

**(1994) 11 NCDRC CK 0022**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

MADNANAND SARKAR

APPELLANT

Vs

S.Mukherjee

RESPONDENT

**Date of Decision:** Nov. 29, 1994

**Citation:** 1995 3 CPJ 355

**Hon'ble Judges:** B.N.Sinha , K.P.Sinha , Kalpana Ashok J.

**Final Decision:** Appeal dismissed

**Judgement**

1. MR. Ram Lal Gupta, Member This appeal is directed against order dated 27th May 1992 passed by the District Forum in Complaint Case No. 149 of 1991. The appellant here was the complainant and the opposite party before the District Forum is the Respondent before this Commission.

2. THE facts of the case as put forth by the complainant may be briefly stated. THE complainant bought from the opposite party-Dr. S. Mukherjee one Neelam and one Top for Rs. 700/- and Rs. 200/- respectively and got them embedded in ring for which Rs. 100/- was charged by the opposite party-Dr. S. Mukherjee. THE complainant suspected that the stone given by the opposite party as Neelam was spurious and he therefore asked the opposite party to return the price along with compensation. But the opposite party refused to do so and hence the complainant filed a case before the District Forum. .

The opposite party on being noticed appeared and submitted orally that he had purchased that Neelam Stone from one Neyaz Uddin, Stone Hawker and failed to contact him about the genuineness and purity of the Neelam.

It appears that the District Forum has ordered for examination of the genuineness of the stone and accordingly it got it examined by Professor M. Prakash of the Department of Geology, Indian School of Mines, Dhanbad who give his finding that the stone is not authentic.

3. THE complainant examined Mr. K.P. Paul in support of his case. But the District Forum came to the finding that C.W., K.P. Paul does not inspire confidence because he has stated in his evidence that the complainant had given Rs. 1200/- to the opposite party for three rings which is not the case of the complainant.

The District Forum however by the impugned order has directed the opposite party to pay Rs. 1,000/- to the complainant and to get back the ring from the complainant and to pay Rs. 200/- as compensation for mental torture and physical exertion which the complainant had to undertake for filing case in the Court and pursuing the same. Not satisfied with the relief given by the District Forum the complainant has filed this appeal before this Commission.

4. IT may be mentioned at the very outset that this appeal has been presented before this Commission on 17.10.92 i.e. after expiry of the period of thirty days from the date of the impugned order. Section 15 of the Consumer Protection Act (hereinafter called the Act) specifically lays down that the memo of appeal against an order of the District Forum has to be presented before this Commission within thirty days from the date of the impugned order. Rule 8(4) of the Bihar Consumer Protection Rules requires that if an appeal is presented before this Commission after the expiry of the period of thirty days as specified under the Act, an application supported by an affidavit stating the circumstances under which the appeal could not be presented within the period specified under the Act has to be filed by the appellant. But no such application with an affidavit has been filed by the appellant. On this ground alone the appeal cannot be entertained.

But on merit also the appeal cannot succeed because on the evidence of Mr. S.K. Paul it is not established that the Neelam had been purchased by the complainant from opposite party. The witness has only stated that the complainant paid Rs. 1200/- to the opposite party as the price of three rings. There is no evidence to establish that the Neelam found to be "not authentic" was purchased by the

complainant from the opposite party.

Under the circumstances we find no merit in the appeal and the appeal is dismissed. Taking into consideration the consumer status of the appellant there is no order as to costs. Appeal dismissed.