

T.P. Shaju Vs. E.K. Aleyamma

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Sep-03-2011

Judge : The Honourable Mr. S. Chandramohan Nair Member

Appeal No. : First Appeal No. A/11/140 (Arisen out of Order Dated 30/10/2010 in
Case No. CC/10/82 of District Wayanad)

Appellant : T.P. Shaju

Respondent : E.K. Aleyamma

Judgement :

SRI.S.CHANDRAMOHAN NAIR : MEMBER

Being aggrieved by the directions contained in the order dated 30.10.2010 of CDRF, Wayanad in CC 82/2010, the opposite party has come up in this appeal calling for the interference of this Commission as to the sustainability of the order passed by the Forum below. By the impugned order the opposite party is under directions to refund Rs.5000/- with compensation of Rs.10000/- to the complainant within one month from the date of receipt of this order.

2. The complainant has approached the Forum stating that he had entrusted the opposite party to record the betrothal and marriage function of her daughter in video CD and that an advance of Rs.2000/- was given towards the total agreed amount Rs.5000/-. The case of the complainant is that though the complainant

asked for the CD recorded, the opposite party did not give it by raising one or other reasons. It is also her case that on filing a complaint before the police, the CD was shown to her which lacked the scenes that were recorded by the opposite party. The complainant further submitted that though the opposite party agreed to hand over the CD after rectifying the defects, the same was not handed over and hence the complaint was filed praying for directions to pay compensation of Rs.85000/- along with refund of Rs.5000/- already paid by the complainant to the opposite party.

3. Resisting the complaint opposite party filed version and contended that the betrothal and marriage function were recorded and the video CD was given to the complainant and consequent to the complaint before the police and mediation, the opposite party had given the video CD after rectification and hence there was no deficiency in service on the part of the opposite party. Pleading that the opposite party did not commit any deficiency in service he prayed for the dismissal of the complaint with costs.

4. The evidence consisted of the proof affidavit of the complainant and opposite party. Exts.A1 and A2 were marked on the side of the complainant. On the side of the opposite party, opposite party and other 2 witnesses were examined as OPW1,OPW2 and OPW3 Exts. B1 and B2 were also marked.

5. Heard both sides.

6. The learned counsel for the appellant/opposite party vehemently argued before us that the order of the Forum below is without any appreciation of the facts and circumstances of the case and hence is liable to be dismissed.

7. It is his very case that the opposite party has handed over the CD after rectification to the complainant and the receipt of the CD was purposefully concealed by the complainant before the Forum. He has also advanced the contention that the video CD was edited as per the directions of the son in law of the complainant who himself was a videographer. The further contention advanced by the learned counsel for the opposite party/appellant is that the complaint was filed after a period of 9 months which would itself show that the complaint lacked

bonafides. Contending for the position that there was no deficiency in service on the part of the opposite party, the learned counsel argued for allowing the appeal thereby dismissing the complaint in toto.

8. On the other hand the findings and conclusions were supported by the learned counsel who appeared for the respondent/complainant. It is argued by him that the complainant had entrusted the video recording of the betrothal and marriage function of her daughter to the opposite party and that the opposite party had committed deficiency in service by not recording the functions properly and also not giving the video CD to the complainant. It is submitted by him that the opposite party refused to handover the CD even after a police complaint was made by the complainant and even though the opposite party had assured that the CD would be given to the complainant after curing the defects the same was not done. Thus it is his very case that opposite party had committed great deficiency in service and the order of the forum below is only to be upheld.

9. On hearing both sides and also on perusing the records, we find that the complainant had entrusted the video recording of the betrothal and marriage function of her daughter with the opposite party. The complainant has a case that video CD was not handed over to the complainant even after the intervention of the police and mediators. It is also found that as per Ext.A1 complainant had paid Rs.2000/- towards advance. Ext.A2 is the petition given by the complainant to the Bathery police station. The complainant has admitted that she has seen the CD though it lacked many of the scenes recorded by the opposite party. She has also stated that even after assurance that the CD would be handed over after curing defects, the opposite party has not handover the CD. On going through Ext.B1 and B2 we find that a total sum of Rs.4500/- only had been received by the opposite party though the complainant would say that she had paid Rs.5000/-. The available evidence would show that only Rs.4500/- has been paid by her. It is also found that the opposite party/appellant has a case that he has given the CD to the complainant. But no cogent evidence is forthcoming to show that the CD was handed over to the complainant though the opposite party would argue they have made an endorsement in Ext.B2 that CD is given. Ext.B2 is the document that was in possession of the opposite party. If the CD was given they could have very well

obtained the signature of the complainant or the person who has received the CD especially when there was a police case and the complainant had disputed the delivery of the CD. In such a circumstance we find that the opposite party had failed in establishing that the CD was given to the complainant.

10. It is also found that the Forum below had ordered to refund Rs.5000/- which is the amount paid by the complainant. We find that the complainant has no case that no video recording was done by the opposite party. She would only say that all the scenes recorded by the opposite party were not included in the CD shown to her. However it is found that the video CD is not handed over to the complainant. All the same the complainant has not adduced any evidence to show that she has suffered any loss or other hardships due to the none issuance of the CD. However it is to be found that the opposite party failed in handing over the CD which amounts to deficiency in service and for that purpose the complainant has to be compensated.

11. The Forum below has ordered Rs.10,000/- as compensation and cost apart from the direction to return Rs.5000/- received from the complainant. We find that a total sum of Rs.5000/- will be just and proper to meet the ends of justice which is to be paid as compensation by the opposite party. However it is also found that the Forum below has not quantified the amount towards compensation and costs. As compensation is ordered as shown above we find that the complainant is entitled to cost of Rs.2000/- for the proceedings through out.

12. In the result the appeal is allowed in part with the modification that the opposite party/appellant is liable to pay Rs.5000/- as compensation and Rs.2000/- as cost within one month from the date of receipt of this order failing which the amount shall carry interest at 9% per annum from the date of default till the date of payment.

Office is directed to send back the LCR along with copy of this order to the Forum below urgently.

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