

(2021) 11 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 139 Of 2019, Writ Petition (C) No. 383 Of 2019, Civil Miscellaneous No. 811 Of 2019, IA No. 1 Of 2019

Valley Motor Corporation

APPELLANT

Vs

Jamsheed Ahmad Akhoon And Anr

RESPONDENT

Date of Decision : 01-11-2021

Acts Referred:

Jammu And Kashmir Consumer Protection Act, 1987 — Section 18A

Citation : (2021) 11 J&K CK 0008

Hon'ble Judges : Ali Mohammad Magrey, J;Sanjay Dhar, J

Bench : Division Bench

Advocate : Sajood Amin, Danish Yousuf

Final Decision : Dismissed

Judgement

1. Petitioner has challenged order dated 04.12.2018 passed by J&K State Consumer Disputes Redressal Commission, Srinagar (hereinafter for short "the State Commission") as well as order dated 23.11.2017 passed by District Consumer Protection Forum, Kupwara (hereinafter for short "the District Forum").
2. Briefly stated, the facts giving rise to the filing of instant petition are that respondent No.1 had filed a complaint before the District Forum alleging deficiency of service on the part of petitioner herein on the ground that the petitioner had failed to provide the sale letter and other requisite documents to the respondent No.1, who had purchased a tractor from the petitioner after having paid whole of the sale consideration. It was alleged in the complaint that inaction on the part of the petitioner (respondent before the District Forum) caused severe financial constraints to respondent No.1 (complainant before the District Forum), as he had raised a huge loan for purchase of the said tractor.
3. It appears that the petitioner (respondent before the District Forum) filed its written version before the District Forum, wherein, a stand was taken that respondent No.1 (complainant) had not paid an amount of Rs.1,79,000/- out of

total sale consideration despite requests, as such, the sale letter and other relevant documents were withheld by the petitioner. However, the petitioner did not contest the complaint and it did not lead any evidence. The District Forum on the basis of ex parte evidence led by respondent No.1 (complainant), vide impugned order dated 23.11.2017, held the petitioner herein guilty of deficiency of service and directed it to provide all the documents i.e, sale letter etc to the respondent (complainant) within a period of 15 days.

4. It appears that respondent No.1 challenged the order of the District Forum by way of appeal before the State Commission to the extent that no compensation was awarded by the District Forum while allowing the complaint of the complainant. The appeal was contested by the petitioner herein and vide impugned order dated 04.12.2018 passed by the State Commission, it was observed that the District Forum, while passing the award, should have awarded compensation in favour of the complainant because the tractor could not be plied by the complainant for a period of 11 years on account of unauthorized withholding of sale letter by the petitioner herein. Thus, a sum of Rs.1,00,000/- was awarded as compensation in favour of the complainant/respondent No.1 herein.

5. Petitioner has challenged both the aforesaid orders i.e, order passed by the District Forum as well as order passed by the State Commission, by way of instant writ petition, on the grounds that both the authorities below have failed to appreciate the fact that respondent No.1 owed a sum of Rs.1,79,000/- to the petitioner and, as such, the petitioner was justified in withholding the sale letter of the tractor in question and that the authorities below have not taken into account the fact that the complaint itself was barred by limitation as prescribed under Section 18-A of J&K Consumer Protection Act.

6. We have heard learned counsel for the parties and perused the record.

7. It is not in dispute that respondent No.1 had purchased the tractor from the petitioner. It is also not in dispute that the petitioner had withheld the sale letter and other documents of the tractor and the same were not delivered to respondent No.1 at the time of delivery of the tractor. The only contention that has been raised by the petitioner is that respondent No.1 owed sum of Rs.1,79,000/- to it. Had it been so, the petitioner would not have delivered the tractor to respondent No.1 in the first place. Having done so, it was not justified in withholding the sale letter as in the absence of the sale letter it would not have been possible for respondent No.1 to get the tractor registered and ply the same. The finding of the District Forum that there has been deficiency of service on the part of the petitioner, therefore, calls for no interference.

8. Admittedly, respondent No.1 has availed bank loan for purchase of the tractor in question which carries interest. The illegal action of the petitioner in withholding the sale letter prevented respondent No.1 from plying the tractor for years together. This must have caused huge loss to respondent No.1, inasmuch

as, on the one hand he was deprived of use of the tractor and on the other hand to pay interest on the loan amount. Once it is held that there was deficiency of service on the part of the petitioner, it is legally obliged to compensate respondent No.1 for the inconvenience and the loss that has occurred to him due to the illegal action of the petitioner. Thus, the award of compensation by the State Commission against the petitioner cannot be faulted with.

9. So far as the contention of the petitioner that the authorities below have failed to appreciate the fact that the complaint itself was barred by limitation is concerned, the same is without any merit because a continuing cause of action had accrued in favour of the complainant as the petitioner herein had failed to deliver the sale letter and the other relevant documents to him despite his repeated demands in this regard. Therefore, there was no question of the complaint being barred by limitation.

10. For the foregoing reasons, we do not find any merit in this petition. The same is, accordingly, dismissed alongwith all connected CMs.