

(1992) 12 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

Ranbir Singh

APPELLANT

Vs

Punjab Tractors Ltd.

RESPONDENT

Date of Decision : 18-12-1992

Acts Referred:

Citation : 1993 1 CPJ 235

Hon'ble Judges : S.S.Sandhawalia , Basanti Devi , S.Kulwant Singh J.

Final Decision : Objection rejected

Judgement

1. FOR the limited purpose of this order disposing of the preliminary jurisdictional objections, it is unnecessary to delve deeply into the facts and the merits of the case.

2. IT suffices to mention that the complainant had made a primal grievance about the allegedly defective Swaraj Tractor supplied to him by the opposite parties. Total claim of Rs. 9,50,000/- is sought as damages and compensation. In the reply filed on behalf of the opposite party No.1 as many as 13 purported preliminary submissions have been stated. However, the only one pressed by Shri Pradeep Kumar is ground No. 3 thereof. IT has been averred therein that the complainant on the 17th of July, 1992 had filed a complaint before the District Forum, Kurukshetra for the identical cause of action and therein he had claimed a compensation of Rs. 15.5 lacs. Notice was issued to the opposite parties and they raised objections thereto under Section 11(1) of the Act and the District Forum disposed of the same by its order dated the 16th of September, 1992 on the ground that the relief therein was in excess of rupees One lac. Against the aforesaid factual background, the primal submission of Mr. Pardeep Kumar first was that the complaint for the identical cause of action having already been disposed of by the District Forum, the present complaint was virtually a transfer of the same therefrom to the Commission. It was submitted that the Act and the rules make no provision or any transfer from one redressal agency to another and therefore, the present proceedings cannot be treated as a original complaint. Reliance was placed on the decision of the Rajasthan State Commission in II

(1991) CPJ 335 "Girraj Prasad Tikkiwal v. Ram Deo Saini & Others." The aforesaid submission though, it brings some credit to the ingenuity of Mr. Pardeep Kumar does not in our view appear to be tenable. A reference to the order of the District Forum, Kurukshetra dated the 16th of September, 1992 would show that same was in no way a dismissal or final adjudication of the complaint. This is manifest from the operative part of the said order, which is as under: " In view of the same, this complaint is held to be beyond the jurisdiction of this Forum and is disposed of as such. The complainant may file a complaint before the Hon"ble Commission having jurisdiction to do so, if so advised."

It is manifest from the above that the District Forum had rightly refused to exercise the jurisdiction in a matter beyond its pecuniary limit. The filing of the present complaint before the State Commission expressly permitted by this order, therefore cannot by any stretch of imagination be deemed as a transfer of the complaint from the District Forum to this Commission. Apart from the consumer jurisdiction, it is well settled that whenever a Court of law does not have territorial or pecuniary jurisdiction, the plaint or the proceeding is returned to the litigant for the presentation of the same to a Court of competent jurisdiction. Such an action has never been deemed to be one of transfer from one Court to another. On a parity of reasoning, therefore, the submission that the present is a case of the transfer of the complaint has to be necessarily rejected.

3. EVEN otherwise Counsel's reliance on Girraj Prasad Tikkiwal v. Ram Deo Saini & Others" (Supra) is somewhat misplaced. It is true that therein an observation has been made that there is no provision or warrant for the transfer of one complaint from a redressal agency to another. However, within this jurisdiction that view has been expressly dissented from in our considered order in Revision Petition No. 2 of 1992 "A.P.J. Chool v. M.K. Malhotra" decided on 3rd November, 1992. Equally it may be noticed that herein it has been held that the State Commission is bound by its own decision on a pure question of law in I (1992) CPJ 127 "S.D.O., A.E.E. City Division, Hissar v. M/s. Hotel Palki Hissar." Reliance of Mr. Pradeep Kumar on precedent, therefore, must also fail. Lastly Mr. Pardeep Kumar was compelled to take up the somewhat doctrinaire stand that if a complaint has been wrongly filed in the District Forum beyond its pecuniary jurisdiction, there can be no redress thereafter. It was the stand that the consumer in such a situation would lose his right of redress irredeemably.

4. WE are unable to subscribe to such a dogmatically strict proposition. Merely an error by an innocent consumer, or the mistake of his Counsel in preferring a complaint in the wrong jurisdiction cannot destroy a valuable right at its very inception. No authority or sound reasoning could be advanced for such an overly technical view. It is somewhat well settled that an erroneous resort to wrong jurisdiction cannot destroy a legal right either conferred or vested in the litigant. WE are unable to hold that by the mere fact of the complainant having mistakenly resorted to the District Forum with a tall claim of Rs. 15.5 lacs would

not altogether destroy his remedy. Mr. Pardeep Kumar has however, rightly projected the abuse of process and the patent harassment caused to the opposite party by repeated complaints for the same cause of action. It was rightly and forcefully pointed out that the complainant had filed the earlier complaint before the District Forum through Counsel and there was a manifest error in resorting to the same in face of the clear provision of Section 11 with regard to its pecuniary jurisdiction. A righteous grievance was, therefore, made that the opposite party was dragged in that litigation and had even offered to make and actually extended redress to the complainant as is evident from R1/14 annexed to the written statement. Nevertheless having succeeded there, the opposite party is now compelled to go through the mill all over again by the patent negligence of the complainant in first resorting to the wrong jurisdiction. It was even pointed out that having first put his claim at the high level of 15.5 lacs the same has now been arbitrarily reduced to Rs. 9,50,000/- to bring the same within the pecuniary jurisdiction of this Commission. It was the apprehension of the opposite party that tomorrow the complainant may again change his mind to revert to his original claim and seek redress before the National Commission and thus put the opposite party to further harassment and expense. In the peculiar facts of the case, it is somewhat manifest that the glaring error of the complainant has indeed put the opposite party to a quality of litigation and consequential harassment which must be compensated with some costs. Faced with this situation Mr. V.B. Aggarwal, the learned Advocate for the complainant had very fairly conceded his liability to pay the same. We accordingly would assess these costs at a somewhat modest figure of Rs. 500/-.

5. FOR the foregoing reasons, the preliminary jurisdictional objections are rejected subject to the payment and tender of the costs afore-mentioned to the opposite party before proceeding with the trial on merits. Objection rejected.
