

(2003) 02 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

SHANTADURGA GRAM SEVAK SOCIETY

APPELLANT

Vs

PADNABH PRABHUDESAI

RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Citation : 2003 3 CPJ 338 : 2003 3 CPR 342

Hon'ble Judges : B.S.Sreenivasa Rao , J.N.Prabhudessai J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is filed by the appellants-opposite parties against the order passed by the District Consumer Disputes Redressal Forum, North Goa dated 10.9.1999 allowing the complaint and directing the appellants-opposite parties to refund the amount of Rs. 29,000/- with interest at the rate of 18 per cent per annum from the date of purchase of machine till realisation of the amount and also for costs.

2. AGGRIEVED by the said order the opposite parties have come before this Commission in appeal. For convenience sake the appellants are referred to as opposite party Nos. 1 and 2 and the respondent as the complainant hereinafter. Briefly stated that facts of the case are the opposite party No. 1 is a Society claiming to be working for generating employment by guiding unemployed youth to start self-employment in cashew processing. The opposite party No. 2 is the Chairman of the opposite party No. 1 representing the said Society. The opposite parties represented to the complainant that they are engaged in generating self-employment in Goa and manufactured a machine for processing cashew nuts which is very easy to handle. They also represented that they could give guidance to the persons who purchase this machine and also install them. Believing their representation complainant purchased the said machine from the opposite parties for Rs. 29,000/-. The machine was not efficient and production was not as desired.

Complaint was filed before the District Forum, North Goa for refund of the amount with costs.

3. THE main contention of the opposite parties is that the machinery is manufactured by Usha Industries, Belgaum and as far as the defects and repairs are concerned the complainant should approach Usha Industries, Belgaum. After considering the documents and affidavits of the parties in evidence the District Forum passed an order for refund of the amount with costs and the present appeal has been filed by the opposite parties. Heard the Counsel for the appellants opposite parties and the Counsel for the respondent-complainant.

4. THE learned Counsel for the appellants made more than one submissions before this Commission. His main contention seems to be that the complainant is not a consumer within the definition of the Consumer Protection Act. It is to be noted that this ground has not been urged or taken before the District Forum. For the first time before this Commission the learned Counsel for the appellant has canvassed this argument. THE Counsel for appellants relied on 1991 Consumer Protection Reporter Page 26 of Kerala State Consumer Disputes Redressal Commission, wherein it has been stated purchaser filed complaint, claiming compensation of Rs. 1 lakh - No doubt, machine purchased for commercial purpose - Complainant not "consumer"-Complaint not maintainable. It has been held that the machine was purchased to make plastic articles for sale. It is, therefore, clear that the purchase was for a commercial purpose. That being so, the complainant is not a consumer who is entitled to invoke the provisions of the Consumer Protection Act. The learned Counsel for the appellants also relied on 1991 Consumer Protection Reporter page 260, Kerala State Consumer Disputes Redressal Commission, wherein it is held Section 2(1)(d)(i)-Clause 1 of the Act defines consumer is a person who buys for a consideration which has been paid or promised or partly paid or partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised when such use is made with the approval of such person, it does not include a person who obtains such goods for resale or "for any commercial purpose". It is a settled fact that commercial purpose means any purpose wherein the primary objective is to make profit. It has been strenuously contended by the learned Counsel for the appellants in the present case on hand the complainant purchased the machine and it is for commercial purpose and hence the complainant is not a consumer under the definition of Consumer Protection Act. We do not agree with the above line of argument of the learned Counsel for appellants for the simple reason that the complainant has produced documents before the District Forum wherein he obtained loan, in the form he has filled that for self-employment purpose he took the loan and purchased the machine. Even correspondence also shows that the scheme of the opposite parties is to give self-employment for unemployed persons. Under that scheme they represented that they manufactured the machine and they induced the complainant to purchase the same by means of advertisement like leaflets. When such being the case for the documents placed before the Court it cannot be said that the purchase of machinery by the complainant is for commercial purpose or

on the other hand it is for self-employment to earn for his living by processing cashews. When such being the case facts of the decision mentioned in the above case are distinguishable with respect to the present complaint and the contention of the learned Counsel for appellants that the complainant is not a consumer is repelled. Besides as already pointed out in the above this ground was not urged before the District Forum either in the objection statement or at the time of arguments. Further in the view which we have taken as above the complainant has shown that he is a consumer who suffered from the representation made by the opposite party for purchasing the machine which amounts to unfair trade practice.

5. THE next contention of the learned Counsel for the appellants-opposite parties is that they are only distributors or dealers and not manufacturers. Usha Industries, the manufacturers should have been impleaded as a party to the proceedings. This contention has also been met in the order passed by the District Forum. THE District Forum has observed during the course of the order the opposite parties furnished the leaflets in Marathi language giving details of the machine and services rendered by the opposite parties. THE leaflet was given by the opposite parties though it might have not been signed, it is like an advertisement. It clearly mentions that the said machine was manufactured by the opposite parties. On this understanding the complainant parted with Rs. 29,000/- and purchased the machine and also it has been noted that the draft had been issued in the name of opposite party No. 1 and not to Usha Industries. On the other hand the opposite parties have not placed any evidence that the said money was paid to Usha Industries, nor any evidence has been let in to show that the opposite parties purchased the machine from Usha Industries. In the circumstances the opposite parties could have filed affidavit of Usha Industries stating that they are the manufacturers at the time of the purchase of the machine by the complainant. This has not been done and also it has been noted that no certificate has been produced to show that opposite parties are distributors. Interesting to note that leaflet which has been produced before the Court clearly points out that the opposite parties are the manufacturers and also it has been mentioned that the machine could be utilized for a period of 50 years. From this the District Forum has come to the conclusion that the complainant has proved the opposite parties are the manufacturers of the said machine. Even during the correspondence also when a letter of demand for refund of amount was given to the opposite parties there is no mention of Usha Industries as the manufacturer of the said machine.

6. THE hard fact remains that opposite parties are the suppliers or sellers of the machine to the complainant who purchase it for Rs. 29,000/- and also it is seen that the machine is not working properly and the correspondence shows that the opposite parties tried to get it rectified. In the correspondence it has been mentioned that the opposite parties directed to put a hole in the machine and they did not send their person. On the direction of the opposite party the complainant put a hole in the machine but still it is not working properly. When

such being the case from the materials placed on record the complainant has proved the negligence on the part of the opposite parties and also deficiency in service and by misrepresenting things they sold a defective machine to the complainant and failed to replace the same or refund the amount. The District Forum after discussing all the aspects of the case allowed the complaint and passed the order for refund of Rs. 29,000/- with interest at 18 per cent from the date of purchase of the machine till realisation. In our opinion the order passed by the District Forum does not call for interference and the same is to be affirmed. For the reasons aforesaid the appeal is liable to be turned down, as there is no merit in it.

In the result the appeal fails and the same is dismissed with costs of Rs. 5,000/-.
Appeal dismissed.