
(2007) 11 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

U K JAMSHID

APPELLANT

Vs

K V RATNAKARAN

RESPONDENT

Date of Decision : 05-11-2007

Acts Referred:

Citation : 2008 2 CPJ 256

Hon'ble Judges : Valsala Sarangadharan , M.V.Viswanathan J.

Final Decision : Appeal allowed

Judgement

1. -THE above appeal is directed against the order passed by the District Forum, Kozhikode dated 16. 12. 1999 in O. P. 547/1999. The complaint in O. P. 547/1999 was filed by the respondent herein as complainant against appellant herein as opposite party. The case of the complainant is that his daughter's passport size photograph was taken from the studio of the opposite party and in spite of repeated requests neither the photograph nor its negative was given to him by the opposite party. Later a youngster of the locality was troubling his daughter with this photograph and the said photograph was taken from the said youngster by the Circle Inspector of Police, Balusseri and returned to the complainant. Complainant has claimed compensation for mental agony and prayed for return of the negative and photograph from the opposite party.

2. IT is contended by the appellant that the complainant did not take any such photograph of the daughter of the complainant on 20. 5. 1996 or on any other date and sought for the dismissal of the complaint. We heard the Counsel for the appellant and respondent in person and perused the records. Ext. P1 bill is in the name of the complainant and Ext. R1 is the counterfoil of the same. The complainant has relied on the Ext. P1 produced by him. The aforesaid Ext. P1 would show that the photograph was taken on 20. 10. 1998. The complainant could not produce any bill to substantiate the case as pleaded. There is no other bill from the side of the complainant to substantiate his case. The case of the complainant that he took photograph of his daughter from the studio of opposite party on 20. 5. 1996 cannot be believed or accepted. Ext. P1 would clearly show

that the complainant had taken photograph on 20. 10. 1998. Moreover, the complainant has no such case that he had taken photograph of his daughter on 20. 10. 1998. Thus, the documentary evidence produced by the respondent/complainant is also of no avail to prove his case. The lower Forum has gone wrong in appreciating the evidence available on record especially Ext. P1 document produced by the complainant.

It is well settled law that pleading is not evidence much less proof. In the absence of any evidence the case of the complainant cannot be accepted. Non-production of the alleged photograph before the Forum and failure to implead the youngster who troubled daughter with the alleged photograph as a party are serious commissions or lapse on the part of the respondent/complainant. Thus complaint is bad for non-joinder of necessary party. In the circumstances we find that the Forum below has erred in accepting the pleading of the complainant/appellant as such and rejecting the case as contended by the complainant/opposite party.

3. ANOTHER fact to be noted at this juncture is the case put up by the complainant that he got the disputed photograph from the possession of a local youngster through the intervention of C. I. of Police, Balussery. If that be the position definitely there should be an entry in the petition register maintained by the police at the Police Station, Balussery. But the complainant herein has not taken any steps to get the concerned C. I. of Police, Balussery and to substantiate the complainant's case that the so called photograph was seized or recovered from the local youngster. It is strange enough to note that the complainant has not even mentioned the name of the local youngster who according to the complainant was troubling his daughter by showing her photograph. It is further to be noted that the complainant's daughter has not been examined in this case. The complainant herein had no direct knowledge about the alleged illegal action of the above said youngster. The competent person to depose about the alleged nuisance is the complainant's daughter. But the complainant failed to get the evidence from his own daughter. Thus in effect there is no acceptable evidence on record to prove the case of the complainant as pleaded. The oral testimony of P. W. 1 can be treated as hearsay. Thus the lower Forum has gone wrong in making the opposite party liable to pay compensation by relying on the hearsay evidence of P. W. 1. After hearing the parties and going through the evidence adduced by them, no deficiency of service can be fixed or fastened on the opposite party. Hence we hold that there is no deficiency on the part of the opposite party. So the complainant is not entitled to get any compensation. In the result, this appeal is allowed. The impugned order passed by the lower Forum is set aside. The complaint in O. P. 547/99 stands dismissed; but no order as to cost. Appeal allowed.