of the machine has come down and as such the complainant suffers loss if new machine is supplied instead the alternate prayer of the cost of the machine at the time of purchase may be ordered. We cannot take into consideration the fluctuations of rates of the machine in the market. Some times they go up and sometimes the rates come down. Therefore, as prayed for by the complainant as main prayer i.e. supply of machine should be ensured and in case the petitioner fails to comply with the said direction it is open to the complainant to insist on the alternate prayer. But the order of the District Forum cannot be made subject to change of rates. Hence we are of the view that the petitioner should produce the new machine before the District Forum on 30.9.2003 and the same will be handed over to the complainant on production of the old machine.

3. IT is represented by the learned Counsel for the respondent/complainant that the respondent purchased the machine under PMRY Scheme and, therefore, he suffers huge loss and if new machine is supplied instead of alternate prayer of refund of the amount. We cannot accept this contention. It is represented that during the pendency of the appeal a sum of Rs. 62,500/- was deposited by the petitioner herein which was withdrawn by the complainant. As the District Forum directed payment of damages of Rs. 10,000/- and Rs. 2,000/- towards costs i.e. Rs. 12,000/- can be deducted from the said amount. Further for the delay for not complying with the order of the District Forum till today another Rs. 10,000/- shall be deducted by the complainant and the balance shall be paid back to the opposite party and the District Forum will ensure the exchange of the machines as well as refund of this amount by the complainant to the petitioner herein. The N.B.Ws. pending against the petitioner are suspended till 30.9.2003. In case the petitioner complies with the directions contained in this order on that date the warrants will be recalled. Otherwise if there is default on his part the warrants will remain in force. In case the complainant fails to produce the old machine the District Forum will appropriately modify its earlier order granting relief to the petitioner herein towards non-production of old machine. Ordered accordingly.