

(2016) 10 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

Case No : 4241 of 2014

SARWAN SINGH S/O UDHAM SINGH

APPELLANT

Vs

HARMAN AUTOMOBILE DEALERS INTERNATIONAL LIMITED

RESPONDENT

Date of Decision : 07-10-2016

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : 2016 4 CPR 77

Hon'ble Judges : M. Shreesha

Advocate : Pawan Kumar Ray, Rishab Raj Jain

Judgement

1. Challenge in this Revision Petition under Section 21(b) of the Consumer Protection Act, 1986 (in short, "the Act") is to the order dated 13.03.2014 passed by the State Consumer Disputes Redressal Commission, Punjab, Chandigarh, (in short, "the State Commission"), in First Appeal No.1518/2012. By the impugned order, the State Commission allowed the Appeal, preferred by the Opposite Party and set aside the order of the District Consumer Disputes Redressal Forum, Hoshiarpur (in short, "the District Forum") in Consumer Complaint No.97/2012, thereby dismissing the Complaint.

2. The true facts material to the case are that the Complainant, a small farmer, bought two Sonalika Tractors 745 from the Opposite Party on 15.12.2006 and 25.04.2007 at the cost of 3,60,000/- each, with an understanding that the Opposite Party will provide Registration Certificate "free of cost" and give free service for a period of one year. It was averred by the Complainant that on 30.09.2007, during assessment of the accounts, it was found that an excess payment of 1,10,000/- has been made by the Complainant to the Opposite Party. The Complainant approached SHO, Dasuya and Sonalika Manufacturers, Hoshiarpur to urge the Opposite Party to refund the excess payment and also to give the Registration Certificates of both the Tractors. Despite, repeated requests to furnish the photocopy of the Ledger, qua the payment, the Opposite Party was reluctant to do so. It was stated that the Complainant made payments on

17.06.2007 and 14.05.2008, but no receipts were given. Another Sonalika Tractor, Model No.2008 was purchased on 21.12.2007 for 4,53,000/- in the name of Complainant's wife and once again the Complainant found that a sum of 2,50,000/- was paid in excess, hence the Complainant filed a complaint before the District Forum seeking directions to the Opposite Party to refund the amount, along with interest and compensation.

3. The Opposite Party filed its Written Version denying that there was any excess amount paid to provide the Registration Certificate and to do service of the Tractors "free", for a period of one year. There was no such practice in the year 2006-07. The Complainant was their regular customer and out of three Tractors, he had paid the full amount of only one Tractor and the requisite details and Form No.22 were given to the Complainant, qua the said Tractor, for which the amount was paid. The documents of the remaining two Tractors were not provided as the entire amount was not cleared by the Complainant. The denial of the receipt of excess payment of 1,10,000/- by the Complainant, was made but stated that an amount of 2,00,000/- is still due from the Complainant. It was further denied that the Complainant had made payments on 17.06.2007, 11.09.2007 and 14.05.2008 and further denied the receipt of any payment of 50,000/- and also 2,00,000/- on 14.05.2008, but admitted having received payment of 10,000/- on 02.06.2008.

4. The Complainant and his son, Gurprit Singh visited the Opposite Party in the first week of October, 2009 and a pronote and a receipt dated 07.10.2009 for 2,00,000/- was executed, but unfortunately, Gurprit Singh passed away in the year 2011 and nothing was paid by the Complainant out of the said amount of 2,00,000/-. The District Forum allowed the Complaint in part directing the Opposite Party to pay 97,000/- to the Complainant with 50,000/- as compensation and also to provide the Registration Certificates of the two Tractors - 745, within thirty days, failing which, the default interest @ 9% p.a., was awarded.

5. The District Forum observed as follows :- "1 7. We have minutely perused the entries of ledger in the light of receipts Ex. C-1 to C-14 including a writing, duly signed by Harmandip Singh Ex.C-5. Apparently, in the ledger, extract whereof is Ex. OP-2, entries of two payments, i.e., Rs. 1,00,000/- as made on 13.06.2007 and Rs.7,5000/- as made on 14.06.2007 have not been made. The stand of the complainant is that in fact payment Rs.1,75,000/- as made by him on 12/13/06.2007 alone has been entered against entry of 13.06.2007 and 14.06.2007 by showing actual payment of Rs.1,75,000/- (Rs.1,25,000/- + Rs.50,000/-). Payment shown in Ex.C-5 has not been reflected. The stand of the complainant in this respect appears to be correct. The stand of learned counsel for the OP that amount of Rs.1,75,000/- has been split up to Rs.1,25,000/- and Rs.50,000/- instead of Rs.1,00,000/- and Rs.75,000/- on the relevant dates as a result of inadvertence, has failed to impress us as entry in the ledger cannot be expected to be in utter ignorance of the actually signed writing / receipt. Further,

it is noticed that in para 5 of the written statement on merits, OP has denied receipt of payment on 30.08.2007 and 22.09.2007 respectively to the tune of Rs.50,000/- and Rs.70,000/- besides others. However, in the ledger extract Ex.OP-2, these entries have been shown on 30.08.2007 and 20.09.2007. Otherwise, if payment of Rs.70,000/- as is reflected by OP on 20.09.2007 in the ledger extract Ex. OP-2 is admitted and taken independently, no receipt in this respect has been given to the complainant. Thus it can be safely held that complainant was not given receipt of some payments and certain payments were not entered by the OP in the ledger. From this, it can well be concluded that ledger entries are totally unreliable. Ledger in this case cannot be said to be a document of unquestioned authenticity. So, in our considered view, after taking into consideration of a sum of Rs.1,75,000/- and another amount of Rs.2,00,000/- allegedly paid by the complainant to the OP on 12/13/06/2007 and 14.05.2008, total amount paid by the complainant comes to Rs.12,70,000/- (Rs. 8,95,000/- + Rs.1,75,000/- + Rs.2,00,000/-). Thus, a sum of Rs.97,000/- is found to be an over and excess payment made by the complainant to the OP as out of the total amount of Rs.11,73,000/- he has paid Rs.12,70,000/-. OP has fabricated pronote / receipt Mark OP-1 only with a view to deny amount of over payment to the complainant. As a matter of fact, from a perusal of bail order dated 08.01.2011 of Additional Sessions Judge and bail order dated 10.12.2010 of Hon''ble High Court, police application dated 15.09.2000, memo of information of arrest dated 06.08.2009 and judgment of Additional Sessions Judge dated 19.08.2011 respectively, Marks C-21, C-27, C-28, C-29 and C-31, it becomes clear that Gurpreet Singh @ Sethi, son of Sarwan singh, here, complainant, was in police custody w.e.f. 06.08.2009 till 19.08.2011 and there was no occasion for him to approach the OP with the complainant and to execute the pronote-cum-receipt Mark OP-1 as alleged by the OP. In this way, the conduct of the OP tantamounts to their clear indulgence in unfair trade practice".

6. Aggrieved by this order, the Opposite Party preferred appeal before the State Commission which has observed that the Complaint was not maintainable being barred by limitation and has relied upon the judgment of the Hon''ble Apex Court in State Bank of India Vs. B.S. Agricultural Industries (2009) AIR (SC 2210). The State Commission observed that the last payment for the Tractors was made on 22.06.2008, but the Complaint was filed on 09.05.2012 and, therefore, was barred by limitation.

7. Dissatisfied by this order, the Complainant preferred this revision petition.

8. It is an admitted fact that the Complainant had purchased two Tractors for his two sons, namely, Gurprit Singh and Gurjit Singh, on 15.12.2006 and 25.04.2007, respectively. While so, on 30.09.2007, when the petitioner assessed his income, he found that surplus payment of 1,10,000/- has been made by the Opposite Party. Learned counsel for the petitioner submitted that the cause of action was continuous as the Registration Certificate was never supplied to the Complainant and further submitted that the Complainant had made repeated

requests for the issuance of the Ledger account and the Opposite Parties had not issued the same and therefore, the delay in the filing of the Complaint. It is specifically averred in the Complaint that the third Tractor was also purchased from the same Opposite Party on 21.02.2007, for which, an extra amount of 2,50,000/- was paid. It was pleaded by the Opposite Party that a pronote and a Receipt dated 07.10.2009 for 2,00,000/- was executed for the due amount of cost of the Tractor with the understanding that the Complainant will clear the said amount and the Opposite Party would return him the documents. Unfortunately, the Complainant's son Gurprit Singh passed away in the year 2011 and it is contended by the learned Counsel for the Opposite Party that nothing was paid by the Complainant and that till date, the amount of 2,00,000/- is due and, therefore, the documents were not issued to the Complainant. There is no specific pleading that the Complaint was barred by limitation, in the Written Version filed before the District Forum. The District Forum has observed that the said pronote was dated in the month of October, 2009, and signed by the Complainant's son, whereas, the Bail Order dated 08.01.2011 of Additional Sessions Judge and Bail Order dated 10.12.2010 of the Hon'ble High Court and judgment of Additional Sessions Judge, dated 19.08.2011, marked as Exhibits show that the Complainant's son Gurprit Singh was in police custody w.e.f. 06.08.2009, till 19.08.2011 and there was no occasion for him to get the pronote-cum-receipt executed in October, 2009.

9. While reserving the orders, an opportunity had been given to both the parties to file Written Submissions, if any, with respect to the Statement of Account, within 15 days. In his written submission, the Counsel for the Respondent has placed reliance on the following judgments (i) HUDA Vs. Tej Refrigeration Industries Ltd., 2013 (14) SCC 758, (ii) SBI Vs. B.S. Agricultural Industries, 2009 AIR (SC) 2210, (iii) Gannmani Anasuya Vs. Parvatini Amarendra Chowdhary, 2007 AIR (SC) 2380, (iv) HUDA Vs. B.K. Sood, 2006 (1) SCC 164 and (v) Union of India Vs. British India Corporation Ltd., 2003 (9) SCC 505, to establish his case that the Complaint is barred by limitation. The Respondent has also filed an illegible Certified Copy of Complaint and Written Statement filed before the Additional Civil Judge (Senior Division), Dasuya, Punjab, titled as Harmandeep Singh Vs. Gurmeet Kaur & Ors. , which shows faintly that the Suit is of the year 2013.

10. The main question which merits consideration is whether the State Commission committed an error by dismissing the Complaint as barred by time. In the Judgment relied upon by the Respondent, the Hon'ble Apex Court has clearly laid down that delay ought not to be condoned unless sufficient cause has been given and unless the Complainant establishes that the cause of action is not time barred. Cause of action is a mixed question of fact and law. Since, the term "cause of action" has not been defined in the Act, the same has to be interpreted keeping in view the context in which it has been used in Section 24A(1) and object of the legislation. In his famous work on statutory interpretation, Justice G.P. Singh has quoted Professor H.A. Smith in the following words: "'No word", says Professor H.A. Smith "has an absolute meaning, for no words can be

defined in vacuo, or without reference to some context". According to Sutherland there is a "basic fallacy" in saying "that words have meaning in and of themselves", and "reference to the abstract meaning of words", states Craies, "if there be any such thing, is of little value in interpreting statutes". ... in determining the meaning of any word or phrase in a statute the first question to be asked is -- "What is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase." The context, as already seen, in the construction of statutes, means the statute as a whole, the previous state of the law, other statutes in *pari materia*, the general scope of the statute and the mischief that it was intended to remedy."

11. The Hon^{ble} Apex Court in *RBI v. Peerless General Finance and Investment Co. Ltd .* (1987) 1 SCC 424, Chinnappa Reddy , J. referred to the rule of contextual interpretation and observed as under: "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation."

12. The mere fact that the Opposite Party has filed a suit for recovery in the year, 2013, which is subsequent to the filing of the Complaint in the year, 2012 shows that the issue whether any amount was due from the Complainant and whether they could withhold the requisite documents is still wide open and therefore, it can be safely construed that the cause of action is a continuing one. Keeping in view all the facts and circumstances of the case and also that the cause of action is a bundle of facts, the order of the State Commission is set aside and the matter is remanded back to the State Commission for deciding the matter afresh, on merits. It is made clear that no opinion on the merits of the case has been expressed.

13. Since the matter pertains to the year 2012, the State Commission is requested to dispose of the matter as expeditiously as possible, preferably within a period of six months.

14. Both the parties are directed to appear before the State Commission on 15.11.2016.