

(1993) 04 NCDRC CK 0042

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

MOLUGU NAGARAJU @ KRISHNA
RAO

APPELLANT

Vs

BONDA RAMA RAO

RESPONDENT

Date of Decision: April 29, 1993

Citation: 1993 3 CPJ 1419

Hon'ble Judges: A.Venkatarami Reddy , Venkateswara Rao , J.Ananda Lakshmi J.

Final Decision: Appeal allowed

Judgement

1. -THE Court made the following Order:- THE Complainant is the complainant in C.D. No. 38 of 1990 in the District Forum, Vizianagaram.

2. THE complainant joined as a member of the scheme, Sri Lakshmi Enterprises, Swathi Group, which was inaugurated on 5.6.1986. THE group consists of 100 members. After payment of 15 monthly instalments the Opp. Party herein did not heed to the request of the complainant to deliver colour T.V. and he also refused to refund the amount Rs. 3,000/- with interest. THErefore, the complainant claimed the said sum of Rs. 3000/- with interest and in all Rs. 98,397/- towards damages, mental agony and defamation.

The version of the opposite party is that the father of the opposite party was subscriber of two chits run by the complainant on monthly instalment of Rs. 200/- and on that account a sum of Rs. 2960/- was payable by the complainant to the opposite party. The Complainant was also liable to pay under the katha account in the cloth shop of the father of the opposite party a sum of Rs. 1094.50 ps. Since the complainant paid a sum of Rs. 3000/- and expressed his inability to pay the

instalments, on 15.11.88 he asked the opposite party to adjust the amount due to the father of the opposite party and agreed to pay the remaining amount of Rs. 1054.50, after adjusting the said amount, with interest.

The District Forum found that in these proceedings under the Consumer Protection Act, 1986 it cannot direct the adjustment of the amounts said to be due from the complainant to the father of the opposite party and the remedy of the complainant is by way of Civil Suit. It found on the basis of the pass book entries that the complainant has paid a sum of Rs. 3000/- to the opposite party towards 15 instalments. But it was held by the District Forum that the payments made by the complainant within three years prior to 18.5.90, the date of the filing of the complainant can only be recovered in an ordinary Civil Court and that therefore, ordered refund of Rs. 800/- being the amounts paid on 15.6.87 and on 10.9.87, which was within the period of three years prior to the filing of the complaint with interest at 12% p.a. from 18.5.90 till realisation and for costs of Rs. 100/-.

3. DISSATISFIED with the said order the complainant preferred this appeal. It is submitted by the learned Counsel for the Complainant that the District Forum erred in holding that the claim for refund of the payments made prior to 16.6.87 are barred by limitation.

It is submitted that under condition No. 10 of the terms and conditions of the Shri Lakshmi Enterprises, Swathi, group, the cause of action for recovering the amounts paid by the complainant arose only after the completion of the scheme. Condition No. 10 is to the effect that those members who have not regularly paid the instalments are entitled for refund of the amount paid after deducting service charges after completion of the scheme. In the instant case, the scheme was inaugurated on 5.6.86 and subscription was payable for the period of 30 months and that therefore the scheme will come to close by the 2nd of 5th December, 1988. Therefore, the cause of action for claiming of the amount from the opposite party arose by the end of 5.12.1988. Counting the period of three years from that day when all the instalments are to be paid by the complainant and as the complaint was filed on 18.5.90 the claim for refund of the amount of 15 instalments paid by the complainant is not barred by time. Accordingly, the order of the District Forum is set aside. Under Condition No. 10 of the Sri Lakshmi Enterprises, Swathi Group, the defaulter subscriber is entitled for refund of the amount at the end of the scheme after deducting the service charges. In the instant case, it is not in dispute that the complainant paid Rs. 3000/- towards fifteen instalments. The complainant is therefore entitled for refund of the said sum of Rs. 3000/- after deducting service

charges payable by the complainant to the opposite party. The complainant is also entitled to interest on the said sum of Rs. 3000/- minus service charges at the rate of 12% p.a. from 18.5.90 till the date of realisation. He is also entitled to the costs of Rs. 100/- awarded by the District Forum.

4. IN the result the appeal is allowed to the extent above mentioned and the opposite party is directed to pay Rs. 3000/- to the complainant after deducting service charges payable by the complainant. The opposite party is directed to pay interest on Rs. 3000/- minus service charges at the rate of 12% p.a. from 18.5.90 till the date of realisation and also costs of Rs. 100/- awarded by the District Forum. No order as to costs in this appeal.

It is represented by the learned Counsel appearing for the opposite party that certain amounts were paid by the opposite party to the complainant. The amounts so paid shall be taken into account in arriving at the balance of the amount payable pursuant to this order. Appeal allowed. _____