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**(2004) 01 NCDRC CK 0116**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

SNEHLATA DUGAL

APPELLANT

Vs

APPLE FINANCE LTD.

RESPONDENT

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**Date of Decision:** Jan. 30, 2004

**Citation:** 2005 1 CPJ 196

**Hon'ble Judges:** M.S.Rane , V.K.Data J.

**Advocate:** B.H.Bhalwal

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**Judgement**

1. -THIS matter was heard by us in the past and today it is listed on the board for admission hearing. None is present on behalf of both the O.Ps.

2. IN the circumstances as the dispute is pending since 1997 and as statute viz., Consumer Protection Act, 1986, mandates that Consumer Disputes be disposed of expeditiously, we are proceeding to dispose of this matter on perusal of the material available including written say of the O.Ps. and on hearing the learned Advocates for the complainant.

It is to be stated that both the O.Ps. have filed their written statements and the complainant also filed the affidavit and rejoinder to the written statement of the O.Ps. Few Relevant Facts:

The complainant has filed this complaint claiming replacement of the car which he purchased and which was manufactured by O.P. No. 2, alleging the same was when delivered as a brand new car was defective. She has claimed compensation of Rs. 1 lakh.

3. IT is the case of the complainant that she purchased a Cielo (GAD Passenger Car with A.C. Radio and light apparatus on 17.9.1996 vide Invoice No. 0128/96-97 dated 23.11.1996 for total price of Rs. 6,06,571/- arranging finance from O.P. No. 1. The said car was thereafter registered with the R.T.O. Authorities with Registration No. MH-06-1307.

It is the case of the complainant that, she took possession on 17.9.1996 by arranging payment of its price by availing of loan facility from O.P. No. 1.

4. THE complainant states that she executed necessary documents with regard to the procurement of loan from O.P. No. 1 including Higher Purchase Agreement, copy whereof has been annexed as Exhibit "A" to the complaint.

The complainant proceeds to state that the car did not run satisfactorily and she brought the said facts to the notice of both the O.Ps. by letters dated 9.11.1996 and 18.11.1996, copies whereof are annexed as Exhibit "B" collectively to the complaint.

The complainant says that after getting delivery of the car, she was required to pay loan instalment to O.P. No. 1 from time to time. She claims to have paid a sum of Rs. 3 lakhs.

5. IT is the case that she stopped payment of further installment, as the car did not function satisfactorily and despite her letters and complaints to the O.P. nothing was done to have the same repaired.

6. SHE has also narrated one instance of high handedness on the part of O.Ps. However we do not want to dwell over the said aspect in detail. It is in these

circumstances that the complaint has been filed.

O.Ps. who were served with show cause notice have responded in filing written statement. As far as O.P. No. 1 is concerned, as is the case, since the grievance of the complainant is about non satisfactory functioning of the car related to manufacturing defects, O.P. Nos. 1 as financier will not be necessary to be brought and involved in the picture.

However, O.P. No. 1 in their written statement have narrated certain facts about failure on the part of the complainant to discharge his obligation under Hire Purchase Agreement of repayment of loan amount and adoption of criminal prosecution against complainant under 138 Negotiable Instruments Act in the Magistrate's Court in Mumbai, by it, for bouncing of cheques given by the complainant.

7. AS far as O.P. No. 2 are concerned, written statement has been filed on their behalf on 29.6.1999 which is in the record and proceedings.

O.P. No. 2 has denied the case and claim of the complainant that the car was defective etc. It is asserted that the car was sold to the complainant through dealer M/s. Shakti Automobiles Enterprises Mumbai, from whom the complainant took delivery of brand new car after inspecting the same thoroughly and on satisfaction with its condition. They have denied any defect or otherwise. In para 3 of the written statement, this is what it is averred.

"It is submitted that the supervisors of M/s. Shakti Automotive inspected the car of the complainant and found that there was several dents and scratches across the body of the car. The specific dents and scratches were entered into the repair order form. It is submitted that the said works were duly attended by the supervisors/technicians of M/s. Shakti Automotive and the car was collected by the complainant. It is, however, submitted that the vehicle had no defects much less any manufacturing defect as is evident by the repair order form(s). A copy of repair order form of FASSI and other repair forms dated 10.3.1997 and 17.3.1997 are annexed herewith and marked as Annexures A and A-1". With this plea the O.P. No. 2 have also denied their liability case as made in the complainant. The complainant had filed rejoinder on 30.11.1999 to the written statement of the O.Ps. and as far as O.P. No. 2 is concerned, as dealt with the annexure which we have reproduced in the paragraph above and we will quote what they have stated. Further more, the first repair order form annexed to the said reply mentions the registration No. of the car as UP/UB 9976 instead of MH 06-F-1307 (which is the true Regn. No. of the car).

Therefore, it is evident that the respondent No. 2 have delivered an old car to the complainant. However, this repair sheets make it clear that in fact there is defect for which repair had to be carried out if the car did not have any defect as contended by respondent No. 2 what was the occasion for M/s. Shakti Automotive Enterprises the Authorised Sale and Service Dealer of the respondent No. 2 to have prepared the Repaid Order Forms. The respondent No. 2 have fabricated the signature at the bottom of the first form annexed to the said reply, it appears that in the second and the third forms there is no signature at all and the third form there is no signature at all and the several boxes in the said two forms are blank. In any event, the fact remains that I have not signed that work had been done to my satisfaction. The fabrication in the first form is clear from the fact that the date of the form is 24th September, 1996 whereas the purported signature is on 26th October, 1996".

8. THE version of O.P. No. 2 and that of the complainant in the rejoinder reproduced above, it becomes quite evident that the position as explained by O.P. No. 2 in the written statement pertains to car which is not the subject matter of the dispute herein. Inasmuch as explained by the complainant in the reproduced portion above, the number of the car of the complainant is MH-06-F-1307 whereas the document relied upon by the O.P. No. 2 pertains to the registration No. UP/UB/9976.

It is most important to note that the O.P. No. 2 explained and clarified the said position. This is more so when the complainant has pointed out obvious discrepancies as noticed herein above.

It, therefore, clearly emerges that the O.P. No. 2 have no answer to the grievance of the complainant with regard to her car in question. O.P. No. 2 have instead. Have made reference to the car which is not the subject matter of the complaint herein. Despite, the complainant explained the position pointing out the discrepancies as above.

9. SINCE the grievance of the complainant as far as car bearing registration No. MH-06-F-1307 which is the subject matter of the dispute herein has not been dealt with by the O.P. No. 2. It is to be held that the grievance of the complainant with regard to the said car requires to be accepted. Hence we hold that the vehicle in the subject matter of the dispute herein supplied to the complainant was defective and

that being so, O.P. No. 2 as manufacturer are held responsible for rectification of the defects by substituting new car equivalent to the car in question. ORDER

1. Complaint is allowed and O.P. No. 2 are ordered to replace the car bearing No. MH-06-1307 of Cielo make to the complainant. 2. Complainant shall on delivery of the vehicle as above, shall surrender the car being the subject matter of the dispute herein to O.P. No. 2. 3. O.P. No. 2 shall also pay compensation to the complainant quantified to Rs. 50,000/-. 4. Complainant shall also arrange to clear the dues of O.P. No. 1 with regard to loan liability and produce the proof in respect thereof in a form of NOC of O.P. No. 1 before substitution of the vehicle as above. 5. As far this complaint is concerned, no order as to cost. 6. Office to furnish copies of the order to the parties.

Complaint allowed.