

Babu Antony Vs. the President, Kairaly Marketing and Processing Co-operative Society Ltd., AlappuzhA.

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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Jan-29-2010

Judge : The Honourable Smt. Valsala Sarangadharan Member, the Honourable Shri. M.V. Viswanathan Judicial Member the Honourable Shri. S. Chandra Mohan Nair Member

Appeal No. : First Appeal No. 329/2005 (Arisen out of order dated 13/02/2004 in Case No. A.124/2002 of District Alappuzha)

Appellant : Babu Antony

Respondent : The President, Kairaly Marketing and Processing Co-operative Society Ltd., AlappuzhA.

Judgement :

SHRI.M.V.VISWANATHAN : JUDICIAL MEMBER

This appeal is preferred from the order dated 13.02.2004 passed by CDRF, Alappuzha in O.P.A.124/2002. The complaint therein was filed by the respondent herein against the appellant/opposite party alleging deficiency of service on the part of the opposite party in effecting supply and sale of oil expeller and filter press. The complainant alleged that they paid the total consideration of

Rs.1,37,383/- to the opposite party and that the opposite party failed to supply the machineries. The opposite party entered appearance and contended that the complainant is not a consumer as defined under Sec.2(1)(d) of the Consumer Protection Act, 1986 and that the Forum below has no jurisdiction to entertain the complaint in O.P.A.124/2002. The opposite party has also contended that the claim is barred by limitation and there was no deficiency of service on the part of the opposite party.

2. Before the Forum below Exts.A1 to A3 documents were produced from the side of the complainant. No evidence was adduced from the side of the opposite party. On an appreciation of the evidence on record, the Forum below passed the impugned order dated 13.02.2004 directing the opposite party to refund Rs.1,37,384/- to the complainant with 10% interest and cost of Rs.1500/-. Hence the present appeal by the opposite party therein.

3. We heard both sides.

4. The learned counsel for the appellant /opposite party submitted his arguments based on the grounds urged in the memorandum of the present appeal. He vehemently argued for the position that the respondent/complainant is not a consumer coming under the purview of the Consumer Protection Act, 1986 and that the Forum below has gone wrong in entertaining the complaint in O.P.A.124/02. He has also argued for the position that the claim is barred by limitation. On the other hand, the respondent/complainant supported the impugned order passed by the Forum below. The learned counsel for the respondent/complainant much relied on A3 bye-law of the complainant society and submitted that the purchase of the machinery was not for any business or commercial purpose. Thus, the respondent prayed for dismissal of the present appeal.

5. The points that arise for consideration are:-

1. Whether the respondent/complainant can be considered as a consumer as defined under sec.2(1)(d) of the Consumer Protection Act ,1986?

2. Whether the claim is barred by limitation?

3. Whether there was any deficiency of service on the part of the appellant/opposite party?

6. Point 1:- It is the case of the respondent/complainant that he placed order with the opposite party for purchase of oil expeller and filter press for starting an oil mill. It is also the case that a total of Rs.1,37,384/- was paid to the opposite party towards the full sale consideration of the said machineries namely oil expeller and filter press. The case of the opposite part is that the complainants society is not a consumer as defined under sec.2(1)(d) Consumer Protection Act as the oil expeller and filter press was ordered for commercial purpose. Ext.A3 bye-law of the complainants society would make it abundantly clear that the society has been doing commercial activities for earning profit. The very object of the constitution of the complainants society would make it clear that the complainants society has been doing business activities for the benefit of its members. It can safely be noted that they were doing marketing business and other commercial activities for the purpose of making profit. It may be correct to say that the profit making processes has been carried out for the benefit of its members. The fact that the complainants society was constituted for the benefit of its members cannot be taken as a ground to hold that the complainants society was not doing or is not doing any business activity with the intension of making profit. So, it can very safely be concluded that the complainants society was doing business activities and commercial activities for the purpose of making profit. The very purchase of oil expeller and filter press was for starting an oil mill and for doing commercial activities. Thus, the sale agreement or the sale transaction between the complainant and opposite party can be considered as a business transaction. The very purpose of purchase of oil expeller and filter press was for commercial purpose. If that be so, the complainant society cannot be considered as a consumer as defined under Sec.2 (1)(d) of the Consumer Protection Act, 1986.

7. The definition for the term Consumer given under Sec. 2(1)(d) would make it clear that the complainants society is out side the purview of the Consumer Protection Act. If that be so, the dispute involved in the complaint in O.P.A.124/02

cannot be treated as a consumer dispute. The Forum below failed in appreciating the facts, circumstances and evidence on records. Without considering the definition for consumer under Sec.2(1)(d) of the Consumer Protection Act, the forum below has found the complainant as a consumer. The appellant/opposite party is justified in their contention that the complainants society is not a consumer coming within the ambit of the definition of consumer and that the dispute involved is not a consumer dispute. The Forum below had no jurisdiction to entertain the dispute involved in O.P.A.124/02. This point is answered accordingly.

8. Points 2and3:- In the light of the finding that the complainant is not a consumer and that the dispute involved is not a consumer dispute these points do not warrant consideration. The parties are relegated to proper civil court to get their grievance redressed. So, these points are left open.

In the result, the appeal is allowed. The impugned order dated 13.02.2004 passed by CDRF, Alappuzha in O.P.A124/02 is set aside. The parties are directed to suffer their respective costs through out. It is made clear that the parties can very well approach competent court for redressal of their grievances.

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