
(1994) 09 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

RAVJIBHAI BABUBHAI SODHA PARMAR

APPELLANT

Vs

KARUNASAGAR SALES And SERVICE

RESPONDENT

Date of Decision : 22-09-1994

Acts Referred:

Citation : 1995 1 CLT 426 : 1995 1 CPJ 100

Hon'ble Judges : R.C.Mankad , Leelaben Trivedi J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal by the original complainant is directed against the judgment and order dated December 24, 1993 passed by the District Consumer Disputes Redressal Forum, Kheda (District Forum for short) dismissing the appellant's complaint being Complaint No. 6 of 1992.

2. THE appellant obtained quotation from respondent No. 1 for purchase of Swaraj tractor manufactured by respondent No. 2. Respondent No. 1 gave quotation and on the basis of the quotation, the appellant obtained two demand drafts, one for Rs. 80,000/- and the other for Rs. 54,396/- in February, 1991 from Indian Bank, Surashamal Branch for payment of the price of the tractor as per the quotation. THE demand drafts totalling to Rs. 1,34,396/- were handed over to respondent No. 1 for the price of the tractor. Respondent No. 1 assured the appellant that the tractor would be delivered by March 14, 1991. THE tractor was, however, not delivered till March, 14, 1991. THE appellant, therefore, contacted respondent No. 1 on March 14, 1991 for the delivery of the tractor. Respondent No. 1 then assured the appellant that the tractor would be delivered within a week. THE appellant again went to respondent No. 1 after a week. Respondent No. 1, however, did not give delivery of the tractor. Respondent No. 1 did not give delivery of the tractor till July 24, 1991. When respondent No.1 offered the tractor-for delivery in July, 1991, it demanded additional sum of Rs. 10,450/- towards the price of the tractor. According to the appellant he had already paid the price quoted in the quotation and there was no question of his paying additional amount of Rs. 10,450/- towards price of the tractor. However,

he paid Rs. 10,450/- under protest on July 25, 1991. THE appellant has stated that besides increase in price by Rs. 10,450/-, he had also to pay to the bank from whom he had obtained demand drafts as aforesaid a sum of Rs. 8,454/- towards interest. It would thus appear that when the appellant obtained two demand drafts totalling to Rs. 1,34,396/- as stated above, he had taken loan of the said amount from the said bank. THE appellant has further alleged that on account of late delivery of the tractor, he had to hire tractor for cultivating his land and he had to pay Rs. 5,575/- by way of hire charges. THE appellant further alleged that he also would have earned Rs. 8,000/- at the rate of Rs. 2,000/- per month as income by giving the tractor on hire during the delayed period of four months. THE appellant had thus suffered loss of Rs. 24,579/- due to late delivery of the tractor. It is further alleged that the appellant had to spend Rs. 850/- for dhebar" which is to be attached to the tractor. Thus, the appellant has claimed total sum of Rs. 33,428/- together with interest @ 18% p.a. from the respondents by filing complaint referred to above. The District Forum, however, by its impugned judgment and order held to the effect that the appellant had purchased the tractor for commercial purpose to derive income by giving it on hire and, therefore, he was not a consumer within the meaning of Consumer Protection Act, 1986. The District Forum was, therefore, of the view that the complaint filed by the appellant was not maintainable. In the result, it dismissed the complaint.

It appears from the evidence and material on record that the appellant had purchased the tractor to cultivate his own land. It is true that the appellant has stated that he would have earned income by giving the tractor on hire but that does not lead to the conclusion that the appellant had purchased the tractor only for the purpose of giving it on hire. The main purpose for which the appellant had purchased the tractor was to cultivate his own land and not for commercial purpose. Incidentally, when the tractor was free, he would have earned income by giving it on hire to persons who did not own tractor. In our opinion, therefore, main and principal use for which the tractor was purchased was cultivation of the appellant's land. It was not purchased for trading or commercial purpose. Merely because the appellant had thought of earning income by giving it on hire when his tractor was free does not mean that the tractor was purchased for commercial purpose. The appellant was not dealing in tractors and he had not purchased it for reselling it. It was purchased for his own use to cultivate his land. We, therefore, do not agree with the view taken by the District Forum that the tractor having been purchased for commercial use, the appellant was not consumer within the meaning of Consumer Protection Act. We have no hesitation in holding that the appellant is a consumer and his complaint under Consumer Protection Act is maintainable.

3. THE appellant had paid full price of the tractor viz. Rs. 1,34,396/- to the respondents on February 18, 1991. THERE is no reason to disbelieve the statement of the appellant that respondent had agreed to deliver the tractor on or before March 14, 1991. THE tractor was, however, delivered on July 25, 1991

and that too after the appellant paid additional or increased price of Rs. 10,450/-. When the respondents recovered full price of the tractor, it has to be assumed that they were in a position to deliver the tractor to the appellant. As already observed above, we believe the appellant's statement that the respondent had agreed to deliver the tractor by March 14, 1991. THE explanation of the respondent for the delay in delivering the tractor is that the production schedule of the respondent No. 2 was affected due to law and order problems prevailing at that point of time in Punjab and gruesome tragedy in which 27 employees of respondent No. 2 were killed had occurred in March 1991. This explanation, in our opinion, is not satisfactory. THERE is nothing on record to show that law and order situation in Punjab had worsened after the respondents received full price of Rs. 134,396/- from the appellant and agreed or promised to deliver the tractor by March 14, 1991. As observed above, when the respondents received full price, they must have been in position to deliver the tractor to the appellant. THE respondents must have agreed to deliver the tractor by March 14, 1991 to provide for delay in giving delivery on account of despatch of tractor from Punjab. However, the incident which took place in March 1991 would not in any way affect the delivery of the tractor to the appellant by March 14, 1991. THERE is no doubt that the incident in which 27 employees of respondent No. 2 were killed by terrorists was a gruesome and tragic incident. We, however, find ourselves unable to accept the respondent's plea that the delay in delivery of the tractor was due to this incident. In our opinion, the respondents were bound to deliver the tractor to the appellant by March 14, 1991 and there is no satisfactory explanation for not delivering it by that time. If the stand taken by respondents is bonafide, they should have either refunded the amount of Rs. 1,34,396/- paid by the appellant to them on February 18, 1991 or in any case given interest at reasonable rate thereon to the appellant. THE respondents, however, not only delayed the delivery of the tractor but also retained the money paid by the appellant without giving him any interest thereon. In our opinion, the respondents are liable to pay interest on the said amount of Rs. 1,34,396/- to the appellant from March 14, 1991 to the date on which the tractor was delivered to the appellant. There also does not seem to be any justification in charging additional amount of Rs. 10,450/- towards the price of the tractor. There was increase in the price quoted by respondent No. 2 and it could not have recovered the increased price from the appellant unless he was responsible for not taking the delivery of the tractor by due date. There was delay in giving delivery of the tractor without reasonable explanation. The respondents now want to take advantage of their own wrong by not delivering the tractor within stipulated time and charge increased price for the tractor from the appellant. Had the tractor been delivered to the appellant in time, there would have been no question of his paying increased price to the respondents. As held by the Supreme Court in *Om Prakash v. Asst. Engineer, Haryana Agro Industries Corporation Limited*, II (1994) CPJ 1 (SC), the respondents are guilty of both unfair trade practice and deficiency in service by delay in delivering the tractor and charging increased price for it. In our opinion, the respondents are liable to refund to the appellant

the amount of Rs. 10,450/- charged extra towards the price of the tractor. The appellant has not pressed for his claim for rental income before the District Forum. We, therefore, need not go into the question whether the appellant is entitled to claim any compensation for loss of such income and if so, what amount should be awarded to him by way of compensation.

4. IN the result, this appeal is partly allowed. We direct the respondents to pay to the appellant:- (1) INterest @ 15% p.a. on Rs. 1,34,396/- from March 15, 1991 to July 24,1991. (2) INterest @ 15% p.a. on the interest accrued due as aforesaid in (I) from July 25,1991 till the payment thereof is made; (3) Rs. 10,450/- together with interest @ 15% p.a. from July 9, 1991 till payment thereof is made; and (4) Rs. 1,000/- by way of cost. The respondents are directed to comply with the aforesaid order within three months from the date of this order.

Appeal partly allowed.