(1996) 02 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

RATHOD LALJIBHAI RAMUBHAI MANSAR — APPELLANT

Vs

ZALAVAD TRACTORS — RESPONDENT

Date of Decision : 07-02-1996

Acts Referred:

Citation : 1996 2 CPR 334 : 1996 3 CPJ 323

Hon'ble Judges : R.C.Mankad , Jatin P.Vaidya J.

Final Decision : Complaint dismissed

Judgement

1. COMPLAINANT who is an agriculturist has filed this complaint inter alia for recovery of compensation for non-delivery of tractor by the opponents.

2. THE complainant has made the following allegations. He was in need of a tractor and, therefore, he met opponent No. 2 who is partner of opponent No. 1 firm (firm for short) for purchase of a tractor. THE firm is the authorized dealer of Ford Tractors manufactured by opponent No. 4 Escorts Limited (Company for short). THE complainant was told that the firm is authorised dealer of Ford Tractors and that loan for purchase of tractor could be obtained from State Bank of Saurashtra. Opponent No. 2 drafted letter on firm''s letter head requesting State Bank of Saurashtra, Halavad branch to issue demand draft in the name of the company. THE letter was signed by opponent No. 2. Lateron the complainant came to know that it was Dena Bank, Halavad Branch (Bank for short) which was authorised to advance loan for purchase of tractor for agricultural use. THE Bank is joined as opponent No. 3. THE complainant approached the bank and ultimately the bank sanctioned the loan. THE complainant credited Rs. 45,000/- in his Savings Bank account with the bank for the purpose of making provision for margin money which the complainant was required to pay for getting loan or advance from the bank. Demand draft of Rs. 1,79,674 /- was issued by the bank in the name of the firm towards price of the tractor. THE said amount, according to the complainant, included the loan advanced and the margin money. THE firm had also taken deposit of Rs. 2,000/- from the complainant. THE tractor, however, was not delivered to the complainant. It is the case of the complainant

that the firm and opponent No. 2 was guilty of misappropriation and fraud by obtaining the aforesaid amount from him. THE complainant has further alleged that the firm, opponent No. 2 and the bank had colluded in committing fraud to deprive the complainant of the aforesaid amount. THE complaint has, there fore, suffered heavy loss. It is further alleged that the firm and opponent No. 2 appeared to have misappropriated the amount paid to the firm by the bank by demand draft as aforesaid. It is submitted that it is the bank''s duty also to see that the tractor was delivered to the complainant. On the above grounds, the complainant has sought direction against the opponents to deliver tractor immediately and to pay him compensation of Rs. 70,000/- to 80,000/- for the loss suffered by him due to non-delivery of the tractor or in the alternative to refund to the complainant Rs. 2,000/- paid to the firm and opponent No. 2. It is submitted that the firm, opponent and the bank are jointly liable for the aforesaid reliefs. It is significant to note that no relief is sought against opponent No. 4. The Company has filed written statement Exh. 8. The main defence of the Company is that there is no privity of contract between it and the complainant and no cause of action has arisen against it. It is further submitted that the firm is its dealer and relationship between it and the firm is that of principal to principal. The complainant is, therefore, not entitled to claim any relief against it. The written statement of the Bank is at Exh. 9. It has denied the allegations of collusion or fraud committed by it to misappropriate the complainant''s money. It is submitted that the bank had advanced loan to the complainant for purchase of tractor and loan amount alongwith margin money were paid to the firm by demand draft as requested by the complainant. If the firm or opponent No. 2 or the company has failed to deliver tractor to the complainant, the bank is not in any way responsible for it. The complainant has failed to repay the loan as per the agreement with him and, therefore, the bank has filed suit being Civil Suit No. 76 of 1991 in the Court of Civil Judge, S.D. Dhrangadhra for recovery of the amount due to the bank. The bank has therefore prayed for dismissal of the complaint against it. The firm and opponent No. 2 have not filed any reply or written statement. It may however, be stated that at the time of hearing of this complaint, oral arguments were advanced on behalf of the firm and opponent No. 2 contesting the claim made in the complaint.

It is clear from the averments made in the complaint that main grievance of the complainant is that fraud has been committed by the firm and opponent No. 2 in collusion with the bank to deprive him of Rs. 1,79,674/- being the price of Ford Tractor for which he had placed order with him. It is now well settled that when allegation of fraud is made, complaint under the provisions of Consumer Protection Act is not maintainable. This is the consistent view of the National Commission. Further, the evidence on record discloses that the bank had advanced loan to the complainant and complainant had paid margin money for the purchase of the tractor. It was the complainant who requested the bank to issue demand draft in the name of the firm and it was therefore that the demand draft was so issued by the bank. The firm is authorised dealer of the company and, therefore, apparently the bank did not have objection in issuing demand draft in the name of the firm. It is difficult to understand as to why the complainant has joined the company as party to this complaint when no allegations are made against it. As stated above, the complainant has also not prayed for any relief against the company. The company has appointed the firm as its dealer under an agreement. This agreement which is placed on record shows that relationship between the firm and the company is that of principal to principal. Admittedly, no amount has been paid to the company. It would therefore appear that it was the responsibility of the firm alone to supply the tractor for which it had received the price. The company had no privity of contract with the complainant. Under the circumstances, the complaint against the company who is joined as opponent No. 4 is not maintainable.

3. APART from the fact that the main allegation of the complainant is that fraud has been committed, there is no question of defective goods, deficiency of service or unfair trade practice involved in this complaint which would attract the jurisdiction of this Commission under the Consumer Protection Act. The tractor has not yet been supplied to the complainant and, therefore, there is no question of his making any complaint regarding defects therein. There is no allegation of unfair trade practice on the part of the firm to supply tractor to the complainant although it has received full price thereof. In substance, therefore, it is a case of specific performance of contract. The relief of compensation is claimed because of breach of contract committed by the firm. In our opinion, the questions which are raised by the complainant could not be dealt with in exercise of jurisdiction under the Consumer Protection Act. The proper course for the complainant to adopt is to approach Civil Court for appropriate relief. We had, in the course of hearing of this complaint made efforts to see that the disputes raised in the complaint were settled between the parties. As a result of these efforts all that could be achieved was that the firm repaid the amount of the demand draft to the bank. The bank, however, is insisting of payment of interest which is due to it. No settlement could be arrived at between the parties so far as the interest amount is concerned. Since there was no settlement the complainant pressed this complaint. However, as already observed above, in our opinion, no relief could be granted to the complainant.

4. IN the result, this complaint is dismissed. However, in the facts and circumstances of the case, there will be no order as to costs. Complaint dismissed.

