

Aneesh Kumar, Adtech Computer Consultancy Vs. Mrs. Joyes

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Aug-16-2012

Judge : The Honourable Mr. K. Chandradas Nadar Judicial Member

Appeal No. : First Appeal No. A/12/222 (Arisen out of Order Dated 31/01/2012 in
Case No. Complaint Case No. CC/11/18 of District Pathanamthitta)

Appellant : Aneesh Kumar, Adtech Computer Consultancy

Respondent : Mrs. Joyes

Judgement :

SRI. K. CHANDRADAS NADAR : JUDICIAL MEMBER

The appellant was the 2nd opposite party in CC.No.18/11 in the CDRF, Pathanamthitta. The 1st respondent was the complainant. He alleged that he was running an institution named Phoenix Systems, doing the work of photocopying, STD booth etc. The 1st opposite party is the authorized agent of Canon photocopier and the 2nd opposite party is the agent of the 1st opposite party at Pathanamthitta. The 2nd opposite party approached the complainant as the agent of the 1st opposite party and persuaded the complainant to purchase Canon photocopier machine. Attracted by the words of the opposite parties the complainant purchased a photocopier machine by remitting Rs.10900/- in the account of the 1st opposite party in SBT as per their instruction. After remitting the

amount the 2nd opposite party brought the machine to the complainant. They assured that 750 copies will be taken from the 1st load of cartridge. But on working the machine the complainant received only 80 copies. Though the complainant informed the said defect to the opposite parties they evaded the complainant. Even after receipt of lawyers notice they failed to solve the problem. Hence the complaint for refund of the price of the machine and for compensation.

2. The opposite parties filed separate versions. The 1st opposite party contended that there was no privity of contract between him and complainant. The complainant has not purchased any article from the 1st opposite party. The invoice produced by complainant was issued to one Sathyan. The printer mentioned in the invoice was never sold to the complainant. The 1st opposite party had acquaintance with one Jayesh in Chalakkudy who was a dealer in Canon printers. The complainant is understood to have purchased a printer from Jayesh. As requested by Jayesh, the 1st opposite party furnished his bank account to facilitate transfer of Rs.10900/- from one of his customers. A sum of Rs.10900/- credited in the account of the 1st opposite party was paid over to Jayesh. Apart from this the 1st opposite party has no involvement with the disputed transaction. It is incorrect to say that the 2nd opposite party is an agent of the 1st opposite party at Pathanamthitta. 1st opposite party is not engaged in the sale or supply of Canon printers. He never solicited or canvassed purchase orders from the complainant. He has never visited the complainant either by himself or in the company of the 2nd opposite party. The complainant never contacted the 1st opposite party with any complaint regarding the functioning of the photocopier. There was no deficiency on his part and he is not liable to the complainant.

3. The 2nd opposite party contended that the complainant has not purchased any printer or any other article from the 2nd opposite party or from Adtech Computer Consultancy in which the 2nd opposite party is a technician. The printer mentioned in the complaint was never sold to the complainant by the 2nd opposite party. The 2nd opposite party has no acquaintance with the complainant. He is not an agent of the 1st opposite party. The Adtech Computer Consultancy is not an agent of 1st opposite party. The complainant did not make any representation to the 2nd opposite party. He never visited the complainant as alleged. The 2nd opposite

party is not aware whether the complainant had purchased any photocopier for Rs.10900/-. There is no deficiency on the part of the 2nd opposite party. There is no privity of contract between him and the complainant.

4. Before the CDRF, Pathanamthitta the complainant gave oral evidence as PW1. Exts.A1 to A7 were marked on his side. The opposite parties gave oral evidence as DWs 1 and 2. Ext.B1 was marked on the side of the 2nd opposite party. Accepting the case of the complainant, the Forum directed the opposite parties to return the amount covered by Ext.A1 pay in slip issued from SBT, Pathanamthitta towards the price of the photocopier machine. In addition the Forum allowed compensation of Rs.5000/- and cost of Rs.2000/- to the complainant. Aggrieved by the said order the 2nd opposite party has preferred this appeal.

5. The only question that arises for consideration is whether privity of contract is established between the appellant and the complainant as regards the purchase of the disputed photocopier machine.

6. I have referred to the contentions of the appellant. Neither the appellant nor the 1st opposite party had disputed the allegation that the photocopier machine purchased by the complainant was defective and did not perform upto the promise and assurance given to him. The contention is one of total denial and the 1st opposite party has not preferred any appeal challenging the conclusions of the CDRF, Pathanamthitta. It is also pertinent to notice that remittance of the price of the photocopier machine was made in the Pathanamthitta branch of the SBT in the name of the 1st opposite party. This is evident from Ext.A1. The 1st opposite party has admitted receipt of the said amount. The contention is that his account number was given to one Jayesh and the money received was also in fact handed over to Jayesh. The contention is that Jayesh was only an acquaintant of the 1st opposite party. There is absolutely no satisfactory explanation as to why an arrangement as contended by the 1st opposite party was made with Jayesh. There is also no indication that the amount received by the 1st opposite party was in fact handed over to Jayesh. In the above context the failure of the 1st opposite party to prefer appeal is significant.

7. As regards the 2nd opposite party, the allegation that he was the agent of the 1st opposite party is denied. The definite allegation is that the 2nd opposite party approached the complainant and apprised him of the benefits of purchasing a Canon photocopier machine. It was accordingly they together approached the 1st opposite party and purchased the machine from him. It is true that there is no acceptable direct evidence to prove the involvement of the appellant in the matter of disputed purchase. Ext.B1 produced by the complainant shows that it was issued by the 2nd opposite party, but it was issued to a different person by name Sathyan and not the complainant. But in the version itself the 2nd opposite party has admitted that he was a technician in the Adtech Computer Consultancy which has issued Ext.B1. Ext.B1 is the invoice issued when printer of Canon IP 2770 was purchased. So obviously the appellant is a person having sufficient knowledge in the field of computer and photocopiers. The circumstances as a whole indicate that there is no reason to disbelieve the version of the complainant that the appellant was also involved as the agent of the 1st opposite party. If that be so I find no error in the conclusions of the CDRF, Pathanamthitta. Hence the appeal is liable to be dismissed.

In the result the appeal fails and is accordingly dismissed and in the circumstances of the case without costs.

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