

The Managing Director Vs. G. Satheesh Kumar and Another

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC
Chennai

Decided On : Mar-28-2011

Judge : Honourable Thiru Justice M. Thanikachalam President, Thiru J. Jayaram, M.a., M.L., Judicial Member & Thiru S. Sambandam, B.SC., Member

Appeal No. : F.A.660 of 2007 [Against order in C.C.29 of 2002 on the file of the DCDRF, Nagapattinam]

Appellant : The Managing Director

Respondent : G. Satheesh Kumar and Another

Judgement :

(Prayer: The 1st respondent as complainant filed a complaint before the District Forum against the opposite parties praying for the direction to the first opposite party to pay the tour benefit expenses as advertised, to pay Rs.25,000/- for the disappointment for deficiency of service and to pay the cost. The District Forum allowed the complaint, against the said order, this appeal is preferred praying to set aside the order of the District Forum dt.15.02.2007 in C.C.29/2002.

This appeal coming before us for hearing finally on 11.03.2011, upon hearing the arguments of the either counsels and perused the documents, as well as the order of the District Forum, this Commission made the following order:)

M. THANIKACHALAM J, PRESIDENT

1. The first opposite party is the appellant.

2. The first opposite party, who is the manufacturer of Safety Match Boxes called We Two, announced a tour scheme, for the purchasers of their Match Boxes, which contains a price coupon. Attracted by this Scheme from the agent of the first opposite party, namely the second opposite party, when the complainant purchased a match box, it does contain a price coupon bearing No.97, which was informed to the second opposite party, who informed that he had sent the gift coupon to the first opposite party, for arranging a tour, for three days to Mysore, Bangalore. But, they have not taken the complainant to the tour though some of the persons have been taken, thereby disappointing the complainant, causing mental agony and deficiency of service. Even after issuance of the notice, they have failed to answer the claim. Therefore, the complainant is constrained to file this case for the recovery of the expenses, for the recovery of the amount, which the first opposite party would have spent, for the tour to all the eligible purchaser of the Match Box, which had contained the price coupon, with compensation of Rs.25,000/-.

3. The first opposite party admitting the announcement of the scheme namely taking the person to tour for three days, who had purchased a Match Box, which had the price coupon, resisted the complaint, inter alia, contending that as advertised, they have taken the person for tour between 16.09.98 to 19.09.98, that they have not received any gift coupon either from the complainant or from the second opposite party and therefore, question of taking the complainant, for tour will not arise for consideration since in this view, they had not committed any deficiency, prayed for the dismissal of the complaint, denying other averments also.

4. The second opposite party has also filed a Written Version, stating that though he was the agent of the first opposite party, the complainant had not purchased Match Box bundle from him, that he never entrusted any gift coupon with them, and therefore, question of sending the same or taking the complainant for happy tour, will not arise for consideration, thereby praying for the dismissal of the complaint.

5. The District Forum based upon the materials, has come to the conclusion that the complainant, has proved his case regarding the deficiency and on that basis, a direction came to be issued to pay a sum of Rs.5,000/- as tour cost, in addition to, a further sum of Rs.10,000/- as compensation along with cost of Rs.2,000/-, as litigation expenses, as per the order dated 15.02.2007, which is under challenge in this appeal.

6. The learned counsel for the appellant urged before us, that the District Forum failed to consider the maintainability of the consumer case, namely that the claim is barred by limitation and that the complainant has failed to prove the purchase of the Match Box, with price coupon and this being the position, unfortunately passed an award, directing the opposite parties to pay the compensation, which is liable to be set aside, not opposed, since the complainant/first respondent remained absent. On that ground alone, we are not going to say, if the case is otherwise meritorious, appeal has to be allowed and in this view, the appeal is to be decided on merit, irrespective of the complainant absent before us.

7. In a case of this nature, we feel, the Consumer Forum may not have jurisdiction even to decide the alleged deficiency. Admittedly, even as pleaded for taking the tour, there was no consideration and there was no contract between the parties, to provide service also. After all, to promote the business, the first opposite party announced a price scheme, which will not come within the definition of service provider, since there is no consideration, the fact being, the consideration paid if any, was only for the purchase of the Match Box without extra costs, in which, there was no defect even as per the averments in the complaint. Assuming that in order to promote the business, the opposite party has announced, thereby expanding his business, for consideration and the case may come within the Consumer Protection Act, we will see the merits of the case also.

8. Admittedly, the first opposite party announced a scheme, under which, they have agreed to take the person, on tour provided in the Match Box purchased by the person, there was a gift coupon/voucher. In order to claim the tour benefits, in case, tour was not undertaken, the complainant must make out a case that the Match Box was manufactured by the first opposite party, was purchased by him,

which contain gift coupon, for which, practically we have nil evidence. The complainant has not produced any bill, for the purchase of the Match Box from the second opposite party. Ex.A1-a Xerox copy of the price coupon, failed to disclose it, was available in the Match Box purchased by the complainant or it was entrusted to the second opposite party. As seen from the documents, some of the persons were taken on tour on 16.4.98, since the price coupon does not contain the date of purchase. It is not known, whether the complainant had entrusted the original either to the second opposite party or the first opposite party as the case may be, for which, we do not have materials. The District Forum unfortunately presuming, as if, the complainant had purchased the Match Box and entrusted the same to the second opposite party, when denied, has come to the conclusion, as if, the complainant was not taken for the tour, which should be construed as deficiency of service and in this view, the complainant is entitled to tour cost, which findings, we are unable to endorse, in the absence of material. Assuming that the complainant had entrusted the price coupon, but the first opposite party failed to take him in the tour, now, it should be seen, whether the claim is in time.

9. The main argument advanced on behalf of the appellant was, that the claim is barred by limitation. This complaint was filed before the District Forum on 07.02.2002, as seen from the seal. Notice demanding the right, was issued on 27.7.98, as pleaded in the complaint. Therefore, the date of cause of action must be prior to 27.7.98, on which date, the complainant came to be in possession of the gift coupon. Taking the demand date as the date of cause of action namely 27.7.98, it is to be held, claim barred, since this case was filed only on 07.02.2002, that is after the lapse of two years. Under Section 24 (A) of the Consumer Protection Act, the District Forum is barred, from taking the case on file, if the claim is filed after two years from the date of cause of action and it is the duty of the District Forum to find out, whether the claim is in time, which was not done in this case. Therefore, the present claim is to be dismissed, as time barred.

10. In the present complaint itself, there is a note, as if, a case was filed for the same relief in OP.62/2001, which was dismissed for default on 20.12.2001. But, unfortunately that complaint was not restored, whereas fresh complaint came to be filed on 07.02.2002. The District Forum has also recorded a finding subsequent

complaint is not barred, and accepting the same, if the second complaint is to be accepted, it should be within the time, which is not the case. The complainant has also not filed any petition, to condone the delay as available under Section 24(A)(2) of the Consumer Protection Act. In the original complaint, there is an endorsement IA.12/2002 petition filed on 22.03.2002 and it is not made clear, what for that petition has been filed. If that petition was to condone the delay as contemplated under Section 24 (A)(2), then this Petition can be taken, as if, filed within the time and in order to verify, we have issued a direction to the District Forum, to submit the said record, for which, we have received a reply from the District Forum stating that I.A.12/2002 as not available in the bundle. But at the same time, they have obtained a copy of the Advocate concerned and submitted the same, which would reveal that the petition was aimed to restore the petition, which was dismissed for default and there is no prayer for condoning of delay. In fact, the prayer says, setting aside the dismissal order dated 21.12.2002, the complaint has to be taken on file, which is not the case, as seen from the original complaint, since a fresh complaint came to be filed, that is out of time. A copy of register pertaining to IA was also submitted by the District Forum, which says IA.12/2002 was filed to accept the fresh petition not to condone the delay. Thus, it is seen, the present complaint came to be filed, after two years from the date of cause of action and therefore, it should be held as barred by limitation.

11. We do not have the materials, when the first complaint was filed. But the number prima facie indicates, that it should have been filed in the year 2001. If that is the case, that complaint itself might have been barred by limitation. This, viewing the case from all possible, probable angles, we are constrained to say that the complaint, is not maintainable before the Consumer Forum and same is also barred by limitation, hence, the order passed by the District Forum without jurisdiction, is to be erased, for that, appeal is accepted.

12. In the result, the appeal is allowed, the order of the District Forum in OP No.29/2002, dt.15.02.2007 is set aside, and the complaint is dismissed. There will be no order as to cost throughout.

13. The Registry is directed to handover the Fixed Deposit Receipt, made towards the mandatory deposit, to the appellant/ first opposite party duly discharged, since appellant succeeded, and there is no need to retain the FDR.

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