

(2007) 09 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

SCHILLER HEALTH CARE INDIA PRIVATE LIMITED	APPELLANT
Vs	
ANEESH SHARMA	RESPONDENT

Date of Decision : 03-09-2007

Acts Referred:

Citation : 2008 2 CPJ 280

Hon'ble Judges : J.D.Kapoor , Rumnita Mittal J.

Final Decision : Appeals disposed of

Judgement

1. -THE aforesaid two appeals arise from the impugned order dated 19. 10. 2002. On account of having sold a quality defective Spirovit SP-1 machine meant for lung tests, the appellant M/s. Schiller Health Care has been vide impugned order dated 19. 10. 2002 directed to refund the cost of the machine amounting to Rs. 1,02,000 along with interest @ 9% w. e. f. 10. 8. 1999 till the date of payment and Rs. 1,000 towards litigation cost. Feeling aggrieved the appellant has preferred this appeal.

2. BRIEF allegations leading to the impugned order were that the appellant published an advertisement in the issue of the D. M. A. News Bulletin to advertise their Spirovit SP-1 costing Rs. 1,12,000 for a down payment of Rs. 25,000 only and the balance being payable in 12 easy instalments of Rs. 7,250 p. m. On the respondent becoming interested in the unit, appellant deputed Mr. R. K. Handa who agreed to sell the unit for Rs. one lac only by way of full down payment out of which the respondent paid to him against his receipt on advance of Rs. 25,000 immediately and the balance price was to be paid against delivery. After a few days, Mr. Handa informed the respondent that the total price of the unit would be slightly higher at Rs. 1,12,000 to which the respondent agreed. The unit was delivered on 10th August, 1999 together with its warranty signed on behalf of the respondent by Mr. Handa but without the invoice. Mr. Handa returned the uncashed cheque of Rs. 25,000 to the appellant who issued a fresh cheque of Rs. 1,02,000 in favour of the respondent. The unit's invoice was, however, delivered by the appellant on 14th August, 1999 which showed that the

unit was "quality Deficient" to the extent of almost 10% because as per the invoice, a sum of Rs. 10,000 had been deducted as "quality discount" from its so-called pre sales price of Rs. 1,06,226. The invoice did not indicate even the serial number of the unit. It was also lacking in the sheen and shimmer of a brand new imported product, and a closer look at its packing revealed that the unit's serial number did not tally with the serial number of its packing which itself seemed to be the packing of an ECG machine. The respondent reconfirmed that he had placed his order for a brand new imported and not quality deficient unit. As against this, the version of the appellant, in brief, was that since the respondent was not ready to purchase the unit on the quoted price, a special concession was made for him to sell the unit at a price of Rs. 1,02,000 to which the respondent had agreed. The respondent gave a cheque for Rs. 1,02,000 only after being satisfied with the due performance of the unit. The invoice was not given to the respondent as it was to be given only after the realization of the cheque and the appellant had not objected to this on the date of delivery i. e. , on 10th August, 1999. It has denied that the unit was quality deficient to the extent of almost 10% and as such a sum of Rs. 10,000 was deducted as quality discount. Invoice does not indicate the serial number of the unit and has denied that the unit was lacking in sheen and shimmer of a brand new imported product and the serial number of the unit did not match with the serial number of the packing as alleged by the respondent.

According to appellant the product supplied was a brand new one and the allegations of the appellant are an after thought as the unit was tested and run by the Engineer of the appellant in the presence of the respondent and it was only thereafter that he had issued a cheque of Rs. 1,02,000 towards the costs of the unit and also signed the warranty card. It is surprising that it was only after four days i. e. , on 14th August, 1999 that the respondent realized that the unit was lacking in sheen and shimmer and the packing box also had a different serial number from that of the unit. Appellant denied that the unit was quality deficient. They, however, stated that after using the unit for a few days, the respondent had telephonically talked to appellant and objected to minor abrasions on the unit whereupon appellant had offered to take back the equipment and return the money to the respondent but the respondent did not even avail this offer of the appellant and continued to use the unit.

3. AS is apparent from the rival contentions of the parties, the main dispute was whether the machine supplied by the appellant was sub-standard or lacked in the quality or performance and whether on that count discount of Rs. 10,000 was given which was not acceptable by the respondent. According to the appellant it was only because there were some scratches and there was not a proper seal on the machine as it was lying for about nine months without being sold that quality discount of Rs. 10,000 was given. On the other hand, the Counsel for the respondent contends that the quality discount of Rs. 10,000 demonstrated that the machine was not qualitative and lacked in standard or potency or manner of performance and it was because of this that the respondent-doctor did not at all

use this machine, and, therefore, the allegation that the machine was of sub-standard quality or potency and it was risky to use it. We find it difficult to accept this contention as the respondent has not produced any evidence to show as to any shortcoming or inadequacy of performance or adverse results of the machine. However, in the given facts and circumstance of the case particularly that it was after the invoice was issued that the respondent found that discount of Rs. 10,000 as to the quality discount has been given that the respondent informed the appellant that he was not interested in such a machine, we maintain the order of the District Forum with respect to refund of the cost of the machine on its return and set aside the interest awarded by the District Forum as interest is awarded if there are equitable grounds or where the goods have not been received by a consumer against consideration or where there is term of contract between the parties as to the liability to pay the interest. Rest of order is maintained.

4. THE impugned order shall be complied with within one month from the date of receipt of this order. Parties shall appear before the District Forum for the aforesaid purpose on 4. 10. 2007. Bank Guarantee/fdr, if any furnished by the appellant, be returned forthwith.

5. A copy of this order as per the statutory requirements be forwarded to the parties free of charge and also to the concerned District Forum and thereafter the file be consigned to Record Room. Appeals disposed of.