

Sheeba and Another Vs. Sindhu Pradeep

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Apr-03-2012

Judge : The Honourable Mr. S. Chandramohan Nair Member & the
Honourable Smt. a. Radha Member

Appeal No. : First Appeal No. A/11/793 (Arisen out of Order Dated 15/06/2011 in
Case No. CC/10/377 of District)

Appellant : Sheeba and Another

Respondent : Sindhu Pradeep

Judgement :

S. CHANDRAMOHAN NAIR : MEMBER

Complainants in C.C. 377/10 before the CDRF, Thiruvananthapuram are the appellants herein who are not satisfied by the order dated 15.6.2011 of the Forum below directing the opposite party to complete the borewell work till availability of sufficient water from the well or in the alternative to refund of Rs. 18,000/- with compensation and cost of Rs. 5,000/-

2. The complainant had approached the Forum stating that the opposite party had agreed to dig a bore well for the complainants and the opposite party with the help of a Geologist had located the place and started digging borewell and that after digging from 27.3.10 and 28.3.10, they abandoned the work stating that sufficient

water was available. But according to the complainant no water was available in the borewell and the matter was informed to the opposite party immediately on 30.3.2010. It is alleged that the opposite party had falsely informed that there was sufficient water and according to the complainants that they had paid Rs. 37,550/- to the opposite party for digging the borewell and as there was no water, the complainant had prayed for directions to the opposite party to refund the amount with interest, compensation and costs.

Though notice was served on the opposite party, there was appearance before the Forum and hence the opposite party was set exparte.

3. The evidence consisted of the proof affidavit filed by the second complainant and Exts. P1 to P6.

4. The learned counsel for the appellant submitted before us that the opposite party had left the premises without digging the borewell till getting sufficient water. It is also his case that the complainant had purchased materials for pipe connection on the assurance given by the opposite party. He has submitted that if the opposite party did the work properly the complainants would have got enough water from the well and due to the negligence and deficiency and unfair trade practice of the opposite party, the complainant suffered much financial loss and great mental agony. It is also his case that the Forum below had failed in appreciating the fact that the opposite party had accepted the sum of Rs. 37,550/- from the complainant and the Forum below ought to have awarded the entire amount to be refunded to the complainant with compensation.

5. On hearing the learned counsel for the appellants and also on perusing the records, we find that as per Ext. B4 the complainants have paid a sum of Rs. 37,550/- to the opposite party and that their case regarding the non availability of water is not disputed by the opposite party either in the reply notice or by filing any version. It is found that the case of the complainants stands proved by filing affidavit and producing documents before the Forum. On a reading of the order passed by the Forum below, it is found that the Forum below has directed the opposite party to complete the borewell till the availability of sufficient water from the well or to refund Rs. 18,000/ to the complainants. We find force in the

argument of the learned counsel for the appellants that they are entitled to get back the whole amount paid to the opposite party since the opposite party had left the place without digging the well in order to get sufficient water. We direct the opposite party to refund the whole amount of Rs. 37,550/- in case they are not able to procure sufficient water by completing the borewell work. However the compensation and cost ordered is found reasonable and hence the same is sustained.

In the result, the appeal is allowed. The opposite party /respondent is directed to complete the borewell work till the availability of sufficient water from the well or in the alternative to refund Rs. 37,550/- to the complainants with 12% interest per annum from the date of payment till the date of refund. The opposite party is also directed to pay Rs. 5,000/- towards compensation and costs as ordered by the Forum below.

The office is directed to send back the L.C.R. along with a copy of this order to the Forum below.

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