

(2005) 11 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

SHIVPRASAD PAPER INDUSTRIES

APPELLANT

Vs

SENIOR MACHINERY COMPANY

RESPONDENT

Date of Decision : 30-11-2005

Acts Referred:

Citation : 2006 1 CLT 527 : 2006 1 CPJ 92 : 2006 1 CPR 227 : 2006 2 UC 1194

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. THE appellant was the complainant before the State Commission where he had filed a complaint alleging deficiency in service on the part of the respondent-M/s. Senior Machinery Company, Pune.

2. VERY briefly, the facts of the case are that the appellant/complainant purchased "Sensor 90 Automatic Roll-O-Line Machine" on 25.11.2003 which was installed in the premises of the appellant on 3.12.2003. The equipment carried a guarantee for one year. It was stated that the equipment developed certain defects during warranty period and defects are continuing. Admittedly, the price of the equipment was Rs. 14,04,400 but the complainant, to date, has paid only Rs. 12,40,400. It was also stated in the complainant that the remaining amount has not been paid for the simple reason that there are defects in the equipment stated. In these circumstances, a complaint was filed for refund of the amount along with the interest and other reliefs. The State Commission, after hearing the parties and considering the reports of the Local Commissioner appointed by it passed the order granting the following reliefs: (1) The complainant is directed to allow the O.P. to rectify the defects pointed out by the Commissioner at page 3 of his Report, within one month from the date on which the complainant requests the O.P. to rectify the defects. (2) The O.P. is directed to make the machine in a workable condition and to see that the said machine is made defect-free. (3) The O.P. is also directed to give two years warranty from the date it rectifies the defects as directed above to the complainant. (4) During the above said warranty period, if the complainant finds that the machine does not work properly due to

the defects, the complainant is at liberty to file a fresh complaint before the appropriate Forum. (5) Parties to bear their costs.

Not satisfied with these reliefs, this appeal has been filed before us seeking refund of the "purchase-price" and also certain other damages by way of compensation and loss of business.

We heard the learned Counsel for the appellant and also perused the material on record especially the report of one of the Commissioner appointed by the State Commission comprising a technically qualified people. The learned Counsel for the appellant was unable to satisfy us at any stage or anywhere the Factum of the manufacturing defects in the supplied equipment. There is no disputing fact that in the report of the Engineer who was appointed by the State Commissioner and submitted his report, he has stated about the problems in all area but has, at no stage, stated the factum of machinery having any manufacturing defects and for that matter, after repairs the equipment cannot be made workable/ serviceable.

3. IT is by now settled law that an equipment or machinery cannot be ordered to be replaced if can be repaired. Since defects have been noted in the report of the Engineer, Mr. Sadananda R. Holennavar, B.E. & (Mech.) Engineer in view of the settled position of law, we do not find any infirmity in the order passed by the State Commission granting all the possible reliefs including waiving off of Rs. 2,64,000 admittedly, payable by the appellant to the respondent. The reliefs granted by the State Commission in the order are comprehensive and meet the ends of equity and justice. Without proving any manufacturing defects, the appellant/complainant cannot claim refund of the money. IT was also stated that the respondent/complainant has not complied with the direction given by the State Commission in its order dated 3.8.2005. If, those orders are not complied, the appellant should proceed under Sections 25 and 27 before the Executing Court in getting the order executed as per the provisions of Law. In the aforementioned circumstances, we see no merits in this appeal. Hence, dismissed. Appeal dismissed.