

(2011) 07 CAL CK 0076

Calcutta High Court

Case No: C.O. No. 158 of 2011

Great Eastern Appliances Pvt.
Ltd.

APPELLANT

Vs

Santosh Kumar Kanodia @ S.K.
Kanodia

RESPONDENT

Date of Decision: July 8, 2011

Acts Referred:

- Constitution of India, 1950 - Article 227
- Consumer Protection Act, 1986 - Section 12

Citation: (2011) 4 CHN 166

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Advocate: U.C. Jha and Md. Adnan Ahamed, for the Appellant;

Judgement

Joymalya Bagchi, J.

This is an application under Article 227 of the Constitution of India, inter alia, challenging the order dated 6th May, 2010 passed by the learned State Consumer Disputes Redressal Commission, West Bengal (hereinafter referred to as the "State Commission") in S.C. Case No. FA/462/2009 confirming the order No. 13 dated 29th October, 2009 passed by the learned Calcutta District Consumer Disputes Redressal Forum Unit I (hereinafter referred to as the "District Commission") in C.D.F. Unit I case No. 115/2008.

2. The factual matrix giving rise to the instant litigation is as follows

The respondent No. 1/complainant (hereinafter referred to as "the respondent") being attracted by an advertisement issued by the petitioner/ opposite party No. 1 (hereinafter referred to as "the petitioner") and intending to purchase a Microwave Oven having grill, baking and toast facilities, on or about 23.12.2006, visited the office/showroom of the petitioner. The sales personnel of the petitioner persuaded

the respondent and his family members to buy the Microwave Oven of Videocon having model No. VC3300. They assured the respondent that after sales service would be rendered by Videocon Industry Limited, the proforma respondent herein, through its local service centres and the same was promised to be of the highest standard. The respondent accordingly paid a consolidated price of Rs. 8,300/- and the petitioner issued an invoice being tax credit memo bearing No. AB0898 dated 23.12.1996. The Microwave Oven was delivered by the petitioner on 23.12.2006 and it worked satisfactorily upto March, 2007 but suddenly stopped functioning thereafter. Complaints were made to the petitioner by the respondent in this regard. Pursuant to such complaints, representatives of the petitioner visited the residence of the respondent and it was reported by their service engineers that the printed circuit bearing (PCB for short) had become dead and that the same required replacement.

3. However, no steps were taken by the petitioner to repair the said Microwave Oven or replace the same.

4. Finally, in October, 2007, the engineers of the petitioner confirmed that the Microwave Oven was a defective one and the same required a complete replacement.

5. Thereafter, on 23rd October, 2007, under a challan dated 16th October, 2007 the petitioner replaced the said Microwave Oven with a new one. In spite of such replacement, again on and from 24th February, 2008, the new Microwave Oven stopped functioning. This fact was reported by the respondent to the petitioner, but no steps were taken to rectify the fault in the defective machine. Only on one occasion, an engineer of the petitioner examined the replaced Microwave Oven and confirmed that the said Microwave Oven has become defective and he assured the respondent that he would put in a requisition for supplying a new Microwave Oven. Thereafter, time and again the respondent approached the petitioner and was assured by the petitioner that they would look into the matter, but no steps were taken. Finally, on 7th March, 2008 one Miss Namita, an employee of the petitioner assured the respondent that on or before 10th March, 2008 the said Microwave Oven would either be repaired or be replaced with a new one. In spite of such representation no steps were taken to replace the defective Microwave Oven.

6. The respondent being a consumer of the aforesaid product having purchased the same from the petitioner, on or about 17.04.2008 filed a petition u/s 12 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act of 1986") against the petitioner and the proforma respondent herein, inter alia, praying for the following reliefs :

a) The petitioner and the proforma respondent herein be directed to refund to the respondent herein the said sum of Rs. 8,300/- (Rupees Eight Thousand & Three Hundred) only together with interest thereon at the rate of 24% per annum from the

23rd December, 2006 till the date of effecting refund;

b) The petitioner and the proforma respondent herein be directed to pay jointly or severally to the respondent herein the sum of Rs. 1,00,000/- (Rupees One Lakh) only on account of damages and mental agony suffered by the complainant;

c) Interest be directed to be paid at the rate of 18% per annum on the sum awarded by this learned Forum against the petitioner and the proforma respondent herein from the date of filing of this petition till its realization;

d) An order of injunction be passed restraining the petitioner and the proforma respondent herein as also all other whole sellers, retailers and dealers of the proforma respondent from selling the Videocon Microwave Oven Model No. VC3300 to any one;