

(2006) 01 NCDRC CK 0069

In the National Consumer Disputes Redressal Commission

PRITHU NATH And COMPANY

APPELLANT

Vs

TUBE ROSE ESTATE (P) LTD.

RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

Citation : 2003 3 UC 1707 : 2006 2 CLT 454 : 2006 2 CPC 292 : 2006 2 CPJ 332 : 2006 2 CPR 101

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. APPELLANT was the opposite party before the State Commission, where the respondent/complainant had filed a complaint alleging deficiency in service on the part of the appellant.

2. VERY briefly the facts of the case are that the respondent/complainant purchased a "Building-Hoist" Machine from the appellant for a consideration of Rs. 93,860 which was fixed by the technicians of the appellant but it is alleged by the complainant that it started giving problems from the very beginning, for which the complaints were repeatedly made to the appellant, who at least on half a dozen occasions sent their technicians to carry out the repairs but still it could not work. Finally the machine was taken by the appellant for carrying out repairs in the first week of December 1996 and same was not returned in spite of repeated requests from the complainant. Since neither the machine was being repaired nor returned, a complaint was filed before the State Commission, who after hearing the parties and perusal of the material on record directed the appellant to pay a cost of the machine along with interest @ 10% p.a. from the date of purchase, i.e., 20th Sept., 1996 along with compensation of Rs. 20,000. Aggrieved by this order, this appeal has been filed before us. We heard the learned Counsel for the appellant and perused the material on record. Before going to the merits of the case it is not disputed that the order of the State Commission passed on 4.11.2004 and as per endorsement on the order, a copy was sent to the appellant on 30th Dec., 2004. This appeal has been filed before

us on 7.3.2006. This delay is sought to be condoned on the ground that they never received the copy of the order and they came to know of it only when the appellant received summon in connection with the execution application filed by the respondent before the State Commission. After perusal of material on record and seeing the copy of the order, with endorsement number and date of despatch we are not impressed by the argument advanced by the appellant that he did not receive the copy of the order. We also fail to understand as to what was the respondent doing for almost year and a half after the case was closed for orders in June 2004? No effort seems to have been made by him to find out as to what happened to final orders after the arguments had been heard! We find no merit in this application of condonation of delay, filed by the appellant.

Coming to the merits of the case, it is not in dispute that machine was purchased for a consideration and within the warranty period, on several dates-reproduced by the State Commission in its order-several complaints were lodged with the appellant, pointing out the defects which goes on to show that right from the very beginning, the machine was not performing well and continued to repeatedly develop defects resulting in non-performance. The final fault of the appellant was that despite having brought the machine for repair some time in December 1996, yet this machine has not been returned for the last 10 years or so thus depriving the complainant the use of that machine. If in these circumstances, the State Commission has awarded the refund of the amount, i.e., purchase price of the machine along with interest @ 10% , we find no ground to interfere with this part of the order. We also do not find fault with the compensation of Rs. 20,000 for mental agony, harassment including cost of litigation which, in our view, is on the lower side in view of the facts and circumstances mentioned earlier, that the complainant was deprived of the use of machine by now of about 10 years.

3. IN view of the facts that neither the defects have been removed nor machine has been returned after removing the defects, we see no merit in this appeal. No interference is called for in the well reasoned order passed by the State Commission. This appeal has no merit, hence dismissed. Appeal dismissed.