

Makhan Goon Vs Jitendra Nath Roy

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Oct. 12, 2011

Citation: 2011 4 CPJ 619

Hon'ble Judges: V.B.Gupta , Suresh Chandra J.

Final Decision: Revision Petition dismissed.

Judgement

1. BY way of present revision petition, there is challenge to order dated 30.1.2006 passed by State Consumer Disputes Redressal Commission,

Guwahati (for short "State Commission) vide which appeal of the petitioner was dismissed.

2. BRIEF facts are that, respondent No. 2 (opposite party No. 1 before the District Forum) is a manufacturer of offset printing machinery and

spare parts with head office at Baroda and petitioner (opposite party No. 2 before the District Forum) is the authorized agent of. respondent No.

2.

3. RESPONDENT No. 1/complainant, purchased an Image 1117 Single Colour Offset Machine from respondent No. 2 through its agent

petitioner, against a consideration amount of Rs. 2,82,900, out of which he took an amount of Rs. 1,95,000 as a medium term loan from Union

Bank of India, Simlaguri Branch. Balance amount was paid by respondent No. 1 himself. The machine was installed on 26.6.2001. But on the very

same day of installation, it is alleged that machine was found to be defective. The mechanic deputed by petitioner reported that there were inherent

defects in the machine. Thereafter, respondent No. 1 contacted the petitioner, who in turn deputed their authorized mechanic to inspect the

defective machine on 9.7.2001 and reported that the same was completely out of order. Respondent No. 1 asked the petitioner for replacement of

the machine with compensation of Rs. 20,000 per month with effect from 26.6.2001. Petitioner wrote to respondent No. 2 and requested him to

deal with the case of respondent No. 1. However, such request yielded no result. Finding no alternative, respondent No. 1 wrote a letter to

respondent No. 2 on 21.11.2001, with copy to the petitioner, disclosing his problems and asked him to replace the machine immediately with the

compensation of Rs. 20,000 per month from the day of its installation. On 30.11.2001, petitioner wrote a letter to respondent No. 2 and drew his

attention to the facts that machine suffers manifest defects from its inception and requested the latter to meet respondent No. 1. Again on

9.1.2002, petitioner wrote a letter to respondent No. 2 with copy to respondent No. 1, to settle the dispute, but in vain. Finding no way out

respondent No. 1 filed a complaint before District Forum with a prayer for refund of the cost of the machine amounting to Rs. 2,82,900 with

compensation of Rs. 20,000 p.m. from the day of installation of the machine, with cost and interest till realization.

4. RESPONDENT No. 2 did not contest the case.

5. HOWEVER, petitioner filed its written statement and resisted the claim for want of cause of action, inasmuch as it is alleged that no legal action

for claim is made out in the petition. It further stated that the complaint suffers from misjoinder of parties inasmuch as petitioner is an agent of

respondent No. 2 and it has got no obligation; to meet the grievance of respondent No. 1. Denying the loss of the business, petitioner prayed for

dismissal of the complaint.

6. DISTRICT Forum vide its order dated 18.7.2003, allowed the complaint against the petitioner as well as respondent No. 2 and directed them

to refund the cost of machine amounting to Rs. 2,82,900 with cost and with interest @ 9% p.a. from the day of its installation, i.e. from 26.2.2001,

till realization.

7. AGGRIEVED by the order of District Forum, petitioner filed an appeal before the State Commission. Vide impugned order, appeal of the

petitioner was dismissed.

8. HENCE, this revision before us.

9. NOTICE of this revision was issued to both the respondents. Respondent No. 2 was served by publication but it did not appear and as such

has been proceeded ex parte.

10. WE have heard learned Counsel for the petitioner and respondent No. 1.

11. IT has been contended by learned Counsel for the petitioner that petitioner is only the authorized dealer of respondent No. 2 and he cannot be

held responsible for the act of respondent No. 2. Petitioner was agent of respondent No. 2 and there was agent-principal relationship and as such

being the agent, he is not liable to pay the value of the machine. Moreover, petitioner had not been the beneficiary but it was respondent No. 2,

who had received the price of the machine from respondent No. 1. Hence, the financial liability, if any, is of the respondent No. 2.

12. ON the other hand, it is contended by learned Counsel for respondent No. 1 that, respondent No. 1 has purchased the machine from

petitioner and payment was also made to the petitioner. The machine was also installed by the petitioner and as such petitioner and respondent No.

2, are jointly and severally liable for making the payment.

13. PETITIONER, in para 7 of its written statement has admitted that there were some defects in the machine supplied to the respondent No. 1,

however, the same were rectified. Para 7 of the written statement reads as under;

7. That the averments made in para 4 of the petition saying that on the very day of its installation on 26.6.2001, the machine was found defective.

But the mechanic deputed by the opposite party No. 2 remarked that there were defects in the machine are denied by the opposite party and he

had no such information. However, due to transit from a distant place there might take place some minor defects, which were rectified by the

mechanic and found seriously defective the complainant should have repudiated the contract by refusing to instal the machine. But once, the

complainant installed it and found running the alleged defect on 26.6.2001 is of no avail to him.

14. THUS, petitioner himself admits that there was some minor defects at the time of installation though the same was rectified by the mechanic.

This admission made by petitioner goes on to show that respondent No. 1 has been supplied with a defective machine in the first instance.

15. DISTRICT Forum, as per following findings held that defective machine was supplied to respondent No. 1:

The discussions as made above with reference to the oral testimony as well as the documents inducted into evidence more particularly the report

of the mechanic under Ext. 3 clearly shows that the Image 1117 Single Colour Offset Printing Machine which was purchased by the complainant

from the opposite party No. 1 through the opposite party No. 2 on Bank loan, suffers from inherent defect from the day of its installation at the

premises of the complainant i.e. on 26.6.2001. Therefore, the said evidence stands undemolished inasmuch as the contesting opposite party No. 2

could not impeach such evidence and, thus, it inspires great confidence that the machine in fact was suffering from inherent defect which requires

replacement, but was done by the opposite parties causing great hardship and immense loss to the complainant.

It further held;

The complainant is found running from pillar to post to get his grievances redressed through the opposite parties, but it yielded no results. On the

other hand, one can easily imagine the responsibility on the part of the complainant to liquidate the loan to the Bank with interest. He purchased the

machine with the high hope that after retirement, he would earn something for his livelihood, which prompted him to take loan from the Bank on

interest. But so unfortunate, the complainant was, the machine was found having inherent defect from its very installation for which he could not run

it and start his business and earn his livelihood. On the other hand, it becomes a liability to him as he is bound to pay the interest for the loan he

obtained from the Bank, for his fault of his own. The opposite parties all along are found giving deaf ear to the problems of the complainant.

Thousands contemplate to carry out business with high hope to earn livelihood and this inspired them to take loan from the Bank on interest. But

they are found betrayed by the institution, like opposite parties inasmuch as they are found not interested to replace the defective machine. They

are found to earn money and profit without any duty cast on them on the consumers. This cannot be allowed to continue and the interference of the

Court is required. Otherwise, the perception of law would start ceasing and the right of the complainant would start withering unless it is redressed.

Had the machine been found all right from the day of its inception, it could have give some profit to the complainant out of which he would earn his

livelihood and to pay off the loan with interest to the Bank. He could not do it due to the callous attitude of the opposite parties. Therefore, he

sought replacement of the machine and alternatively urged upon to get back the cost of the machine with compensation and cost. The opposite

parties are found giving a deaf ear to the complainant and failed to replace even the defective parts of the machine least to say about the entire

machine.

16. ABOVE findings of the District Forum were affirmed by the State Commission. We do not find any reason to disagree with the findings of

Fora below and no legal issue is involved in this revision petition.

17. IT is well settled that under Section 21(b) of the Consumer Protection Act, 1986, scope of revisional jurisdiction is very limited.

18. RECENTLY, Hon"ble Supreme Court in Mrs. Rubi (Chandra) Dutta v. M/s. United India Insurance Co. Ltd., II (2011) CPJ 19 (SC)=IV

(2011) SLT 303=2011 (3) Scale 654, has observed:

Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which the said

power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set

aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission

to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some

legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts.

This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the

jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view

could have been taken by setting aside the concurrent findings of two Fora.

19. IT is also well settled that no leniency should be shown to such type of litigants, who in order to cover up their own fault and negligence goes

on filing meritless petitions in different Foras.

20. THUS, no jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21(b) of the Act.

Since, two Fora below have given detailed and reasoned orders which does not call for any interference nor they suffer from any infirmity or

erroneous exercise of jurisdiction. Thus, present petition is hereby, dismissed with costs of Rs. 10,000 (Rupees ten thousand only).

21. PETITIONER is directed to deposit the costs of Rs. 10,000 in the Consumer Legal Aid Account of this Commission, within four weeks from

today. In case, petitioner fails to deposit the said cost within the prescribed period, then he shall also be liable to pay interest @ 9% p.a., till

realization.

22. LIST on 18.11.2011 for compliance. Revision Petition dismissed.