

(2004) 01 NCDRC CK 0075

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

RADHESHYAM AUTO AGENCY

APPELLANT

Vs

VIJAYKUMAR SHANKERLAL PATEL

RESPONDENT

Date of Decision: Jan. 23, 2004

Citation: 2004 4 CPJ 397 : 2005 1 CLT 121

Hon'ble Judges: M.S.Parikh , M.K.Joshi , Leenaben P.Desai J.

Final Decision: Appeal dismissed

Judgement

1. THIS appeal arises from order dated 30.4.1998 rendered by the learned Consumer Disputes Redressal Forum, Sabarkantha in Complaint No. 237 of 1997 directing the opponent to replace the Rickshaw in question by a new Rickshaw against taking back old Rickshaw and if that is not possible to refund price of the Rickshaw in the sum of Rs. 1,13,500/- against return of Rickshaw and to pay compensation and cost respectively in the sum of Rs. 5,000/- and Rs. 2,000/-. We have heard the learned Advocate for the original opponent, now appellant. No one is present for the complainant.

2. IT was the complainant's case before the learned Forum that he went for a brand new Rickshaw and purchased the Rickshaw accordingly on 4.7.1996 from the opponents for consideration of Rs. 1,13,500/-. The Rickshaw was defective right from the inception. Consumption of oil was highly excessive. The rings were damaged within a very short period. The complainant informed the opponent to change the spare parts but the opponent failed. The complainant had to approach the opponent on 10 to 15 occasions and at last the Rickshaw was sent to Modasa and got repaired for Rs. 7,000/-. Ultimately, the complainant came to know that instead

of brand new Rickshaw, opponent delivered to the complainant a Rickshaw which was already sold to some one else who had returned the same. Upon inquiry, the complainant found that the Rickshaw was sold to one Jayeshbhai Nagjibhai Patel on 2.5.1996. Thus, the case of the complainant before the learned Forum was one of unfair trade practice having been practised by the opponent in respect of the transaction in question. Opponent resisted the complaint inter alia on the ground that the Rickshaw was sold at owner's risk only and the condition in the warranty was that the Rickshaw would be attended to within three months of the date of sale of Rickshaw or use of the Rickshaw up to 6,000 kms. According to the opponent, the complainant did not inform with regard to the defect in the Rickshaw. The complainant had approached the opponent on 22.11.1996 and on 24.1.1997 and the Rickshaw was repaired after the warranty period was over at the cost of the complainant. With regard to the allegations of unfair trade practice, the opponent asserted that the Rickshaw was sold to one Jayeshbhai Nagjibhai Patel with all necessary documents. But since the said party went for registration of the Rickshaw at Bharuch and since there was mistake in the engine number inscribed on the Rickshaw, it could not be got registered at Bharuch. This has resulted into dispute and quarrel in the family of the said purchaser. The Rickshaw was accordingly returned by the said purchaser to the opponents who accepted the same and refunded the amount. Thus, it was the defence of the opponent that the Rickshaw in question was brand new Rickshaw under such circumstances. After hearing the parties and considering the material placed on record, the learned Forum came to the conclusion that the opponent supplied Rickshaw in question to the complainant without disclosing the fact that it was one which was already sold to some one else. Thus, according to the learned Forum, it amounted to unfair trade practice. Impugned order was, therefore, passed against the opponents.

We have heard the learned Advocate appearing for the appellants. First submission of learned Advocate for the appellants is that the learned Forum did not have territorial jurisdiction to hear the complaint. In our considered opinion, we cannot entertain this submission as it is settled law that the question of territorial jurisdiction has to be raised in the original proceedings at the earliest point of time. We permitted the learned Advocate for the opponent to read the written statement filed before the learned Forum. We could not see any such question raised before the learned Forum. Question of jurisdiction is sought to be raised for the first time in this appeal. It is settled law that the same cannot be permitted. See *Koopilan Uneen's Daughter Pathumma v. Koopilan Uneen's Son Kuntalan Kutty*, AIR 1981 SC 1683.

In view of this binding decision of the Apex Court, we have not permitted the question of jurisdiction to be raised and, therefore, we do not propose to decide the same. As a matter of fact, question of territorial jurisdiction is a mixed question of fact and law. If question of jurisdiction is permitted to be raised in appeal, it would impliedly amount to permitting the opponent to state the facts with regard to bar of

territorial jurisdiction and then to permit him to adduce evidence and have a fresh trial of the matter. This also cannot be permitted.

3. IT has been submitted that the complainant did not join the manufacturer as party to the complaint proceeding. IT is not disputed that the opponents sold the Rickshaw in question to the complainant. The bill has been issued by the opponent. This is not merely a case of manufacturing defect. The Rickshaw was giving trouble right from the inception. IT is in the process of repeated communications by the complainant to the opponent that he came to know what he got was an old Rickshaw or the Rickshaw, which was already sold to someone else. IT is clear that opponents did not disclose this fact to the complainant. Actually the Rickshaw was not a brand new Rickshaw which the complainant went for purchase. In the aforesaid process he came to know about the fact that Rickshaw was not brand new Rickshaw but one that was sold to some one else. Thus, there was suppression of material fact by the opponent when the Rickshaw was sold to the complainant. This clearly would amount to unfair trade practice for which there is no answer from the side of the opponents. If the Rickshaw is having manufacturing defect it is for the opponents to get it replaced from the original manufacturer. In that view of the matter, we do not find any discrepancy or error in the impugned order.

In view of the facts and circumstances of the case, we pass following order. ORDER
This appeal is dismissed, with no further order as to cost. Appeal dismissed.