
(2008) 05 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

SANJEEV K AND COMPANY

APPELLANT

Vs

HITENDER KUMAR SOOD

RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Citation : 2008 3 CPJ 480 : 2008 3 CPR 48

Hon'ble Judges : Arun Kumar Goel J.

Advocate : Vijay Arora , Vivek Thakur

Judgement

1. HEARD learned Counsel for the appellant as well as the respondent, and with the assistance of Mr. Arora record of the District Forum below has been examined.

2. IT is not in dispute that on 9. 11. 2004 vide Annexure C-1 under a marketing scheme respondent purchased LG Colour Television 29" + LG 3100 mobile. In this sale-bill it is further mentioned that G-10 given Dhoom Macha De, wall clock due. Against LG CTV 29" CA 41 VW, it is mentioned in encircled red "delivered", nothing is mentioned against G-3100 mobile. In this background respondent-complainant filed complaint, claiming that mobile G-3100 and wall clock have not been delivered to him by the appellant. This Complaint No. 321/2006 was allowed by the District Forum, Shimla on 19. 3. 2007 directing the appellant as well as respondent No. 2 to deliver the wall clock and G-3100 mobile to the complainant within one month from the date of order i. e. 19. 3. 2007, and also to pay Rs. 500 as costs of litigation hence this appeal.

Mr. Arora by referring to Annexure C-1 pointed out that along with LG CTV 29", G 3100 mobile was also delivered. Great emphasis was laid by him on the sign "+", thus according to this "+" indicates that along with the colour TV, G-3100 Mobile was also delivered to the respondent. When confronted with other two items like G-10 and LG coupon having been shown as "given" and clock being due mentioned in Annexure C-1, why nothing is mentioned in Annexure C-1 against G-3100 mobile, Mr. Arora repeated his earlier submission that this sign "+" indicates mobile was delivered. This argument is being noted simply to be rejected. Reason being that in case G-3100 mobile had in fact been delivered, it

would have been mentioned as is the situation in other items given and what was not given. As such this plea is without any basis and contrary to Annexure C-1, document admitted on behalf of the appellant.

3. OTHER submission urged by Mr. Arora is that on 14. 3. 2007 his client was set ex parte because none appeared on that date. Reason given by the appellant is that on this date when appellant was proceeded ex parte, it had skipped from his mind, due to sudden illness of the daughter of the appellant and he could not attend the Court on that date. And during next week when he remembered the date, then on 20. 3. 2007 he made inquiry from the Registry of the District Forum below and came to know that the case has been decided on 19. 3. 2007. This plea would have been considered, provided medical certificate of the daughter of the appellant was produced on record regarding her ailment. Admittedly there is no such material placed. In a given case, if bona fides are established, then the case has to be dealt with on its basis that is not the situation in this appeal. I am further of the view that in case the daughter of the appellant was genuinely ill on 14. 3. 2007, in the ordinary course of things something could be placed and in fact should have been placed on record, so that the submission of Mr. Arora could be upheld for allowing this appeal and for remanding the case to the District Forum below. In the absence of any such material, this plea is also rejected. No other point is urged. In view of the aforesaid discussion, there is no merit in this appeal which is dismissed and the order of the District Forum, Shimla in Consumer Complaint No. 321/2006 dated 19. 3. 2007 is upheld. Respondent stated that the amount of cost lying deposited by the appellant in this appeal may be ordered to be released in his favour. This prayer is allowed. Accordingly office is directed to permit the same to Saving Bank Account No. 3798, Uco Bank, Dhali Branch, that the respondent is holding there. Learned Counsel for the appellant has undertaken to collect a certified copy of this order from the Reader as per rules, and office will send the same by post to the respondent free of cost. All interim orders passed from time-to-time in this appeal shall stand vacated forthwith. Appeal dismissed.