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(2004) 06 NCDRC CK 0080

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

KAMALINDER SINGH — APPELLANT

Vs

HANUMAN TRADER — RESPONDENT

Date of Decision: June 29, 2004

Citation: 2004 2 CLT 612 : 2004 3 CPR 354 : 2005 2 CPJ 297

Hon'ble Judges: Surinder Sarup , Onkar Chand Thakur , Prem Chauhan J.

Advocate: Sandeep Sharma

Judgement

1. THIS appeal is directed against the order of the learned District Forum, Shimla, Camp at Solan, dated 19.9.2003, whereby the complaint of the appellant/complainant has been dismissed.

2. THE complainant"s case, in brief, is that he purchased 140 bags of Ambuja Cement from the respondent on 20.10.2000 for the construction of godown in which the raw material for his flour mill, mini rice sheller and an oil extraction machine was to be stored. It has been alleged that out of total quantity, the respondent has supplied some 111 bags of 43 grade cement which is only meant for Government approved contractors and not for general public including the complainant. Consequent upon the use of the said cement in the construction of the alleged godown, the roof of the godown started leaking profusely endangering its safety. It has further been alleged that the matter was brought to the notice of the respondent and it was assured by the opposite party that leakage would stop automatically, but it did not. Hence, the complaint, seeking Rs. 1 lakh on account of destruction of law material stored in the godown and further Rs. 1 lakh on account of poor quality of the cement which resulted in unsafe construction entailing the danger of the roof being collapsed or demolished.

By filing reply, the complaint containing the sole allegation of poor quality of the cement supplied by the respondent, who is authorised stockist of Gujarat Ambuja Cement Ltd., has been resisted by the opposite party on grounds of their cement having been duly certified by an independent authority of the Government i.e., Bureau of Indian Standards based on certain specifications which are duly met by their product. The cement before it is offered for sale as an ultimate product, is put under strict physical and chemical test and report taken every day and complied on monthly basis. Certain variations in grade of cement supplied to the appellant as alleged in para-4 of the complaint have also been denied to be true and based on facts. It has also been the contention of the respondent that insofar as the construction of a building is concerned, the cement is only one of the ingredients and not the sole ingredient for proper construction of the building and, therefore, the defect in the construction cannot be attributed to cement only on the ground of its being defective. Rejoinder to the reply has also been filed on behalf of the appellant controverting what has been averred in the reply of the respondent. The allegations of the variation in grade and that of licence Nos. printed on the bags of the cement supplied, have been reiterated.

By way of evidence, only the affidavits of the appellant as well as the respondent are on the record of the case containing allegations and counter allegations without any cogent evidence to substantiate the allegations of the cement in question being defective. Be it stated here that supply of cement in question in terms of quantity has been admitted by the respondent. It is somewhat elementary that in order to succeed the complainant herein has to establish that the cement in question was defective.

3. FROM the evidence and pleadings of the parties on record, we find that no evidence is forthcoming so as to establish the defectiveness of cement which goes to the root of the matter in order to adjudicate upon the controversy between the parties.

The learned Forum below has based its reasoning on the mandatory requirement of Section 13(1)(c) of the Consumer Protection Act, 1986 hereinafter to be called the Act, which makes it obligatory upon the complainant to produce a sample of the alleged defective cement for being sent to the appropriate laboratory for carrying out chemical test or analysis so as to enable the learned District Forum to arrive at a definite conclusion in order to establish the essential ingredients of consumer apathy i.e., deficiency in service and unfair trade practice, for which it has also relied upon the judgment of the National Commission reported as 1994 (2) Consumer Law Today, 225. In other words, barring his own bald assertions in the complaint and the self serving affidavit by way of evidence in support thereof, there is nothing else to establish that the cement supplied by the respondent was defective.

4. HOWEVER, at the hearing of this appeal, the learned Counsel for the appellant has assailed the findings of the District Forum and has shifted the onus on the District Forum for getting the samples of defective cement tested and analysed in an appropriate laboratory, as would be seen from the averments contained in Sub-paras (C) and (D) of the present appeal. We do not find any force in the submission of the learned Counsel. No case has been made out in the complaint of the appellant so as to prove the defectiveness of the cement bags in question; merely bald assertions of defectiveness would not do, as already stated above.

Under Clause (C) of Section 13(1)(c) of the Act, it was incumbent on the complainant to produce a sample of the alleged defective cement before the District Forum so that the same could be sent to the appropriate laboratory after observing the codal formality referred to in the said clause, so as to carry out analysis or test there. Moreover, the matter can be looked at from another angle also, inasmuch the complainant has miserably failed to establish as to how he had worked out the colossal loss of Rs. 2,00,000/- in terms of damage to the law material due to alleged seeping inside the godown and poor quality of the construction due to use of alleged defective cement without there being no expert evidence on record in respect of both these aspects. No authenticated details of the raw material alleged to have been destroyed due to seeping have been furnished nor is there any report of the expert on the poor quality of construction due to alleged defective cement and assessment of loss in quantitative terms claimed at Rs. 1 lakh. Thus, the claim has been put forth merely to be rejected.

For the aforesaid reasons, the impugned order is well based and does not call for interference in appeal. The appeal is accordingly dismissed. Appeal dismissed.