

The Owner and Another Vs. R. Senthil Kumar, Partner K.R. Enterprises

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC
Chennai

Decided On : Sep-17-2010

Judge : Honourable Thiru Justice M. Thanikachalam President, Tmt. Vasugi Ramanan, M.a.,B.L., Member I, Thiru S. Sambandam, B.SC., Member II

Appeal No. : F.A.NO.288 of 2007 (Against order in C.C.NO.131/2004 on the file of the DCDRF, Salem)

Appellant : The Owner and Another

Respondent : R. Senthil Kumar, Partner K.R. Enterprises

Judgement :

(The Respondent as complainant filed a complaint before the District Forum against the Appellants/ opposite parties praying for the direction to the opposite parties to pay Rs.87,285/- with 18% interest alongwith compensation of Rs.5000/- and cost of Rs.1000/-. 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.17.4.2007 in O.P.No.131/2004.)

M. THANIKACHALAM J, PRESIDENT

1. The opposite parties are the appellants.

2. The complainant, who is carrying on business, in textile goods, had booked two bundles of handloom goods, in the office of the 2nd opposite party, the branch of the 1st opposite party, for delivery to the consignee by name Kaveri Textiles, Ambattur, Chennai, on 2.5.2003, as per the way bill No.06766, worth about Rs.84,910, which was agreed to be carried and delivered by the opposite parties, to the consignee intact. But the consignment had not reached the destination. It appears, as informed, there was pilferage on the way, resulting loss of goods, for which a criminal complaint has been given, to the police station. Even thereafter, when the complainant requested the opposite parties to pay the value of the goods, since as agreed, not carried the same to the destination, notice also issued, which also failed to yield any result, which should be construed as not only negligence, but also deficiency in service. Hence the complainant is constrained to file the case, to recover the value of the goods, viz. Rs.87,285/-, with interest thereon, as well for the compensation of Rs.5000/-.

3. The opposite party, admitting their position as well the entrustment of the goods, raised an objection, that the complaint itself is not maintainable, since the complainant is not a consumer, and if at all, they ought to have moved the civil forum, for appropriate relief, that there was no contract between the complainant and the opposite parties, which follows, there could be no deficiency in service or negligence, as the case may be, thereby praying for the dismissal of the complaint.

4. The District Forum, considering the factum of entrustment of the goods, as well as non-delivery of the same, came to the conclusion, that there was deficiency on the part of the opposite party. The District Forum, further concluding, though not said so, that the complainant is a consumer, slapped an order, directing the opposite party to return the value of the goods, with interest, as well to pay a compensation of Rs.2000/- alongwith cost, as per order dt.17.4.2007, which is under challenge, before this commission.

5. Heard the learned counsel appearing on either side, perused the written submissions, documents, lower court records, and also the order passed by the District Forum.

6. The only point urged before us was, that the complainant is not a consumer, as defined under the Consumer Protection Act, which was not properly considered by the District Forum, despite the same was raised, and therefore the direction issued must be construed as one, without jurisdiction, which is opposed.

7. As seen from Ex.A6, and Ex.B2, the complainant entrusted with the opposite party, textile goods, in two bundles, for delivery to the consignee viz. Kaveri Textiles, Ambattur, Chennai. It is not disputed before us, that the consignment was not delivered to the consignee. It appears, on the way, there was some pilferage or theft as the case may be, resulting police complaint also, before Aatur Police station, who has not traced out the goods. Thereafter, issuing notice, unable to realize the value of the goods, or the goods, a complaint has been filed. From the pleadings, as well from the invoice, it is clear that the complainant had consigned handloom goods to Kaveri Textiles, Ambattur, Chennai, for business purpose, viz. for profit, which alone was entrusted, with the 2nd opposite party, who undertook to carry and deliver the consignment, to the destination. Though they have collected freight charges or hire charges, the consignment had not reached the destination. When the appellant/ opposite party, has raised the question, that the consignment was for commercial purpose, the same was also not challenged before us. Thus taking it as an admitted fact, as well concluding, based upon the invoice, and way bill, that the opposite partys service was hired, for commercial purpose, we have to see, whether the forum has jurisdiction to decide the case.

8. This transaction had taken place on 2.5.2003. In the definition for consumer, amendment was introduced, which came into effect, on and from 15.3.2003. As per the amended definition for consumer, if any person, hires or avails of any service for consideration, which has been paid or promised, etc., will not come, within the meaning of the consumer, since the amended provision says but it does not include a person, who avails such services for any commercial purpose. There is an explanation also, introduced under the same Act, excluding certain kind of commercial purpose viz. if that commercial activities, relate to self employment, aiming ones livelihood. It is not the case of the complainant, in the complaint, that he comes within the ambit of explanation, and therefore, he cannot be ousted from the definition of a consumer.

9. This commission, while considering the same kind of case in F.A.No.357/2007, taking into consideration, the definition available under the Act, as well as the decision of the Supreme Court, in Economic Transport Organization Vs. Charan Spinning Mills (P) Ltd., and another reported in 2010 CTJ 361 (Supreme Court) (CP), has come to the conclusion, after the amendment, if the service of the carrier had been availed for any commercial purpose, then the person availing the service, will not be a consumer, and consequentially, complaints will not be maintainable in such case. Following the said decision, we are constrained to hold, that the complaint before the District Forum is not at all maintainable. Unfortunately the District Forum, despite this defense has been raised, failed to give a finding, and assuming jurisdiction, passed an order, without jurisdiction, which should be held not valid. For these reasons, without going into other merits of the case, we conclude, the appeal deserves to be accepted.

10. The learned counsel for complainant / respondent submitted, that in case, the commission comes to the conclusion, that complaint is not maintainable, likely may be given to the complainant, to move the appropriate forum for appropriate remedy, giving exemption for the period consumed, which we are inclined to give.

11. In the result, the appeal is allowed, setting aside the order of the District Forum in C.C.No.131/2004, dt.17.4.2007, and the complaint is dismissed. Considering the facts and circumstances of the case, there will be no order as to cost throughout.

Registry is directed to handover the Fixed Deposit Receipt, made by way of mandatory deposit, to the appellant, duly discharged.

Respondent/ complainant is permitted to approach proper forum for appropriate remedy, if advised, and in that event, for calculating the period of limitation, the time consumed in prosecuting this case, till this date, shall stand excluded under Sec.14 of the Limitation Act.

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