

(2003) 12 NCDRC CK 0042

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

GULATI LAW HOUSE

APPELLANT

Vs

UMA KANT MEHTA

RESPONDENT

---

Date of Decision: Dec. 19, 2003

Citation: 2004 1 CLT 472 : 2004 1 CPC 378 : 2004 3 CPJ 34 : 2004 3 CPR 108

Hon'ble Judges: K.K.Srivastava , Devinderjit Dhatt , MajGenS.P.Kapoor J.

Final Decision: Appeal dismissed

---

#### Judgement

1. THIS is an appeal filed against order dated 24.7.2003 passed by District Consumer Disputes Redressal Forum-I (for short hereinafter referred to as the District Forum) in Complaint Case No. 549 of 2001, Mr. Uma Kant Mehta v. Gulati Law House.

2. MR. Uma Kant Mehta, a Partner of U.K. Mehta & Associates, Chartered Accountants, 1651/1, Sector 40-B, Chandigarh issued a cheque for a sum of Rs. 1,440/- as subscription amount for a journal on Tax and Corporate Law. The said cheque was accepted and got encashed by the respondent-Gulati Law House, 1492, Sector 22-B, Chandigarh. However, the said journal was not subscribed despite the fact that the complainant approached the O.P. - Gulati Law House a number of times and apprised the fact of non receipt of the journal subscribed by the complainant.

The grievance of the complainant is that neither the journal was sent and supplied by the O.P. nor the amount of Rs. 1,440/- was refunded to him. In the complaint, he prayed for issuance of a direction to the O.P. for refunding the amount of Rs. 1,440/- with interest and costs for deficient services.

The O.P./appellant-Gulati Law House appeared before the District Forum and filed written statement wherein the complaint filed was described as false, frivolous and mischievous. It was alleged that the complainant had not come with clean hands and had put forward a vague and concocted story. There was no deficiency in service on the part of O.P. It was, however, admitted that the complainant had paid subscription amount of journal on Tax and Corporate Law for the year 2000. It was asserted that the journal was supplied to the complainant in bounded form. It was emphatically denied that the complainant ever approached the O.P. - Gulati Law House regarding the non receipt of the said journal. It was alleged that the complainant with a view to harass the O.P. - Gulati Law House even after receiving certain other books did not pay the price of the respondent. It was alleged that the Gulati Law House, appellant/O.P. had supplied to the complainant certain books for which Bill No. 1406 dated 18.6.2001 amounting to Rs. 6,500/- was raised but the same was not paid and instead the complaint was filed.

3. THE O.P. also prayed for recovery of a sum of Rs. 6,500/- as principal amount along with interest @ 18% per annum from 18.6.2001 till realization of the amount along with compensation of a sum of Rs. 500/-. A photocopy of the bill was placed on record.

The complainant filed replication wherein they denied the averments made in the written statement and reiterated the averments made in the complaint case. Regarding the claim of the O.P., it was contended that a forged bill had been filed as no such books were ever supplied to the complainant.

4. THE complainant filed his affidavit besides the photocopy of the bill dated 26.7.2000 showing endorsement of Cheque No. 245891 for a sum of Rs. 1,440/- favouring Gulati Law House and a letter sent by Shri Uma Kant Mehta for seeking the refund of the amount of Rs. 1,440/- with interest. THE O.P.-Gulati Law House filed affidavit of Shri Anil Kumar, Proprietor and filed a printed document showing a "Journal, Tax & Corporate Reference, (Annual Subscription for the year 2000) Rs. 1,600/-. Back volumes (Bound), 1994 to 1999 (3 vols. per year) Price per year 1,500/-, as Annexure R-1, the visiting card of Sh. Uma Kant Mehta was annexed along with the visiting cards of S.C. Gauba and Sh. Harjeet Singh Minhas, Advocates.

The District Forum held that the journal for which the subscription of a sum of Rs. 1,440/- was made by the complainant was not supplied and directed the refund of the amount of a subscription amount of Rs. 1,440/- with interest @ 8% per annum from the date of deposit i.e., 26.7.2000 till payment.

The O.P. - Gulati Law House feeling aggrieved by the order of the District Forum has filed this appeal. The respondent/complainant put in appearance through Shri Vikas Chatrath, Advocate. The file of the complaint case was summoned from the District Forum.

5. WE have heard the learned Counsel for the appellant and the learned Counsel for the respondent and have carefully perused the impugned order and the record of the case.

6. IT is not disputed that the respondent/complainant Uma Kant Mehta & Associates through Partner Shri Uma Kant Mehta paid a sum of Rs. 1,440/- vide Cheque No. 245899 dated 26.7.2000 for supply of journal aforesaid. The appellant/O.P. took up a specific plea that the journal was supplied. However, no evidence showing the supply of the journal was led and the District Forum held that the onus was on the appellant/O.P. to prove the delivery of books through documentary evidence but no document was, however, brought on record showing delivery of books to the complainant. The District Forum referred to the statement of O.P. Shri Anil Gulati who conceded that he did not possess any other document except Bill No. 866 dated 26.7.2000. He, however, referred to the bill for supplying books worth Rs. 6,500/- and stated that its payment was not made and when the demand was raised, this complaint was filed. The O.P. has thus not led any reliable evidence to prove the fact of supply of journals. The learned Counsel for the appellant submitted that it is difficult to believe that a lawyer which in the instant case is the complainant would have waited so long to lodge a claim regarding the refund of the amount and would not have complied of about the non-receipt of the journal. We find from perusal of the averments made in the complaint as also in the affidavit of the complainant that the complainant approached the respondent several times when he did not receive the copy of the journal and requested the respondent either to make the copy of the journal available or refund the amount received from him. Once the appellant/O.P.

admitted about the receipt of the amount of the subscription of a sum of Rs. 1,440/- for supplying the journal, the burden was on him to prove that he had supplied the journal to the respondent/complainant.

The District Forum, in our considered opinion, has rightly held that the appellant/O.P. failed to prove the supply of the journal and the complainant was entitled to the refund of the amount with interest as mentioned above.

So far as the counter claim set up by the O.P. - Gulati Law House is concerned, it may be mentioned that the claim is not the counter claim and instead it relates to altogether a different transaction wherein some books worth Rs. 6,500/- were allegedly supplied by the appellant to the respondent Sh. Uma Kant Mehta and in case the payment of the said bill has not been made, as alleged, the remedy of the O.P. - Gulati Law House would be by filing an appropriate proceedings before a competent Court and to seek the recovery of the said amount after proving the same according to law but the same cannot be considered in the complaint case filed under the provision of the Consumer Protection Act, 1986. We find no merit in this appeal. The appeal is dismissed with no orders as to costs. Copies of this order be sent to the parties free of charge. Appeal dismissed.