

Cotmac Pvt. Ltd. and Another Vs. Mohammad Muzaffar and Another

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Court : Maharashtra State Consumer Disputes Redressal Commission SCDRC
Mumbai

Decided On : Aug-31-2012

Judge : The Honourable Mr. P.N. Kashalkar, Presiding Member & the Honourable Mr. Dhanraj Khamatkar, Member

Appeal No. : First Appeal Nos. A/09/1078 & A/11/103 (Arisen out of Order Dated 24/06/2009 in Case No. 321/06 of District Additional DCF, Pune)

Appellant : Cotmac Pvt. Ltd. and Another

Respondent : Mohammad Muzaffar and Another

Judgement :

P.N. Kashalkar, Presiding Judicial Member

1. Both these appeals are filed against the judgement and award dated 24/06/2009 passed by Addl. District Forum, Pune in consumer complaint No.321/2006. By allowing complaint partly, opponent has been directed to pay Rs. 2,82,060/- to the complainant with interest @ 9% p.a. from the date of purchase i.e. from 21/08/1999 till realization of the entire amount. Complainant was further directed to deliver defective Aqua Gas Generator Model AG 2000 to the opponent after getting the above mentioned cost within two months from the date of receipt of copy of this order. Opponent was further directed to pay Rs. 1,000/- towards costs of the proceeding. Aggrieved by this order, org. opponent has filed appeal

No.1078/2009 and org. complainant has filed appeal No.103/2011 for enhancement.

2. Since, both these appeals are arising from one and same order, we are disposing of these two appeals by this common order.

3. The facts to the extent material may be stated as under :-

The complainant is a self employed partner of M/s.Crown Engineering Works, situated at Plot No.16, Survey Nos.53 and 55, Mailaredevpally, Ballaguda I.E. Rajendra Nagar, R.R. District. The complainant involved in the business of manufacturing of Kerosene Stove and he was using conventional welding equipments in the welding of accessories of M.S. Tank for production of Kerosene Stoves. According to the complainant he had received offer from the opponent for supply of Aqua Gas Generator Model AG 2000 for total cost of Rs. 2,82,060/-. Looking to the qualities and cost effectiveness as canvassed by the opponent, complainant accepted the offer and paid initial payment of Rs. 1,85,000/- vide receipt No.24609 dated 07/08/1999. Complainant took the delivery of said machine on 22/08/1999. Complainant made full payment of the agreed amount by 08/12/1999. According to the complainant after taking delivery within one month machine stopped functioning. Same was informed to the opponent. Staff of the opponent visited complainants factory twice between period 01/09/1999 to 18/04/2000, but they failed to rectify the defects. On advice of the opponent, complainant sent said machine to Pune on 18/04/2000 and same was returned on 30/05/2000 after 45 days, but defects remained as it were. On the complaint of the complainant, technical staff of the opponent again visited complainants place of work between 01/06/2000 to 28/09/2000, but failed to activate the heating process and rectify the defects in spite of taking guidance from its Malaysian collaborator. According to the complainant, opponent returned said machine on 17/04/2001 after about six months. Machine worked till 18/06/2001 and again tripped off. The complainant lodged telephonic complaint on 18/06/2001 and sent a legal notice on 08/07/2001. In response technical staff of opponent attended complaint on 08/07/2001 but failed to rectify the defects and reported that malfunctioning of the machine was due to defect in the circuit board and defect could only be rectified

with proper tools and equipments at their place in Pune. After due acknowledgement, they took circuit board to Pune and promised to rectify the defects or report about status within a week. But, opponent neither re-fixed said circuit board nor rectified the defects due to which the machinery was lying as a heap of scrap though the complainant had invested huge sum by borrowing moneys from the Bank. Circuit board is a crucial component which controlled the entire machine. The machine was purchased on 22/08/1999 and circuit board was taken by the opponent on 08/07/2001. Looking to this period, machine was operative only for 318 hours and that too it was operated by the opponent or by the complainant in presence of opponent for trial run and repairs. Operating capacity of said machine was 10 hours per day, but it works out approximately 32 days working during the trial and repairs and therefore, complainant filed consumer complaint and prayed for award of Rs. 12,16,600/- towards interest @ 16% p.a., salaries and wages, loss of revenue, transportation for repairs cost, etc. Complainant filed affidavit and documents in support of their complaint.

4. Opponent appeared in the District Forum but did not file written version and therefore, complaint was proceeded without say of the opponent and thereafter, complaint was decided on merit by District Forum by delivering judgement on 30/11/2007 and complaint was allowed and opponent was directed to pay Rs. 2,82,060/- to the complainant with interest @ 9% p.a. from the date of purchase till realization of the entire amount. Complainant was also directed to deliver defective Aqua Gas Generator Model AG 2000 to the opponent after getting the above mentioned cost within six weeks from the date of receipt of copy of the order. Against this order, First Appeal No.48/2008 was filed by the opponent and said appeal was allowed by the State Commission on 29/09/2008 and matter was remanded back to the District Forum. Thereafter, opponent was directed to file written version, affidavit and documents after paying cost of Rs. 25,000/-.

5. In the written version filed in the second inning before the District Forum, opponent pleaded that complaint was barred by limitation in view of National Commission order dated 06/02/2006. Cause of action arose on 22/08/1999 and as per the order of the National Commission dated 06/02/2006 period spent in litigation was to be excluded while calculating the limitation period. Complaint was

filed before the District Forum, Ranga Reddy District on 27/09/2001 after two years period of limitation which was barred by 35 days. Hence, it was dismissed by District Forum on 27/03/2003 for want of jurisdiction against which complainant filed appeal before the State Commission, Andhra Pradesh on 25/04/2003 which was dismissed on 09/09/2005 against which complainant filed Revision Petition before the National Commission. Honble National Commission allowed the Revision Petition and directed that the matter may be filed in District Forum, Pune and the time spent in litigation may be excluded. Thus, complaint was filed before the Addl. District Forum, Pune on 20/12/2006 after 10 and half months after the passage of National Commission order which was known to the opponent only after receipt of the order of National Commission dated 06/02/2006. It was contended that complainant had not filed any condonation of delay application. Subject matter of the complaint is commercial purpose and therefore District Forum has no jurisdiction to entertain the complaint.

6. Opponent denied that opponent had made any offer for supply of Aqua Gas Generator to the complainant. Complainant himself has seen the machine in an Exhibition, approached the opponent at their office at Pune and negotiated with the opponent for purchase of said machine at the cost of Rs. 2,82,060/-. The complainant placed oral order and made a payment of Rs. 85,000/- towards cost of machine and complainant had taken extensive trials of machine of about 100 jobs and only after satisfaction had placed order with the opponent. It pleaded that there was no complaint regarding machine initially. On the contrary, complainant issued certificate about satisfactory performance of the machine. After sometime, opponent received telephone call from the workers of the complainant having defects in running the machine. Opponent sent Mr.Kotnis to help them and to train complainants personnel. Opponents representative Mr.Praphul B. Kotnis attended workshop at Hyderabad to train the personnel of the complainant and to help out in any problems they were facing in running new technology machine. It is denied by the opponent that he had gone to repair defects. The opponent found that welders of the complainant were untrained in welding, not qualified to run and operate the machine. Despite strict instructions to use only distilled water, complainant and his workers used ordinary water which caused malfunctioning in the machine. There was tripping of electric supply. The opponent suggested to

make necessary application to the local Electricity Board for stable power supply. According to the opponent, complainant was using rusted material as a cost saving measures. Opponent had suggested the complainant to send machine to Pune as their Malaysian collaborator were expected to come to Pune. Accordingly opponent received machine on 29/09/2000. After checking the machine with the help of Malaysian collaborators team machine was found in good condition and after thorough checking the machine was dispatched to Hyderabad. Opponent pleaded that circuit board was brought to the Pune to check the claims of defect by complainant and since proper tools and equipments for checking was not available at complainants workshop, but in the meanwhile, complainant went to Court and matter was sub-judice and therefore, circuit board was not returned to the complainant. Opponent pleaded that this act of taking circuit board should not be treated as admission to the defects in the goods. Opponent pleaded that the meter on the machine has shown it was operative for 310 hours or 32 days and it was because of complainants own personnel were unskilled and electric supply being not stable. Non-operation of the machine thus could not be attributed to any defect in the machine, per se, claimed the opponent. Opponent therefore pleaded that complaint should be dismissed with costs.

7. Both parties adduced documentary evidence, affidavits and considering the same after hearing both the parties, District Forum recorded its finding on the five points. The District Forum held that complainant was a consumer. Complaint was not barred by limitation and complaint was still maintainable since it was not for commercial purpose. District Forum also recorded finding that opponent was guilty of deficiency in service by selling defective machine and therefore, District Forum was pleased to allow the complaint and directed the opponent to pay a sum of Rs. 2,82,060/- to the complainant with interest @ 9% p.a. from the date of purchase i.e. 21/08/1999 till realization and also directed to pay Rs. 1,000/- towards costs of this complaint. Besides, complainant was also directed to deliver defective Aqua Gas Generator Model AG 2000 to the opponent after getting the payment of awarded amount from the opponent. Aggrieved by this order, opponent has filed Appeal No.1078/2009 and org. complainant has filed Appeal No.103/2011 for enhancement.

8. We heard submission of K.U. Nagarkatti, Advocate for the appellant/org. opponent in A-1078/2009 and for respondent in A-103/2011 and Mr.Mohd. Muneeruddin, Advocate for the appellant/org. complainant in A-103/2011 and for the respondent in A-1078/2009.

9. It was tried to be contended by Advocate for the appellant/org. opponent that distilled water should have been used by the respondent/complainant for running of said machine, but they used ordinary water and it was breach of warranty and therefore, they are not liable for malfunctioning or non-functioning of the machine or tripping of machine from time to time. It was also contended by Advocate for the appellant/opponent that there is fluctuation in the electric supply where workshop of respondent is situated and respondent has not taken adequate care to ensure that he got regular and stable electric supply for running of the machine. We are finding that machine was not working properly. The very fact that employees of the appellant/opponent were required to be deputed time and again to go to place i.e. complainants workshop to rectify the defects would mean that the machine was not working properly and it had inherent defects. The very fact that machine had worked only for 310 hours virtually totally for 32 days would mean that machine supplied by the opponent was defective one and they could not remove the defects despite deputing their expert engineer from Pune. What is significant to note is the fact that though appellant/opponent had sent its engineer at the site in complainants premises, they had to bring back circuit board of the machine to Pune and till filing of the consumer complaint, they had not returned said circuit board to the complainant and had not installed it in the machine they had supplied to the complainant. Virtually, therefore, machine supplied by the appellant/opponent remained idle, it was not working and whenever it was working it was mal-functioning. The very fact that circuit board was required to be brought to Pune to show it to the Malaysian Collaborator of the appellant/opponent would mean that appellant/opponent was not having proper experts to repair the machine or to remove the defects of the machine. It is an admitted fact that till filing of the complaint, circuit board removed from the machine supplied to the respondent was lying with the appellant/opponent and that itself shows that machine supplied by the appellant/opponent to the respondent/complainant was defective and whatever defects were there in the circuit board could not be removed even with

consultation of Malaysian Collaborator of the appellant/opponent. When these are the facts on record duly established by the affidavit of respondent/complainant, we are of the view that District Forum rightly held that machine was defective. They had removed the circuit board of said machine from the machine, brought it to Pune and till filing of the complaint they had not reinstalled the circuit board in the machine supplied by the appellant/opponent to the respondent/complainant. So, ultimately the respondent/complainant could not use it for manufacturing of its product i.e. Kerosene Stoves. In the circumstances, we must record the finding agreeing with the findings recorded by Learned District Forum that machine supplied by the appellant/opponent was defective one and supplying defective machine itself amounts to deficiency of service of high order on the part of appellant/opponent. District Forum therefore rightly recorded a finding that appellant/opponent is guilty of deficiency in service in not removing the defects till filing of the consumer complaint. We therefore concur with the findings recorded by the District Forum while allowing the complaint partly and while directing the appellant/opponent to refund the amount of Rs. 2,82,060/- with interest @ 9% p.a. from the date of purchase i.e. 21/08/1999 till realization.

10. It was also tried to be contended by Counsel for the appellant/opponent that complaint as filed in the District Forum was barred by limitation and there was no condonation of delay application filed by the respondent/complainant along with complaint when it was so filed in the District Forum, Pune. Learned District Forum while discussing the point of limitation observed that complainant was required to run from pillar to post. Initially, he filed consumer complaint in District Forum, Ranga Reddy, Andra Pradesh. The complaint was dismissed. Appeal was preferred before the Andra Pradesh State Consumer Commission. Same was dismissed and hence, he approached National Commission, National Commission passed order on 06/02/2006 and complainant was permitted to file consumer complaint before District Forum, Pune and time spent in prosecution of complaint was excluded while calculating the limitation period for filing consumer complaint before the District Forum, Pune. The complainant filed this complaint on 20/12/2006 in the District Forum, Pune. District Forum rightly held that technical ground of limitation could not be pressed into service to frustrate the present proceeding before the District Forum. District Forum held that period spent by the

complainant in approaching various Fora right upto the National Commission was liable to be ignored in view of ruling of the National Commission. District Forum rightly held that complaint was filed within limitation and there was no necessity for the complainant to file condonation of delay application in view of direction given by the National Commission in its order passed in Revision Petition dated 06/02/2006. District Forum also recorded finding that cause of action for filing complaint before the District Forum, Pune was continuous one because after defects occurred the opponent tried to remove the defects, but they could not remove the defects and set the machine right. Hence, they removed circuit board from the machine, brought it to Pune and assured the complainant to repair the same and then to reinstall it to their machine but till filing of the consumer complaint, they had not done so. From the warranty period till the complaint was filed, the machine was proved to be defective. It was mal-functioning and under the garb of removing defects or repairing circuit board, they have removed the major part of the machine and brought it to Pune and never returned it to the complainant and even today, said part is lying with the appellant/opponent. In the light of these facts, District Forum rightly held that complaint cannot be said to be barred by limitation on any ground whatsoever.

11. It was tried to be contended by Counsel for the appellant/opponent that machine procured by the complainant for commercial purpose. But respondent/complainant is a proprietor of the Crown Engineering Works situated at Rajendra Nagar, Dist. Ranga Reddy, Andhra Pradesh. He has specifically mentioned that he is a self-employed partner of said firm. He is in the process of manufacturing Kerosene Stoves, but his business is for self-employment. It means that he is a consumer within meaning of Section 2(1)(d) of Consumer Protection Act, 1986 and it cannot be said that he is engaged in commercial activity. He comes within explanation attached to Section 2(1)(d)(ii) of the Consumer Protection Act, 1986. He had bought the machine exclusively for the purpose of earning his bread and butter by means of self-employment which is clearly mentioned by him in the consumer complaint filed in the District Forum and therefore, objection raised by Learned Counsel for the appellant/opponent while arguing these appeals that complainant has purchased this machine for commercial purpose is appearing to be without any substance.

12. In view of discussion, we hold that there is no merit in the appeal preferred by org. opponent. The judgement and award passed by District Forum is just, proper and it is well reasoned and it is sustainable in law and we do not find any reason to take a different view than what has been taken by the District Forum while deciding the consumer complaint.

13. The appeal bearing No.103/2011 filed by org. complainant is for enhancement of compensation. District Forum awarded interest @ 9% p.a. on the amount of Rs. 2,82,060/- from the date of purchase of machine till realization. Aggrieved by this rate of interest, the complainant has also filed appeal seeking enhancement in the rate of interest awarded by the District Forum. We are finding that interest awarded @ 9% p.a. is appearing to be just and proper and there is nothing on record which induced us to enhance rate of interest from 9% to 18% p.a. Thus, appeal for enhancement filed by the org. complainant is also appearing to be devoid of any substance. In the result, we dismiss said appeal filed by the complainant for enhancement of rate of interest. Thus, both these appeals, one filed by org. opponent and another filed by org. complainant are required to be dismissed. In the result, we pass the following order :-

ORDER

1. Both these appeals stands dismissed.
2. Parties to bear their own costs.
3. Amount if deposited by org. opponent be paid over to the org. complainant with accrued interest, if any towards part satisfaction of the award.
4. Copies of the order be furnished to the parties.