

(2009) 01 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

Vinay Enterprises

APPELLANT

Vs

A.S. Kondappa Reddy And Anr.

RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Citation : 2009 1 CPJ 255

Hon'ble Judges : R.K.BATTA , S.K.NAIK J.

Advocate : D.P.CHATURVEDI

Judgement

1. BY virtue of this revision petition the opposite party No. 1 before the District Forum, Proprietor -M/s. Vinay Enterprises, a dealer of Mahindra Tractors seeks to challenge the order dated 16.9.2008 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (for short the State Commission") affirming the order dated 28.2.2008 of the District Forum who while partly allowing the complaint of the respondent/complainant directed the petitioner - dealer to pay a sum of Rs. 91,280 towards the refund of full consideration of the trailer and agricultural implements which were not supplied to the complainant despite having received their full cost. The District Forum further imposed a cost of Rs. 5000 on the petitioner -dealer.

2. FACTS of the case in brief are that for the purchase of a tractor with a trailer and agricultural implements, the respondent/complainant paid a sum of Rs. 5,27,780 to the petitioner -dealer. The cost of the trailer and agricultural implements was Rs. 1,45,000. It was alleged by the complainant that the petitioner -dealer delivered him only the tractor and despite repeated request failed to give the trailer and implements but refunded a sum of Rs. 53,720 through a cheque and promised to refund the balance/remaining amount of Rs. 91,280 within a month. When repeated visits followed by a legal notice failed to evoke any response, he was forced to file a complaint before the District Forum. Petitioner -dealer contested the complaint. His main contention in defence was that in addition to Rs. 53,720 which was paid by cheque another sum of Rs. 40,000 was paid to the complainant in cash towards the full and final refund and

the complaint had been filed to blackmail him to derive wrongful gain. On appreciation of evidence and after hearing the learned Counsel for the petitioner, the District Forum arrived at the conclusion that the alleged payment of Rs. 40,000 by cash did not stand substantiated and, therefore, directed the petitioner -dealer to refund Rs. 91,280 with a cost of Rs. 5,000 to the complainant.

3. AGGRIEVED there upon, the petitioner -dealer had filed an appeal before the State Commission who, as stated earlier dismissed the appeal. Yet aggrieved upon the dismissal order of the State Commission that this revision petition has been filed by him. The only point of dispute for adjudication pertains to whether a sum of Rs. 40,000 claimed to have been paid in cash by the petitioner -dealer to the respondent/complainant is to be believed. In support of his claim, learned Counsel for the petitioner has contended that two debit vouchers (Annex.P -5) for Rs. 20,000 each showed that the complainant had received Rs. 40,000 in cash in addition to Rs. 53,720 received by cheque. It was, therefore, not correct for the State Commission to hold that there was no evidence with regard to the payment in cash.

4. WE have perused the records and considered the contention of the learned Counsel.

5. SUFFICE it to state that the debit vouchers at Annex.P -5 now referred to by the learned Counsel for the petitioner had not been produced either before the District Forum or the State Commission. Further, this has neither been pleaded in his reply in response to the complaint nor does it find a mention in his affidavit. No reason has been stated in the memorandum of revision petition as to why a specific mention with regard to the debit vouchers was not made in evidence before the Fora below. Learned Counsel, even at this stage has not been able to explain this omission. For the failure to produce the best evidence in his possession, the only inference that can be drawn is that the evidence did not exist and has been subsequently created as an after thought. Under the circumstances, the findings of the Fora below cannot but be held to be legally correct. There being no illegality, irregularity or jurisdictional error, we are not inclined to interfere with the concurrent order passed by the Fora below and the revision petition is accordingly dismissed at the stage of admission itself. R.P. dismissed.