

G. Velliyan Vs. the Proprietor, Columbia Electronics

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC
Chennai

Decided On : Jul-06-2012

Judge : Honourable Thiru Justice R. Regupathi, President, Honourable Thiru a.K. Annamalai, Judicial Member & Honourable Thiru S. Sambandam, Member

Appeal No. : F.A.No.505 of 2008 [Against order in C.C.No.117/1997 dated 28.02.2008 on the file of the DCDRF, Salem]

Appellant : G. Velliyan

Respondent : The Proprietor, Columbia Electronics

Judgement :

(The appeal having come before us for final hearing on 27.06.2012, upon hearing the arguments of appellant/complainant side and perused the documents, written submission as well as the order of the District Forum, this Commission made the following :-)

A.K. ANNAMALAI, JUDICIAL MEMBER.

1. The unsuccessful complainant is the appellant.
2. The complainant entrusted his T.V. set for service to the opposite party with replacement of certain parts and after the service as the complainant not satisfied with the same and found certain deficiency in service even after payment of

service charges of Rs.2645/- filed this consumer complaint in which the opposite party denied the allegations that there was no such selling spare parts on the particular day and no service was done and thereby after an enquiry on the basis of both sides materials, the District Forum came to the conclusion that the complainant failed to establish his case for deficiency of service and thereby dismissed the complaint.

3. Aggrieved by the impugned order, this appeal came to be filed by the complainant and contended that the District Forum erroneously dismissed the complaint without appreciating complainants case in proper way and failed to consider the documents submitted by complainant and thereby the complaint to be allowed.

4. In contra to the contentions, the respondent/opposite party contended that the opposite party is not running service centre and only dealing with the spare parts and on the date of alleged supply of spare parts, the opposite party was not in existence and thereby the order of the District Forum is well founded one and no need for interference.

5. While considering the both sides materials and on hearing the arguments and upon perusing all the records and from the District Forum order, we are able to find that the original complaint was filed in the year 1997 and on that basis the earlier enquiry was conducted in which the order was passed by the District Forum by allowing the complaint on 29.05.2003 in which the opposite party was directed to refund Rs.3645/- with 12% interest and Rs.500/- as costs. On perusal of that order in which it is observed in para 2 that in spite of receipt of notice, the opposite party did not turn up and thereafter due to fault of the complainant, the complaint was dismissed for default at one stage and thereafter it was restored on petition by the complainant and on receiving the complainants side document, proof affidavit and in the absence of the opposite party, the complaint was allowed. Aggrieved by this order since the opposite party filed petition to set aside the exparte order against him in C.M.P.No.114/2004 and it was allowed on 19.09.2005 and there after once again enquiry was proceeded and on receipt of written version and other documents by the opposite party, final order was passed by dismissing the

appeal on 28.02.2008 and against this impugned order the present appeal has been filed by the aggrieved complainant.

6. With this background of the case details, when we consider the merits of the appeal the complainant filed a complaint alleging deficiency in service against the opposite party while delivering the repair of T.V. sets entrusted for repair by placing cheaper spare parts instead of putting the promised original spare parts thereby the T.V. set has once again become repaired as it was delivered after repair with cheap fittings and thereby claiming refund of the service money of Rs.2645/- paid for the same as per Ex B1. But, the opposite party contended that he was not running any service centre and as such he was not selling any spare parts that too on the date of alleged repair on 26.03.1997 and no such business was in existence for which he has produced Ex B1 certificate for registration obtained from the commercial tax department which was issued as dated 01.10.2003 and the certificate was valid from the period from 14.04.1993 to 31.03.1998 renewed for one year and the original certificate issuing date was mentioned as 11.06.1997. From this certificate though it is to be construed that the business was commenced from 14.04.1997 onwards except this document to accept the contentions of the complainant the alleged service centre for repairing the T.V. was in existence even prior to that of said date of the alleged repair on 26.03.1997 was in existence that too apart from selling spare parts it was also having a service centre to repair the T.V. as per Ex A1 even though it is found that it had been details of spare parts name the prices for the same totaling for Rs.2645/-. Further, it was only an estimate regarding the price relating to the spare parts or of no proof by the complainant since there is no endorsement on the same for receipt cash of Rs.2645/- paid towards spare parts. Even though legal notice was issued under Ex A2 stating that the amount was paid in which it is further stated that the complainant was having with his position relating to the bill for repair but the same was not produced before the District Forum for proving the repair of the TV set on the basis of spare parts supplied by the opposite party. Further, in this regard, both the parties have let in oral evidence before the District Forum and through the examination of the complainant which was ascertained with the complainant about against the contents of the legal notice under Ex A2 and not producing the bill for repair from his possession as per notice and thereby

the District Forum considered all the details and came to the conclusion that the complainant has not established his case to prove the allegation against the opposite party and dismissed the complaint with which view, we are in full agreement in view of the foregoing reasons stated and the discussions made as above. Further, the complainant had filed a petition before this Commission questioning the order of referring the condonation of delay allowed to entertain the petitioner to set aside order against the opposite party to set exparte at the earliest stage and subsequently, set aside the exparte order in CMP No.114/2004 dated 19.09.2005 against which the complainant filed the petition to condone the delay of 1422 days in CMP No.1209/2008 before this Commission which was dismissed on 11.12.2009 against which it appears that the complainant filed revision petition in R.P.No.371/2010 before the National Commission which was also dismissed by its order dated 20.07.2010.

7. The complainant already filed appeal in FA No. 505/2008 against the order in main complaint itself by the District Forum in CC No.117/1992 dated 28.02.2008 pending the appeal he filed petition to condone the delay of 1422 days in preferring revision against the order of allowing the condone delay of 165 days based in the CMP No.1/2004 by the District Forum questioning the validity of the condonation of delay which was entertained as CMP No.1209/2008 and after enquiry this Commission dismissed the same by observing no purpose would be served in allowing the petition in order to entertain the Revision since the main case itself was disposed of against which already appeal was preferred by the complainant which is pending in F.A.No.505/2008 and also when the petitioner has not come forward to challenge the order against the allowing of set aside exparte order against the opposite party by the District Forum and thereby the petition was dismissed on 11.12.2009 against which the petitioner/complainant preferred a revision before the National Commission in R.P.No.371/2010 which was also dismissed by the National Commission by confirming the order of the State Commission in its order dated 20.07.2010.

8. In those circumstances, whether the order passed by the District Forum by setting aside the exparte order against the opposite party after allowing C.M.P.No.1/2004 and by condoning the delay in filing the exparte order set aside

petition for C.M.P.No.114/2004 dated 19.09.2005. Even that complaint, on which final order was passed on 28.02.2008 which was stand good irrespective of validity of the exparte order set aside by the District Forum which was not challenged by the complainant by way of Revision before this Commission even though taken steps to challenge in allowing the condonation delay of 165 days in filing the petition to set aside the exparte order against the opposite party in CMP No.114/2004 dated 19.09.2005.

9. In order to prefer the revision against that order to condone the delay of 1422 days in CMP No.1209/2008 before this Commission which was dismissed on 11.12.2009 against which the complainant preferred a Revision in R.P.No.321/2010 before the National Commission which was dismissed by its order dated 20.07.2010 by confirming the order of the Commission and thereby the District Forum order by setting aside the exparte order against the opposite party and proceeded with the complaint on which final order was passed on 28.02.2008 became final was stand good irrespective of the validity exparte order set aside by the District Forum which was vehemently conversed by the appellant/complainant in this appeal stating that the District Forum has no power to restore or review its own order as per the Supreme Court decision. This point will have no force at this stage since the District Forum allowing petition to set aside exparte order against which the opposite party has not challenged even though challenged the petition allowing condoning the delay was challenged which was also ended in futile. In those circumstances, we are of the view that in view of the above discussions and reasons adduced in appeal survives in this appeal on the point of merits of the case, as well as question of law thereby this appeal deserves to be dismissed by confirming the order of the District Forum.

In the result, the appeal is dismissed by confirming the order of the District Forum, Salem, in C.C. No.117/1997, as well as in C.M.P.No.1/2004. No order as to cost.

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