

The Post Master Rupnagar and Another Vs. Balbir Singh

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Court : Punjab State Consumer Disputes Redressal Commission SCDRC
Chandigarh

Decided On : Feb-20-2013

Judge : The Honourable Mr. Inderjit Kaushik, Presiding Member & the Honourable Mr. Jasbir Singh Gill, Member

Appeal No. : First Appeal No. 1067 of 2009

Appellant : The Post Master Rupnagar and Another

Respondent : Balbir Singh

Judgement :

Inderjit Kaushik, Presiding Member

1. The Post Master, Post Office, Gharuan and another, appellants/opposite parties (In short the appellants) have filed this appeal against the order dated 19.06.2009 passed by the learned District Consumer Disputes Redressal Forum, Ropar (in short the District Forum).

2. Facts in brief are that Balbir Singh, respondent/complainant (hereinafter called as the respondent) filed a complaint under section 12 of the Consumer Protection Act, 1986 (in short, the Act), narrating that his wife Smt. Paramjit Kaur is residing in U.K. and on 22.12.2008, said Paramjit Kaur sent a registered parcel from England vide no.3116725 and the said parcel reached the Post Office, Gharuan, Tehsil Rupnagar, District Rupnagar. The respondent received a telephonic

message from England that Paramjit Kaur has sent a registered parcel and the respondent went to Post Office, Gharuan and at that time, the said registered parcel was found opened and the respondent requested the Postmaster, Gharuan that the said parcel was open and mobile make Nokia No.85 was missing from the said parcel. The Postmaster told the respondent that the said parcel reached Post Office, Gharuan in already opened condition.

3. The respondent approached and inquired from Railway Post Office, Rupnagar, but the officials of Railway Post Office, Rupnagar told the respondent that they have received the said parcel with seals and they have sent the same to Post Office, Gharuan, Tehsil Kharar, District Rupnagar. Thereafter, the respondent gave an application to the Senior Supdt., Post Office, Chandigarh on 01.01.2009, but no action was taken. The respondent served a legal notice dated 19.01.2009 on appellant no.1 and appellant no.1 sent a letter in this regard to appellant no.2 and the appellants sent reply dated 05.02.2009, stating that the inquiry in the matter is to be carried out at different quarters by different authorities and the inquiry is likely to take some more time for completion and the reply to the legal notice of the respondent will be given on completion of department inquiry. The appellants have not taken any action and delayed the matter and there is deficiency in service on the part of the appellants and the respondent suffered the loss financially as well as mental tension and agony.

4. It was prayed that the appellants may be directed to supply new set of Nokia mobile to the respondent and if the appellants failed to supply new Nokia mobile set, then they be directed to pay Rs.27,000/- as price of the mobile, and to pay Rs.50,000/ as loss/damages along with interest @ 18% p.a. till realization.

5. In the written version filed on behalf of the appellants, preliminary objections were taken that the complaint is not maintainable in view of section 6 of the Indian Postal Act, 1898. The respondent is not a consumer of the appellants and the respondent has not come to the Forum with cleans hands. He has misled the Forum by producing fake customer agreement no.11711201208155825 which is signed by Ms Kulwinder Kaur, whereas the respondent has stated that the packet was sent by Smt. Paramjit Kaur and it seems that the respondent has tried to use

the mobile invoice of someone else. Section 3 of the Act was in addition to and not in derogation of existing Act in force and it has been held by the Honble National Commission that if the remedy is barred under any other Act, then the various Forums constituted under the Act cannot grant the remedy prayed for. The complaint is bad for mis-joinder and non-joinder of necessary parties.

6. On merits, it was admitted that an unregistered packet bearing no.3-3116725 was received at Gharuan through Railway Mail Service Office, Ropar and intimation was sent to the addressee through delivery staff to collect the article personally from the post office and the respondent visited Gharuan Post Office in the afternoon on 31.12.2008, but on seeing the condition of the packet, he refused to take its delivery alleging that it contained one mobile phone which was not present in the packet. The said article is still lying undelivered in the Gharuan Post Office. It was also admitted that an application dated 01.01.2009 was received in the office of SSPs, Chandigarh to enquire into the matter and the inquiry was conducted at both Railway Mail Service, Ropar and Gharuan and it was found that the article was handled safe at Ropar RMS. A notice dated 19.01.2009 was also received by appellant no.1 and appellant no.1 sent reply to this notice on 05.02.2009 and thereafter an inquiry was got conducted at Ropar RMS and it was revealed that the said article was received as unregistered packet from L bag of Ambala RMS/3 dated 26.12.2008 in good and safe condition. The said article was dispatched by attaching the order slip with remarks in the parcel and the packet was sent in safe condition. There is no deficiency in service on the part of the appellants. Had there been a Nokia mobile inside the packet, the owner would have sent through registered post or insured post and not through unregistered packet and the respondent is not entitled to any compensation. Other allegations were denied and it was prayed that the complaint may be dismissed with costs.

7. Parties led evidence in support of their respective contentions by way of affidavits and documents.

8. After going through the documents and material placed on file and after hearing the learned counsel for the parties, the learned District Forum observed that the version of the respondent that the parcel did not contain mobile Nokia 85 was

given by him on that very day when the delivery of packet was refused by him. There is no specific denial of the appellants and the version of the respondent is deemed to have been admitted. The respondent has placed on record some documents concerning the purchase of the mobile set in question in London. No doubt, the mobile set appears to have been purchased by one Kulwinder Kaur on 20.12.2008, but the perusal of invoice Ex.C-2 shows that it was sent by Paramjit Kaur on 22.12.2008 vide receipts Ex.C-7 and Ex.C-8. As per Ex.C-7, the parcel was sent on 22.12.2008 and the weight of the parcel is written as 0.600 kgs. and it goes in consonance with the version of the respondent that something of that weight may be the mobile phone which was sent through that parcel. The appellants have not given any version as to what was contained in that parcel. The complaint was allowed and the appellants were directed to pay Rs.27,000/- as cost of the mobile phone Nokia 85 to the respondent and Rs.3,000/- as compensation and costs of litigation within 30 days of receipt of copy of the order, failing which interest @ 9% p.a. on above amounts was to be paid.

9. Aggrieved by the impugned order dated 19.06.2009, the appellants have come up in appeal.

10. We have gone through the pleadings of the parties, perused the record of the learned District Forum and have heard the arguments advanced by the learned counsel for the appellant.

11. Neither the counsel for the respondent nor anybody else on his behalf appeared at the time of arguments.

12. As per the respondent, his wife Smt. Paramjit Kaur, who is residing in U.K., sent a registered parcel from England on 22.12.2008 vide no.3116725 and the said parcel reached the Post Office, Gharuan, Tehsil Ropar, District Ropar. On intimation, he went to the said Post Office and found that the said registered parcel was opened and he informed the Postmaster, Gharuan that the parcel was opened and the mobile Nokia-85 was missing from the said parcel. The appellants in the reply admitted that an unregistered packet bearing no.3-3116725 was received at Gharuan through Railway Mail Service Office, Ropar. The intimation was sent to the respondent to collect the article personally from the said post office

and the respondent came to Gharuan Post Office on 31.12.2008, but on seeing the condition of the packet, he refused to take its delivery on the ground that the said parcel was containing a mobile phone which was not in the pack. The said article is still lying undelivered in the Gharuan Post Office. It was further admitted that an inquiry was conducted at Ropar RMS and the inquiry report reveals that the said article was received as unregistered packet from L bag of Ambala RMS/3 dated 26.12.2008 in good and safe condition. The said article was dispatched by attaching the order slip with remarks in the parcel and the packet was sent in safe custody. Ex.C-2 is the insurance Registration and Service Agreement Form as per which Kulwinder Kaur purchased one NOK N85 VODA C Black STD IMEI No.355708021998801 and SIM No.894410003006153255176 and the cover start date (date of purchase) was 20th December, 2008. Ex.C-3 is the purchase summary of the said mobile phone. As per receipt Ex.C-7, the parcel was dispatched from U.K. on 22.12.2008 and the destination was India and weight was 0.600 kgs. Ex.C-8 is the receipt. Ex.C-13 is the Inquiry Report and the said article was in good and safe condition and the same was dispatched to the addressee.

13. Thus, from the Inquiry Report, Ex.C-13/Ex.R-2, it is clear that the parcel was received as unregistered packet from L bag Ambala RMS/3 dated 26.12.2008 in good and safe condition and the same was dispatched to the addressee with the remarks as One foreign packet in safe and sound condition.

14. The parcel when received at Post Office, Gharuan was found opened and as per the version of the respondent, the said Nokia phone was missing and he immediately brought it to the notice of the Postmaster. The said parcel was opened during transit from Ropar RMS to Post Office, Gharuan. Thus, the article was missing and taken out by some official of the appellants fraudulently in order to cause loss to the respondent. The counsel for the appellants relied upon Section-6 of the India Post Office Act, 1898 and argued that the Govt. is not responsible for the reason of any loss, misdelivery or delay or damage to any postal articles. This argument is not tenable, because the parcel from a foreign country i.e. U.K. was received in safe condition at RMS, Ropar from Ambala and during the course of it being brought to Gharuan Post Office, the parcel was opened.

15. As per the version of the respondent, the mobile Nokia-85 was in the parcel, but the documents placed on record do not prove so because there is no material to connect the said Nokia mobile, which was purchased by said Kulwinder Kaur, with Paramjit Kaur, as no affidavit or any document of said Kulwinder Kaur is on file to prove that the said Nokia mobile phone was given by her to Paramjit Kaur, wife of the respondent. As discussed above, the parcel has been opened and this was opened with an intention to cause loss to the respondent willfully by the officials of the appellants and the authorities of the Honble National Commission i.e. S. Parameshwar Vs Chief Post Master, Revision Petition No.4603 of 2010 decided on 10th October, 2012 and Union of India and Ors. Vs M.L. Bora, Revision Petition No.2411 of 2006 decided on 13.10.2010, relied upon by the learned counsel for the appellants are not applicable. As discussed above, the evidence of the said Nokia mobile No.85 handed over by said Kulwinder Kaur to Paramjit Kaur is missing, as such, no cost of the said mobile can be awarded and the impugned order passed by the District Forum, awarding the cost of the same is against the facts and evidence on record and is liable to be set aside.

16. In view of above discussion, the appeal filed by the appellants is partly accepted and the impugned order under appeal dated 19.06.2009 passed by the District Forum, directing the appellants to pay Rs.27,000/- as cost of the mobile phone Nokia-85 to the respondent, is set aside. Remaining part of the impugned order is affirmed and upheld.

17. The appellants had deposited an amount of Rs.15,000/- with this Commission at the time of filing of the appeal. Out of this amount, Rs.3,000/- (awarded by the District Forum as compensation) be remitted by the registry to the respondent/complainant by way of a crossed cheque/demand draft after the expiry of 45 days under intimation to the learned District Forum and to the appellants. The entire remaining amount with interest accrued thereon, if any, be remitted by the registry to the appellant no.2 by way of a crossed cheque/demand draft after the expiry of 45 days.

18. The arguments in this appeal were heard on 08.02.2013 and the order was reserved. Now the order be communicated to the parties.

19. The appeal could not be decided within the stipulated timeframe due to heavy pendency of court cases.

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