
(2014) 02 NCDRC CK 0057

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Bundel Financing And
Manufacturing Pvt. Ltd.

APPELLANT

Vs

Sukriya Devi

RESPONDENT

Date of Decision: Feb. 24, 2014

Citation: 2014 0 NCDRC 112

Hon'ble Judges: K.S.CHAUDHARI , B.C.Gupta J.

Advocate: SANJAY KUMAR DUBEY

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 17.08.2012 passed by the Jharkhand State Consumer Disputes Redressal Commission, Ranchi (in short, "the State Commission ") in Appeal No. 23/2011 - Kapildeo Singh Vs. Sukrya Devi & Anr. by which, while dismissing revision petition, order of District Forum allowing complaint against OP No. 1 was upheld.

2. BRIEF facts of the case are that complainant/Respondent No. 1 intended to purchase "Piaggio Auto Tempo ". from OP No. 1/Petitioner, but OP misled the complainant and sold "Karlo Tempo " instead of "Piaggio Auto Tempo " which was not road worthy. Complainant paid a sum of Rs.60,000/- from her own saving and Rs.79,000/- were financed from OP No. 2/Respondent No. 2. There were many manufacturing defects in the Auto and complainant visited showroom of OP No. 1 for repairs, but found that the showroom was closed and shifted to Gaya. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP No. 1 was proceeded ex -parte. OP No. 2 resisted complaint and submitted that he was not responsible for any alleged manufacturing defects in the Auto, as he has only financed the vehicle and payment was

to be made in 24 monthly installments, but complainant has made payment of only two installments; hence, complaint be dismissed. Learned District Forum after hearing both the parties, allowed complaint and directed OP No. 1 to pay Rs.1,39,000/- and compensation of Rs. 50,000/- and litigation cost of Rs.10,000/- to the complainant. Revision filed by the petitioner was dismissed by learned State Commission vide impugned order against which, this revision petition has been filed.

None appeared for the respondent even after service; so, the respondent was proceeded ex -parte.

3. HEARD learned Counsel for the petitioner and perused record.

4. LEARNED Counsel for the petitioner submitted that learned District forum allowed complaint even without proper service and learned State Commission dismissed appeal without any cogent reason; hence, revision petition be allowed and impugned order be set aside and matter may be remanded back to learned District forum.

Perusal of record reveals that learned District Forum observed in its order that notice sent to OP No. 1 could not be served and returned back unserved and later on notice was sent by courier to OP No. 1, which was returned back with the endorsement "refused " and in such circumstances District Forum proceeded ex -parte. Perusal of record clearly reveals that complainant purchased Auto from "Bundel Financing and Manufacturing Pvt. Ltd. ", whereas in the complaint ""Kapil Deo Singh Automobiles Pvt. Ltd. "" has been impleaded as OP No. 1 and on the same address notice has been sent by Regd. Post and by courier. Notice sent by Regd. Post was received back with the endorsement "incomplete address " and notice sent by courier was returned back with the endorsement "refused ", but it has not been mentioned that who refused to receive the notice. Admittedly, notice was addressed to ""Shri Kapil Deo Singh Automobiles Pvt. Ltd. "" which is not the correct nomenclature of OP No. 1, as complainant purchased Auto from "Bundel Financing and Manufacturing Pvt. Ltd. " and complainant ought to have impleaded Bundel Financing and Manufacturing Pvt. Ltd. as OP No. 1 and notices should have issued to OP No. 1 on this address. As complainant has not impleaded correct party and notice was also not sent to the correct OP No. 1, in such circumstances, service of notice on "Bundel Financing and Manufacturing Pvt. Ltd. " cannot be presumed and learned District Forum

committed error in proceeding ex -parte against OP No. 1 impleaded in the wrong name. Purchase bill of Auto does not reveal that it was purchased from ""Shri Kapil Deo Singh Automobiles Pvt. Ltd """. It appears that ""Shri Kapil Deo Singh was Managing Director of Bundel Financing and Manufacturing Pvt. Ltd. as shown in the affidavit filed along with revision petition and complainant impleaded OP No. 1 in the wrong name. Learned State Commission has committed error in upholding order of District Forum on merits without considering merits of the case.

5. LEARNED Counsel for the petitioner further submitted that petitioner was compelled by State Commission to file revision petition in the same name in which District Forum allowed complaint and in such circumstances, in the wrong name revision petition was filed before State Commission, but now he has filed revision petition before this Commission in the correct name which is apparent from the purchase bill of Auto.

6. LEARNED State Commission observed in its order that petitioner should have filed appeal instead of revision and revision was also filed after 2 years of the impugned order. It is true that petitioner should have filed appeal before the State Commission instead of revision, but on this ground revision petition filed by the petitioner was not dismissed by learned State Commission. It is also not true that revision petition was filed after 2 years of the District Forum order. As order was passed by learned District forum without service, petitioner could not have filed appeal/revision before State Commission within the prescribed period of limitation and in such circumstances, delay of 265 days in filing revision petition before State Commission should have been condoned by learned State Commission. We do not find delay of 2 years in filing revision petition before State Commission as District Forum 's order was passed on 18.12.2010 and revision petition was filed in December, 2011.

In view of the above discussion, impugned order is liable to set aside and matter is to be remanded back to District forum.

7. CONSEQUENTLY , revision petition filed by the petitioner is allowed and impugned order dated 17.08.2012 passed by the State Commission in Appeal No. 23/2011 - Kapildeo Singh Vs. Sukrya Devi & Anr. and order of District Forum dated 18.12.2010 passed in Complaint Case No. 248/08 - Sukriya Devi Vs. Sri Kapil Deo Singh Automobiles Pvt. Ltd. is set aside and matter is remanded back to District Forum to decide the complaint on merits after taking written statement of OP No. 1/Petitioner on record as per law.

8. PARTIES are directed to appear before the District Forum on 3.4.2014 and petitioner shall file written statement on that day.