
(2000) 12 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

SMN CONSUMER PROTECTION COUNCIL

APPELLANT

Vs

GODREJ PHOTO-ME LTD.

RESPONDENT

Date of Decision : 26-12-2000

Acts Referred:

Citation : 2001 3 CPJ 601

Hon'ble Judges : M.S.Janarthanam , Banumathi Baskaran J.

Final Decision : Complaint dismissed

Judgement

1. THIS action has come up for admission before us on 22.12.2000. We heard the arguments of learned Counsel Mr. K.R. Ganapathy, representing SMN Consumer Protection Council (1st complainant) which has filed the complaint for and on behalf of Mr. K. George Mathews, Jose Colour Lab, located at 167/30, Gandhi Nagar, Udumalpet, Tamilnadu 642 154. Since there was no time, this matter was adjourned for dictation of orders in open Court today December 26, 2000). The following factors are getting revealed from the averments incorporated in the complaint and the documents filed along with it.

2. THE 2nd complainant placed an order with the opposite parties for buying the following units : (a) Godrej Magnum - Pro Film Processor, and (b) Magnum Pro short leader printer. The cost of the equipments inclusive of taxes is to the tune of Rs. 5,95,492.80. He had also purchased from the opposite party, Passport Lens 1 No. inclusive of taxes for a sum of Rs. 62,160/-. The total amount paid for the purchase of the items as above by the complainant from the opposite party is to the tune of Rs. 6,57,652/-. He had also incurred freight charges for the delivery of the equipments to the tune of Rs. 8,009.20.

The processing unit was installed on 2.3.1996. The equipments, it is said, were started giving problems little by little on and from the date of instalments. Complaints were said to have been launched with the opposite parties regarding the problems and inspite of repeated service calls, the opposite party could not rectify the problems.

3. THE 2nd complainant took a loan from the Catholic Syrian Bank, Udumalpet, for buying the equipments, hoping to increase his photo business to a higher profitable level. Due to defects, the equipment could not be used and the 2nd complainant could not keep up the loan payment according to schedule with the Bank. As a consequence, he lost most of the goodwill of the customers. The equipments as installed by the opposite parties in his processing unit was defective right from its inception. Therefore, there has been a continuous cause of action and as such the complaint is filed within time.

4. ALLEGING the factors as above, the present action has been resorted to for certain reliefs as prayed for in the complaint. We have given anxious consideration to the arguments of the said learned Counsel representing SMN Consumer Protection Council which filed the complaint for and on behalf of Mr. K. George Mathews, Jose Colour Lab, located at 167/30, Gandhi Nagar, Udumalpet, Tamilnadu - 642 154. In the case on hand, the 2nd complainant is admittedly a processing colour lab and in the said colour lab the equipments purchased from the opposite parties had been installed hoping to increase his photo business to higher profitable level. This aspect of the matter is getting revealed from the very averments made in the complaint as indicated above. Such being the case, the moot question that crops up for consideration is as to whether the 2nd complainant could be construed as a consumer qua the opposite parties. On the facts and in the circumstances of the case, we are of the view the 2nd complainant can by no stretch of imagination be construed to be a consumer within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986 [for short "the Act"] qua the opposite parties. The reason is rather obvious. The equipment had been purchased by the 2nd complainant from the opposite party for the purpose of a commercial venture. Pertinent it is to refer to at this juncture, the salient provisions adumbrated under Section 2(1)(d) of the Act defining a "Consumer". The said section runs as under : "2. Definitions-(1) In this Act, unless the context otherwise requires,- (d) "consumer" means any person who,- (i) buys any goods for a consideration which has been paid or promised or partly paid and 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, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; Explanation-For the purposes of Sub-clause (i) "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of

sell-employment"

; Under Section 2(1)(d)(i), a buyer cannot at all be construed as a consumer even if he purchased the goods for consideration in case the goods so purchased were for any commercial purpose. We had already referred to that the equipments from the opposite parties had been purchased by the 2nd complainant for the purpose of a commercial venture. As such, the 2nd complainant cannot at all be construed as a consumer qua the opposite parties.

5. UNDER Section 2(1)(d)(ii) of the Act, a person can be construed as a consumer if he hires or avails the services of the opposite party for consideration and if there is any deficiency in service, then such a person can be construed as a consumer even though the hiring or availing of such services was for the purpose of commercial venture. The deficiency in service in such eventualities on the part of the opposite party seller must accrue during the warranty period as had been stated by the National Commission in decisions more than one. In the case on hand, there is no whisper or murmur as respects the period of warranty given by the opposite parties. We can very well understand that if there is any deficiency in service on the part of the opposite party during the warranty period, the 2nd complainant could be construed to be a consumer qua the opposite parties even though the equipments had been purchased for commercial venture. That is not at all the case here. Therefore, the 2nd complainant cannot even be construed as a consumer falling under this definition 2(1)(d)(ii) of the Act.

6. FURTHER, we are at a loss to understand as to how the complaint filed is within the period of limitation as prescribed by salient provisions adumbrated under Section 24A of the Act. The said section runs as under : "24-A. Limitation period-(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. (2) Notwithstanding anything contained in Sub-section (1), a complaint may be entertained after the period specified in Sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period : Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay."

From what has been extracted above, it is rather crystal clear that a complaint before the Forum or Commission as the case may be as constituted under the Act can be instituted within two years from the date on which the cause of action had arisen. If there is any delay in filing the complaint, the Forum or the Commission constituted under the Act can very well take on its file the complaint so filed if there is sufficiency of cause for not filing the complaint within the period and for condoning the delay so caused reasons must have to be recorded by the Forum or the Commission as the case may be.

Axiomatic a proposition of law it is that once the cause of action commences, it runs from the date of such commencement continuously and only on such footing the computation of the period of limitation as prescribed under Section 24A of the Act has to be made and not otherwise. In the case on hand, admittedly the equipments had been installed in the premises of the 2nd complainant on 2.3.1996 and it is the specific case of the complainant that the equipments started giving trouble on and from the date of installation and despite numerous calls having been made for rectification of the defect, the opposite parties did not at all respond. That means the cause of action commenced on 2.3.1996 and the cause of action so commenced must have to run continuously and such being the case if two years elapsed from the date of such commencement of cause of action which even happened on 2.3.1996, the complaint ought to have been filed on or before 1.3.1998 in the absence of filing a petition for condonation of delay caused for the reasons stated in the affidavit filed in support of the application. Admittedly, in the case on hand, no application had been filed supported by an affidavit for condoning the delay caused in filing the complaint. As such, the complaint filed is beyond the period of limitation.

7. FOR the reasons as stated above, the complaint deserves to be rejected in limini and we accordingly do so. It is however open to the 2nd complainant to knock at the doors of the competent Civil FORum for the appropriate reliefs if so advised. Complaint dismissed.