

(2015) 10 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

Case No : 3229 of 2009

SUNIL KR. HALDER

APPELLANT

Vs

SIKA INDIA PVT. LTD.

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Citation : 2016 1 CPJ 514

Hon'ble Judges : K.S. Chaudhari

Advocate : P. Pankaj, Manik Dogra, Sidhartha Das

Judgement

1. This revision petition has been filed by the petitioner against the order dated 16.04.2009 passed by the West Bengal State Consumer Disputes Redressal Commission, Kolkata (in short, "the State Commission") in Appeal No. FA/2009/32 ? Sri Sunil Kumar Halder Vs. Sika India Pvt. Ltd. by which, while dismissing appeal, order of District forum dismissing complaint was upheld.

2. Brief facts of the case are that Complainant/Petitioner purchased some materials and chemicals from a shop, which were manufactured by OP/ respondent and after application of those products in the construction and renovation work, the walls of complainant's residence were damaged. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. District Forum at initial stage not admitted complaint and dismissed as agreement signed between the parties was not filed and complaint was barred by limitation. Appeal filed by complainant was dismissed by learned State Commission vide impugned order against which, this revision petition has been filed.

3. Heard learned Counsel for the parties and perused record.

4. Learned Counsel for the petitioner submitted that inspite of damage to the complainant's walls on account of application of chemicals manufactured by OP, learned District Forum committed error in dismissing complaint at admission stage and learned State Commission further committed error in dismissing

appeal; hence, revision petition be allowed and impugned order be set aside and complaint be admitted. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

5. Learned Counsel for the petitioner has drawn my attention towards letter dated 22.3.2004 written by OP to the complainant in which it was apprised that fungal growth on paints due to defective coatings applied. Merely on the basis of this letter, it cannot be presumed that materials manufactured by OP were applied by complainant on his walls which caused damage. Learned Counsel for the petitioner has drawn my attention towards 8 years" service warranty for roof waterproofing treatment by PROCON in favour of complainant. Learned Counsel for the petitioner could not show any relationship between PROCON and OP and in such circumstances, on the basis of aforesaid warranty no claim was maintainable against OP. This warranty was pertaining to roof water proofing whereas complaint was pertaining to damage to walls. Complainant has not placed any voucher for purchasing chemicals manufactured by OP.

6. Learned State Commission while dismissing appeal rightly observed as under: "We have perused the complaint, memorandum of appeal and the brief notes of argument filed by the Respondent and it is seen by us that as per its corporate policy the Respondent nowhere has undertaken to do application work or repairing job and the Appellant has not produced any cogent documents in favour of his argument that the Respondent has provided the applicator to do the repairing work in the residence of the Appellant. As the Appellant has failed to file any document that the mason/applicator was provided by the Respondent, the Respondent can neither be connected in any way nor can be held responsible for any outcome of the repair work. In mixing the chemicals with other materials the Respondent had actually no control. The Appellant has submitted that the Respondent provided the mason and for his misapplication of the chemicals the walls of the residence of the Appellant got damage. But the Appellant has failed to implead the said mason as a necessary party. Moreover in this repairing work no contract or agreement was signed by and between both the parties and in absence of such agreement we are unable to adjudicate the case and in this respect in our opinion the Ld. Forum below has taken a correct view to dismiss the complaint.

7. I do not find any illegality, irregularity or jurisdictional error in the impugned and revision petition is liable to be dismissed. Consequently, revision petition filed by the petitioner is dismissed with no order as to costs.