

Nandakumar and Another Vs. K.V. Jayanand

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Sep-13-2010

Judge : The Honourable Shri. Justice K.R. Udayabhanu President

Appeal No. : First Appeal No. 314/2006 (Arisen out of order dated in Case No. of District)

Appellant : Nandakumar and Another

Respondent : K.V. Jayanand

Judgement :

JUSTICE SHRI. K.R. UDAYABHANU : PRESIDENT

Appellants are the opposite parties in OP.325/02 in the file of CDRF, Kannur. The appellants are under orders to pay the market price of the gold pledged as on 2002 after deducting Rs.60,500/- + interest at the rate of 12% from the date of pledge till 2/9/2002 along with compensation of Rs.50,000/- and cost of Rs.2000/-.

It is the case of the complainant that he pledged 2 items of gold having the weight of 171.90 gms and 81.90 gms and availed loan of Rs.31,500/- and 29,000/- respectively. When he went to take back the ornaments on 2/9/2002 he was told that the articles were sold in auction. The selling of the ornaments without notice amounted to deficiency of service. Hence the complaint, seeking compensation and return of gold ornaments.

In the version filed, the opposite parties/appellants have admitted the pledging alleged. It is the contention that the gold ornaments were not taken back within the period fixed. According to the opposite parties even after receiving the lawyer notice they tried their best persuading to take back the gold ornaments and clear the loans. It is stated that they are ready to give the gold of the same sovereign provided the complainant is prepared to clear the loan amount with interest and other dues.

The evidence adduced consisted of the testimony of PW1 and Exts.A1 to A5.

We find that as noted by the Forum the opposite parties have not adduced any oral or documentary evidence in support of the case that the complainant did not take back the ornaments before the due date. On the other hand, the complainant has testified and produced copy of the lawyer notice and postal receipt and acknowledgement card and also Ext.A4 and A5, the cards with respect to the pledges issued by the opposite parties. We find that Ext.A4 and A5 only mentions the pledged date as 16/3/2002 and 25/4/2002 and the due dates as 16/6/2002 and 29/7/2002 which would work out as 3 months. There is nothing in Ext.A4 or A5 as to the rate of interest etc. As pointed out by the counsel for the respondent/complainant, complainant has issued the lawyer notice on 4/9/2002 and instituted the complaint on 26/12/2002. Evidently within two months from the due dates the complainant has approached the opposite party. The lawyer notice was not replied to. No document was produced to show that notice was issued intimating that the ornaments will be sold after notice. No records as to the sale of the ornaments were also produced. Nothing is noted in Ext.A4 or A5 that the ornaments are liable to be sold after the due dates. In the circumstances we find that there is gross deficiency of service on the part of the opposite parties. Hence no interference in the order of the Forum is called for. The order of the Forum is sustained. The appeal is dismissed.

The office will forward the LCR along with the copy of the order to the Forum.

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