

(2003) 12 CAL CK 0043

Calcutta High Court

Case No: C.O. No. 872 of 2000

Debal Deb (Dr.)

APPELLANT

Vs

President, Calcutta District
Consumer Disputes Redressal
Forum

RESPONDENT

Date of Decision: Dec. 2, 2003

Citation: (2004) 1 ILR (Cal) 167

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: Ambar Majumdar, Debapriya Gupta and Pranab Kr. Chatterjee, for the Appellant;

Judgement

Amitava Lala, J.

The original order as passed by the District Consumer Redressal Forum on November 17, 1994 is that the opposite party shall either repair the computer in question within two weeks or take back the machine on refund of the cost of Rs. 27,000/- with 12% interest from the date of purchase till the date of refund and cost of Rs. 500/- to the complainant failing which penal action will be taken.

2. An appeal was preferred from such order before the State Consumer Forum and thereafter to the National Forum. The amount of cost was increased but the order of the Calcutta District Forum was upheld. Now, at the time of execution, the time to repair was extended by the Calcutta District Forum taking a plea that the time which has been given earlier by the District Forum is no more available. I am of the view that such observation is totally wrong in nature. If any appeal is proceeded from an original order then it will remain in force until and unless the finality is reached by the Appellate Forum. It would have been proper for the District Forum that the time is given for two weeks failing which a direction for taking the original order will be given but instead of doing so he wrongly and erroneously extended the time period to accommodate the opposite party at the cost of the complainant. This should not

be taken lightly. Further a Bench of this Court was pleased to direct the opposite party to take appropriate step to repair whereunder a report has been furnished by May 9, 2001. It was little like "No Hard Disk and Ram is found in the machine". Thus, neither the replacement was caused nor the repairing as directed by the court in absence of the material could have been made. Therefore, there is no other alternative but for the contesting Respondent to refund the money. The principle is higher court may modify the order to accommodate a party but court or forum of parallel jurisdiction at the time of execution cannot go beyond the original order.

3. Therefore, having heard the Learned Counsel appearing for the Petitioner, I am of the view that the order as passed by the Calcutta District Forum on March 14, 2000 cannot be sustained. Therefore, the same is set aside. The application is, thus, disposed of. There will be no order as to costs.

4. As a consequential effect, the Petitioner will be entitled to get the cost assessed at Rs. 27,000/- with simple interest at the rate of 12% as calculated upto November 18, 2003. From the statement as shown before this Court, the total amount is Rs. 56,160/-. However, the forum concerned is entitled to take into account such figure or calculate in own way and give necessary direction for payment. The Petitioner will also be entitled to cost, if any, as directed.

5. The statement of amount and service cell report with letter dated May 9, 2001 filed in court today be kept with the record. The Petitioner will be at liberty to produce copies of the same in the forum.

6. Let urgent xerox certified copy of this order, if applied for, be given to the Learned Counsel for the Petitioner within the period of a fortnight from the date of putting the requisites.