

Shekhar Gupta, Prop. Integrated Solution Vs. Deepak Gupta and Another

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Court : Chhattisgarh State Consumer Disputes Redressal Commission SCDRC Raipur

Decided On : Nov-05-2012

Judge : S.C. Vyas, President & the Honourable Mr. V.K. Patil, Member

Appeal No. : Appeal No. FA/12/318

Appellant : Shekhar Gupta, Prop. Integrated Solution

Respondent : Deepak Gupta and Another

Judgement :

1. This appeal is directed against order dated 05.06.2012 of District Consumer Disputes Redressal Forum, Sarguja Ambikapur (C.G.) (hereinafter called District Forum for short), passed in Complaint Case No.127/2011, whereby agreeing with the allegation of deficiency in service on the part of appellant herein, made by the respondent No.1/complainant, appellant has been directed to return Nokia mobile of the respondent No.1/complainant to him within a period of one month from the date of order after due repair and in case of failure, to pay cost of hand set Rs.8,000/to the complainant. Apart from it, Rs.1,000/as compensation for mental agony and Rs.500/as cost of litigation, has also been awarded against the appellant herein.

2. In nutshell, the facts of the case are that a Nokia mobile was purchased by the respondent no.1/complainant on 03.11.2010 from respondent No.2/Anamika

Mobile, Ambikapur (C.G.) at the cost of Rs.8,000/-. Some defects were generated in the mobile set and therefore, it was brought to the authorized service centre of the Company on 11.03.2011, but thereafter the Service Centre has never returned the said mobile to the respondent No.1/complainant and thus committed deficiency in service, so, a consumer complaint was filed before District Forum.

3. The appellant herein, who is In-charge of the Service Centre in the written version has averred that the said mobile set was returned after due repair to the respondent no.1/complainant and no deficiency in service has been committed by the appellant in this regard. The complaint has been filed unnecessarily to harass the appellant and to make a dent on the goodwill of the appellant company.

4. Learned District Forum did not agree with the defence of the appellant and believing version of the respondent No.1/complainant, by the impugned order directed the appellant either to return the mobile set or to pay its cost to the respondent No.1/complainant.

5. We have heard arguments advanced by all parties and perused record of the District Forum.

6. Counsel for the appellant has drawn our towards document Annexure D1, which is Service Job Sheet. He submitted that on this service job sheet, the respondent No.1/complainant has made signatures on two places, firstly when earlier mobile set was handed over to the Service Centre for repairing and secondly when it was received back by the respondent No.1/complainant after satisfactory job was carried out on that hand set. He submitted that in view of this admission on this document, the complaint was not tenable before District Forum.

7. We have gone through document referred by the learned counsel for the appellant.

8. From this document, it appears that signatures of the respondent No.1/complainant are there on the endorsement that the hand set was received by the respondent No.1/complainant after carrying out the satisfactory job work on it. In this regard, the affidavit of the respondent No.1/complainant also appears worth

mentioning. In paragraph No.5 of the affidavit, the respondent No.1/complainant has stated that he does not know English whereas his signatures everywhere including service job sheet are in English.

It has further been stated by him that at the time when hand set was handed over to the Service Centre for repairing, the service job sheet was prepared and his signatures were obtained on two places by the appellant Shri Shekhar Gupta and thereafter service job sheet was handed over to the respondent No.1/complainant, Shri Deepak Gupta with the direction that at the time when he will get back his mobile set, then this original service job sheet was required to be returned by him. This version of the respondent No.1/complainant also shows that this original service job sheet document Annexure D1 (which has been filed by the appellant/O.P.No.1) has been returned by him when he had obtained possession of his mobile set after due repairing. Same thing has been stated by appellant, Shri Shekhar Gupta, in his affidavit filed in support of his written version.

9. The contention of learned counsel for the respondent No.1/complainant is that as hand set was not returned by the appellant to the respondent No.1/complainant, so he was required to lodge Police Report and had there been a case of returning the hand set after repair, then there was no occasion for the respondent No.1/complainant to lodge a report to Police.

10. This argument of learned counsel for the respondent No.1/complainant is not acceptable. Merely by lodging a report to the Police for a noncognizable offence, nothing can be established. It was to the wisdom of the respondent No.1/complainant to file a written complaint to the Police making certain allegation, but such allegation never takes place of proof and it was necessary for the respondent No.1/complainant to have proved the allegation made in the First Information Report or in the complaint. But in the facts of the present case, the affidavit of the respondent No.1/complainant himself is going against him and the factum of production of original service job sheet by the appellant/O.P.No.1, positively establish, when read along with affidavit of the respondent No.1/complainant that hand set was duly returned after repairing and that is why, this original service job sheet bearing signatures of the respondent

No.1/complainant on two places, came in the possession of the appellant herein.

11. In view of aforesaid, the appeal succeeds and is allowed. The impugned order is set aside. The complaint filed by the respondent No.1/complainant before District Forum, is dismissed. No order as to the cost of this appeal.

12. Before parting away with the case, we appreciate the assistance given by Shri S. Pandya, Advocate while appearing as Amicus Curiae and recommend for payment of Rs.500/to him as fees from the Consumer Welfare Fund established by this Commission.

Registrar of this Commission is directed to pay this amount to Shri S. Pandya.

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