

(2015) 05 NCDRC CK 0057

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: 129 of 2015

Abhinandan Kumar

APPELLANT

Vs

Mvl Limited

RESPONDENT

Date of Decision: May 15, 2015

Citation: 2015 2 CPR 747

Hon'ble Judges: AJIT BHARIHOKE J.

Judgement

1. ABHINANDAN Kumar, the complainant herein filed instant consumer complaint No. 129 of 2015 against M/s. MVL Limited alleging deficiency in service on the part of the opposite party in respect of commercial space booked by him in the proposed development project undertaken by the opposite party.

2. AS the complainant had booked the commercial space in a commercial building, the first question which arises is whether the complainant is a "consumer" and he has locus standi to file a consumer complaint?

Learned counsel for the complainant has contended that even if the complainant has booked a commercial space and availed of the services of the opposite party in respect of same, he is a consumer as envisaged under section 2(1)(d) of the Consumer Protection Act (in short, the Act) in view of the Explanation which gives restricted definition to the term "commercial purpose". In this regard, he has referred to the allegations made in para 8 of his amended complaint.

3. IN order to properly appreciate the contention of learned counsel for the complainant, it would be useful to have a look on section 2(1)(d) of the Act, which reads as under:

Section 2(1)(d) of the Act defines the term "Consumer" as under:

2. (1) 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 [but does not include a person who avails of such services for any commercial purpose];

{Explanation - For the purposes of this clause, "Commercial purpose does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment}.

4. ON reading of the above, it is clear that a consumer is a person who buys any goods or hires or avails of services for consideration but does not include a person who buys goods or hires or avails of such services for any commercial purpose.

Explanation to Section 2(1)(d) gives a restricted meaning to the term "commercial purpose" by providing that commercial purpose does not include use by a person of goods bought or services availed by him exclusively for the purpose of earning his livelihood by means of self employment. Thus, it is clear that in order to avail of the benefit of the Explanation, the complainant has to show that the alleged services of the opposite party were availed by him exclusively for the purpose of earning his livelihood by means of self employment.

5. IN view of the above noted position in law, we now proceed to analyse the averments made in the amended complaint particularly para 3.1 and 7, which are reproduced as under:

"3.1. The complainant is NRI and resident of Singapore and he is running an IT company. The complainant in order to expand his business in India decided to set up an offshore centre in India. For that purpose the complainant was looking for a suitable place in India. The complainant has no other place in India to start office as self employment.

7. It is submitted that the complainant purchased the proposed space to expand his business by opening a branch office in India at Gurgaon. It is submitted that the complainant is an NRI and is residing in Singapore for the last more than 15 years. It is submitted that that due to the unlawful acts of the opposite party the complainant has suffered mental harassment and agony. The complainant on number of occasions contacted the officials of the opposite party over phone. On number of occasions the complainant visited India to meet the officials of the opposite party to resolve the dispute. Due to this the complainant suffered loss of his business at Singapore to deal with this issue. The complainant has paid his hard earned money to the opposite party to open a branch office in India."

6. ON conjoint reading of the allegations made in the above said paragraphs, it is clear that complainant is gainfully engaged in a profitable IT business and he had booked the commercial space which is the subject matter of the complaint for expanding his business. Therefore, by no stretch of imagination, it can be said that complainant availed of services of the opposite party for earning livelihood by way of self employment.

It is pertinent to note that on 12.03.2015, this matter came up for consideration. When a query was put to the counsel for the complainant as to how the complainant is a consumer as envisaged under section 2(1)(d)(ii) of the Act, learned counsel for the complainant withdrew the complaint with liberty to approach the appropriate forum. Thereafter, complainant moved Review Application No. 83 of 2015 seeking recall of the order of dismissal of complaint as withdrawn. In the interest of justice vide order dated 05.05.2015, order of dismissal of complaint as withdrawn was recalled and matter was relisted for admission hearing. Thereafter, complainant

moved an application for amendment in order to incorporate his explanation for booking of commercial space as para 3 of the complaint. The application was allowed. Para 3 of the amended complaint reads as under:

"It is submitted that the complainant is working in a company namely Fuji Xerox in Singapore as Global Business General Manager. Apart from the said job the wife of the complainant runs a registered IT company with a virtual address. The purpose of purchasing the space in question was to enable the complainant and his wife to use the premises for carrying on their vocation in India and to earn their livelihood in India. It is submitted that with this intention the complainant purchased the space in question from the respondent, with some return also being earned in the interregnum period. However, the respondent failed to provide the space within a period of three years as promised by it. This has seriously jeopardized the prospects of the complainant and his wife earning their livelihood in India. A copy of the letter of appointment dated 20.03.2013 is annexed herewith and marked as Annexure P -8."

7. BY the aforesaid amendment, the complainant has tried to introduce a fact that he had booked commercial space with a view that complainant and his wife could earn their livelihood in India. This amendment, in our view, is of no avail to the complainant because admittedly, the complainant is self employed and running IT business at Singapore and his wife is also running a registered IT company with a virtual address. Otherwise also, the explanation given in para 3 appears to have been introduced on an after thought with a view to bring the case within the purview of the Act in order to avoid payment of Court fee, which the complainant would have been required to pay had he filed a civil suit against the opposite party.

8. LEARNED counsel for the complainant in support of his contention has referred to the judgment of coordinate bench of this Commission in Consumer Case No. 88 of 2012 titled Kushal K. Rana v. M/s. DLF Commercial Complexes Ltd. We have gone through the said judgment. In our view, the said judgment is not applicable to the facts of the case because it is based upon its own peculiar facts.

In view of the discussion above, we are of the opinion that complainant is not a "consumer" as envisaged under section 2(1)(d) of the Act. As such he has no locus

standi to maintain the consumer complaint. Complaint, is, therefore, rejected. It is clarified that this order will not come in the way of the complainant to avail of his remedy before appropriate forum.