

(2000) 02 NCDRC CK 0016

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

PARAM HANSA

APPELLANT

Vs

DURJAN

RESPONDENT

Date of Decision: Feb. 29, 2000

Citation: 2000 2 CPJ 207 : 2001 1 CLT 267

Hon'ble Judges: K.C.Bhargava , D.D.Bahuguna J.

Final Decision: Appeal disposed of with costs

Judgement

1. THIS is an appeal against the judgment and order dated 20.8.1991 passed by District Consumer Forum, Deoria in Complaint Case No. 29/1990.

2. THE facts of the case stated in brief are that previously one Appeal No. 49/1991 was filed against the order dated 3.11.1990 passed by District Forum, Deoria in Complaint Case No. 29/1990. This case was decided in favour of the complainants. Against the order passed by the District Forum an appeal was heard and was decided by order dated 20.8.1991 by the Commission. THE order of the Commission is on the last page of the order sheet.

It may be mentioned that the complaint was filed by the complainant for either replacing of the pumping set or for refund of Rs. 8,300/- as cost of the machinery and the repairing charges. According to the complainant he purchased the pumping set from opposite party No. 1-Kanpur Engineering Stores, Deoria for a sum of Rs. 8,300/- on 30.11.1987. The pumping set was defective and it was got rejaired by the complainant on different dates spending a total sum of Rs. 2,710/-. Even then the pumping set did not work well. The opposite party contested the case.

The learned District Forum came to the conclusion that the pumping set was defective and it ordered for replacing of the pumping set or to refund a sum of Rs. 8,300/- as cost of the pumping set alongwith a sum of Rs. 1,164/- as repairing charges. This order was appealed against as aforesaid and the appeal was partly allowed to the extent that the repairing charges were not allowed to the appellant and the appeal was partly allowed by this Commission. The rest of the order of the District Forum was maintained.

3. AFTER passing of this order, the execution application was moved by the complainant in which the learned District Forum passed an order after giving notice to the other party that the dealer has not replaced the old pumping set with the new one. Now in this appeal an application was also moved for staying of the order which was passed by the learned District Forum on 23.11.1996.

We have heard the learned Counsel for the parties.

4. AT the outset we may mention that no appeal lies against the order which was originally passed by the learned District Forum, Deoria on 20.8.1991 because against that order an appeal was also filed which was partly allowed. The Commission has specifically dealt with the question of expenses which were alleged to have been incurred by the complainant, but finding that there was no proof of the same, hence it disallowed these expenses. It did not set aside or modify the other finding of the learned District Forum that the pumping set was defective and it should either be replaced or its cost be re-paid. Therefore, the order of the District Forum regarding the replacement of the defective pumping set or for refund of the price was not touched.

Now it has been tried to argue by the learned Counsel for the appellant that the replacement of the pumping set or refund of its price was not ordered by the Commission and other portion of that order was also set aside and the appeal was allowed in toto. While learned Counsel for the respondent has argued that there is no force in this argument.

As we have already pointed out above that the order regarding replacement of the pumping set as well as refund of the price in the alternative was maintained by the

Commission. Hence the dealer or manufacturer was bound to replace the pumping set or to refund the cost. It has further been argued by the learned Counsel for the appellant that only the pump was to be replaced and not the entire set. This argument has no force because this portion of the order of the learned District Forum was not at all modified in the appeal otherwise the cost of the pump or its replacement could have been ordered and not the entire unit known as the pumping set. The pumping set includes engine which is run by diesel or electricity and the pump which lifts water and delivers the same for the purpose required. This fact is also clear from the finding that the entire amount of Rs. 8,300/- was kept intact and was not interfered with by the Commission in its previous order.

5. THUS we find that the appellant was bound to replace the pumping set and when it has not been done so he is liable to refund the entire amount of Rs. 8,300/- awarded by the learned District Forum.

6. IT has been argued by the learned Counsel for the appellant that a sum of Rs. 5,000/- is lying in deposit with the District Forum. There is no evidence on record to support this contention. However, it is ordered that if any amount is in deposit before the learned District Forum then the same shall be paid to the complainant immediately. If that amount has been deposited by way of cheque, then the appellant shall pay the amount and will take back the cheque from the District Forum. If the amount has been deposited in fixed deposit then the fixed deposit shall be returned back to the complainant and the complainant will be entitled to receive the amount of the fixed deposit from the Bank and will also get the interest payable by the Bank on that amount till the encashment at the prevailing rate of interest from time to time.

The rest of the amount of Rs. 3,300/- is to be paid by the appellant to the complainant.

It is not necessary at this stage to enter into the controversy whether the defective pumping set was replaced or not within the time or not, because the controversy has to be settled at rest which is pending for the last ten years.

7. IT is further argued by the learned Counsel for the appellant that no notice before passing of the order in execution was given to the appellant by the learned District Forum. In this appeal before this Commission all the points raised by the appellant have been decided and the notice which was required to be given has served its purpose because the appellant has got the hearing of the petition before this Commission. Now the appellant shall pay the rest of the amount to the complainant within 15 days of the receipt of this order failing which he will have to pay 18% interest on the amount after expiry of 15 days from the date of service of order.

Order

This appeal is disposed of accordingly in terms of the directions mentioned above. The opposite party shall pay the amount of Rs. 8,300/- to the complainant alongwith cost of Rs. 1,000/- of this proceeding. Let the amount already deposited before the District Forum be paid to the complainant as above. If it is not paid within stipulated time then the appellant shall pay interest at the rate of 18% per annum from the date of service of copy of this order on the remaining amount including the cost.

Appeal disposed of with costs.