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NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Escorts Ltd. APPELLANT

Vs

HOTEL SRI KUMARAN RESPONDENT

Date of Decision: Sept. 27, 2002

Citation: 2003 1 CPJ 349

Hon'ble Judges: M.S.Janarthanam , Kayal Dinakaran J.

Final Decision: Appeal dismissed

Judgement

1. THIS appeal is directed against the order dated 14.11.1997 in O.P. No. 824/1993 on the file of the District Consumer Disputes Redressal Forum, Coimbatore.

2. THE appellant is the 1st opposite party. THE 1st respondent is the complainant while the 2nd respondent is the 2nd opposite party.

Short facts may be related in order to understand the crux of the issue arising for consideration in this action.

The complainant is the proprietor of a hotel going by the name Sri Kumaran at Tirupur. It appears, the hotel is a reputed one and it has a large clientele.

3. THE 1st opposite party is a manufacturer of communication equipments while the 2nd opposite party is the principal dealer of the 1st opposite party.

The complainant''s hotel was originally equipped with EPABX telephone service connection. The telephone connection to the rooms was provided by intercom facility by the Department of Telecommunications. The service rendered by them was not satisfactory and consequently the proprietor of the hotel decided to change the system itself. In June, 1992, the sales representative of the 1st opposite party it is said persuaded the complainant to purchase the EPABX equipment and telephone communications equipment manufactured by the 1st opposite party for superior performance. Consequently, the complainant purchased Escorts EX-95 Micro Processor Board Program controlled EPABX Time Division Multiplying Technique on 24.9.1992 from the 2nd opposite party dealer for a total price of Rs. 2,85,500/-. For the proper functioning of the system, a warranty of one year was given. Immediately after the installation of the equipment, it was defective and was not properly functioning. Despite, the defects occurring in the system had been rectified by the opposite parties on a demand emerging from the complainant, the defects persisted and continued beyond repair within the warranty period.

4. THE complainant, therefore, demanded from the opposite parties the repayment of the amount he had paid for the purchase of the equipment and system and take away the equipment and system they had installed in the hotel. THE opposite parties were agreeable and amenable to take back only the central equipment board and not the other accessories even after making an admission by them of the defects in the system. Consequently, the complainant issued a lawyer''s notice on 21.9.1993 claiming from the opposite parties an amount of Rs. 2,23,545.65 paid by him towards the purchase of the equipment the cost price of which is Rs. 2,85,500/-. THE notice so issued did not elicit a reply.

In such a backdrop and setting, the complainant knocked at the doors of the Forum below alleging deficiency in service on the part of the opposite parties and claiming certain reliefs as prayed for in the complaint.

The 2nd opposite party remained absent despite service and he was set ex parte.

5. THE 1st opposite party alone filed a counter in pith and substance contending that the purchase of the equipment by the complainant is for a commercial purpose and, therefore, it is the complainant who could not at all be construed as a consumer qua the opposite parties falling within the definition of Section 2(1)(d) of the Consumer Protection Act, 1986 and, therefore, the complaint is liable to be dismissed as not maintainable. THE defects as and when complained of in the equipment had been rectified. THE 1st opposite party, while offering to take back the entire system and refund the amounts paid by the complainant towards the purchase of the system has at the same time stated that they would be ready and willing to maintain and keep the system in a good state of operation to the satisfaction of the complainant if the complainant desires to keep the system. A sum of Rs. 63,500/- is due and payable by the complainant in respect of the EPABX system purchased by them. THEre is no deficiency in service on their part. THE complaint as such is liable to be dismissed.

6. THE Forum below after taking into consideration the materials placed on record, recorded a finding that although the EPABX system had been purchased by the complainant for running the hotel for a commercial purpose, yet, the complainant must have to be construed as a consumer falling within the definition of Section 2(1)(d)(ii) of the Consumer Protection Act, 1986 inasmuch as the system thoroughly failed during the warranty period of one year and the service rendered by the opposite parties was grossly deficient. THE Forum below had also taken into consideration the offer made by the 1st opposite party to take back the system and refund the amount paid by the complainant towards the purchase of the system in case the complainant was not desirous of keeping the system in the hotel despite the offer made by the 1st opposite party that they would keep the system in perfect order. This sort of an offer had been construed by the Forum below as an admission on the part of the opposite parties of the defects that persisted in the system. THE Forum below simply granted an award only to the amount of the money they had paid i.e., to say Rs. 2,23,534.65 towards the purchase of the system costing Rs. 2,85,500/- and did not even grant the payment of any interest on such refund of the amount. That apart, it also granted compensation quantified in a sum of Rs. 6,000/- for the mental agony and hardship suffered besides cost of Rs. 500/-.

Aggrieved by the order as above, the 1st opposite party resorted to the present action through the Firm M/s. King and Patridge. On service of process, the 1st respondent/complainant entered appearance through a Counsel of his choice namely M/s. Pushpa Sathyanarayana and N. Krishnaveni. Respondent No. 2/opposite party No. 2 despite service remained virtually absent without engaging a Counsel of their choice.

When the matter came up here before us today, learned Counsel appearing for respondent No. 1/complainant were called absent and no representation was made on their behalf. None representing respondent No. 2/opposite party No. 2 projected any hues of views in this matter. We are however inclined to dispose of the matter on merits after hearing the arguments of learned Counsel Mr. A. Baskaran representing M/s. King and Patridge appearing for the appellant/opposite party No. 1 and on perusal of the materials placed on record.

7. LEARNED Counsel Mr. A. Baskaran representing M/s. King and Patridge appearing for the appellant/1st opposite party pressed into service the sole and lone point that the Forum below had not taken into consideration while passing the award the contention of the 1st opposite party as stated in para 8 of the version that there is still an amount of Rs. 63,500/- due from the complainant towards the purchase cost of the system, obviously feeling that the other points if pressed into service are not likely to yield any dividend on the facts and in the circumstances of the case. On the face of the projection of hues of views by the said learned Counsel, we are called upon to answer the only point so pressed.

No doubt true it is that the 1st opposite party had taken a stand in para 8 of the counter that there is a balance amount of Rs. 63,500/- to be paid by the complainant towards the purchase price of the system. Though such a bold contention had been taken in their counter or version, yet, no tangible material in the shape of documents had been placed on record to point out that there is still an amount of Rs. 63,500/- is due by the complainant towards the purchase of the system. The purchase price of the system is admittedly Rs. 2,85,500/-. It is not as if the complainant claimed that he paid the entire cost price of the system totalling to Rs. 2,85,500/-. But, what is stated not only in the notice issued under Ex. A7 dated 21.9.1993 but also by incorporation of averments in the complaint is that he had paid a sum of Rs. 2,23,534.65 and that is the amount for which he made a claim in the complaint by way of refund of the price he had paid in lieu of taking back the machinery from him which was found to be defective. Pertinent it is to point out here that for the notice issued under Ex. A7 by the complainant, there was no response from either of the opposite parties. Another intriguing factor is that the opposite party being a manufacturer cannot at all be expected to have any sort of a knowledge with regard to the payment effected by the complainant in the purchase of the system from the 2nd opposite party dealer who virtually remained absent without even filing a version. Such being the case, we have no hesitation in rejecting the argument so projected by the said learned Counsel and we accordingly do so. As such, the appeal deserves to be dismissed.

8. IN fine, the appeal fails and the same is dismissed. We however make no order as to costs on the facts and in the circumstances of the case. We make it crystal clear that the award of the Forum below as confirmed by us is required to be complied with by the opposite parties within a month from the date of receipt of our order or otherwise it would be perfectly open to the complainant to invoke the jurisdiction of Section 27 of the Consumer Protection Act, 1986. Appeal dismissed.