

(1998) 04 NCDRC CK 0009

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

KAPOOR FARMS

APPELLANT

Vs

KRISHANA FABRICATORS

RESPONDENT

Date of Decision: April 15, 1998

Citation: 1998 2 CLT 65 : 1998 2 CPJ 353

Hon'ble Judges: A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision: Appeal allowed

Judgement

1. THIS appeal is by the complainant against order of District Forum, Jalandhar dated December 10, 1996 whereby the complaint was dismissed on the ground of lack of territorial jurisdiction.

2. THE complainant Kapoor Farms of Kapoor Cold Storage got machinery for the cold-storage supplied from the opposite party - M/s. Krishana Fabricators, New Delhi. THE machinery was supplied in the months of June, September and November, 1992 vide separate bills amounting to Rs. 57,200/- for each bill. It was installed in December, 1992 and the cold-storage was commissioned in January, 1994. Immediately, thereafter defects were found in the functioning of the machinery that the complaints were made to the opposite party for removal of the same. It was ultimately on February 7, 1995 the complaint was filed before the District Forum, Jalandhar. Reply was filed to the complaint by the opposite party taking up the plea of lack of territorial jurisdiction apart from some other pleas on merits. One of such matters was as to whether the order for purchasing the goods was placed through M/s. Kohli Sales Corporation, Jalandhar City. An application for impleading M/s. Kohli Sales Corporation was also filed which remained not pressed,

as stated in the impugned order. However, for the purposes of deciding this appeal, it is immaterial.

In para 8 of the complaint, it is specifically mentioned that the opposite party had declined to replace the defective machinery on the ground that period of guarantee had expired. In the reply filed in the corresponding para No. 8, it is mentioned that the complainant was claiming replacement after expiry of period of guarantee.

Apart from the pleadings aforesaid, there is no other documentary evidence to indicate the period of guarantee. It is assumed that the present was not a simple case of sale of goods and finding defect therein, but such a contract also provided a guarantee period meaning thereby this was also a case of hiring services of the opposite party for consideration for replacement of the defective machinery within guarantee period aforesaid. It is, therefore, assumed that during the period of guarantee the opposite party was to see that machinery properly functioned. Since the machinery was installed at Jalandhar and its functioning has also to be adjudged, therefore it is Clause 11(2)(c) that would be attracted to the case in hand. Even if the opposite party was not having head office or branch office at Jalandhar, the District Forum, Jalandhar would have jurisdiction to entertain the complaint since part of cause of action had accrued there which related to proper functioning of the machinery as installed. It was only on merits thereafter that the question of any part of the machinery being defective and not giving proper service could be gone into. Since part of cause of action had accrued within the jurisdiction of the District Forum through sale of goods accompanied by guarantee, the District Forum has jurisdiction to entertain the complaint. Thus expressing no opinion on merits on other points, this appeal is allowed. Order of the District Forum is set-aside and the case is sent back to the District Forum for decision according to law. Parties through their Counsel are directed to appear before the District Forum on 1.6.1998. There will be no order as to costs. District Forum records alongwith a copy of this order be sent there promptly. Appeal allowed. _____