

Abc Peripherals Vs. Vinod Kumar Gupta

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : May-12-2003

Judge : Lokeshwar Prasad, President & Ms. Rumnita Mittal, Member

Appeal No. : Appeal No. A-397 of 2003

Appellant : Abc Peripherals

Respondent : Vinod Kumar Gupta

Judgement :

Lokeshwar Prasad, President:

1. The present appeal, filed by the appellant, under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as the Act), is directed against order dated 20.2.2003, passed by District Forum (East), Saini Enclave, Delhi in Complaint Case No. 259/2002 entitled Shri Vinod Kumar Gupta v. M/s. ABC Peripherals and Others.

2. The facts, relevant for the disposal of the present appeal, briefly stated, are that the respondent Shri Vinod Kumar Gupta had filed a complaint under Section 12 of the Act before the District Forum averring therein that he had purchased a computer from appellant vide purchase order dated 6.2.2002. It was stated that the computer, so purchased by the respondent from the appellant, was to be of the following configuration:

(i) Compaq Presario 3600 with ink jet colour printer (IJ 650) along with Compaq monitor and some free accessories which were being given by the Compaq company;

(ii) Scratch card and free gift scheme launched by G.M. Compaq Computer (India) P. Ltd.

3. It was stated that along with the computer a table including two chairs were also ordered by the respondent and for the purchase of above articles an amount of Rs. 50,500/- was given in cash along with the purchase order.

4. It was stated that on 18.2.2002, the appellant had delivered an incomplete computer system and when the respondent enquired about the remaining items, namely, computer table, chairs, printer and scratch card, the appellant promised to deliver the same along with the changed UPS. It was stated that despite assurance given by the appellant, the delivery of the above said items was not made and the system was also not properly installed. The defective UPS was returned by the respondent to the appellant for which a sum of Rs. 2,500/- was received by the respondent from the appellant by means of a cheque. Alleging deficiency in service on the part of the appellant, the respondent in the complaint, filed by him, sought for the refund of the cost of the computer together with compensation of Rs. 25,000/- for mental torture and loss of interest. The respondent had also claimed a sum of Rs. 10,000/- as cost of litigation.

5. The claim of the respondent Shri Vinod Kumar Gupta was resisted in the District Forum by the appellant and in the reply/written version filed on behalf of the appellant it was stated that the Compaq P.C. for which an order was placed and cost was paid, was delivered vide bill No. 20895 to the respondent minus printer. It was stated that the appellant offered to provide the respondent with EPSON printer at the same price though the price of EPSON printer was slightly costlier. It was stated that it was agreed between the appellant and the respondent that whenever that printer was available the same be delivered to him. It was stated that on 16.3.202, the appellant contacted the respondent and informed him regarding the availability of a new model of printer (Zed-13). It was stated that the respondent was not ready to take the delivery of that new model of the printer and

insisted that the whole P.C. should be replaced. It was stated in the reply/written version, filed on behalf of the appellant, that the complaint filed by the respondent was false and without any basis and deserved to be dismissed.

6. The learned District Forum vide impugned order has partly allowed the complaint filed by the respondent and has directed the appellant to pay a sum of Rs. 2,500/- as compensation and Rs. 500/- as cost of litigation to the respondent Shri Vinod Kumar Gupta.

7. Feeling aggrieved, the appellant has preferred the present appeal under Section 15 of the Act.

8. We have heard Mr. Pankaj Kalra, the partner of the appellant at length on the question of admission of the present appeal and have also carefully gone through the documents/material on record. In terms of the provisions contained in Section 15 of the Act, a person, aggrieved by an order, made by the District Forum, can prefer an appeal against such order to the State Commission within a period of 30 days from the date of the order. However, proviso to Section 15 of the Act provides that the State Commission may entertain an appeal even after the expiry of the above said period of 30 days, if it is satisfied that there was sufficient cause for not filing the same within the above said period. The words sufficient cause, occurring in proviso to Section 15 of the Act are of utmost significance. As per settled law, culled out from various judicial decisions, the above expression sufficient cause, though deserves to receive a liberal interpretation, yet, a just and equitable balance has to be maintained between the right secured by the respondent as a result of expiry of the prescribed period of limitation and the injustice of depriving the appellant of adjudication of his grievances on the merits of his appeal for causes beyond his reasonable control, which means the cause is bona fide and beyond the control of the appellant. Though, no hard and fast line can be drawn as to what affords sufficient cause in a given case, yet, again, as per settled law, any cause which prevents a person from approaching the Court within time is sufficient cause. In doing so, it is the test of a reasonable man in normal circumstances which has to be applied.

9. Admittedly, the present appeal has not been filed by the appellant within the prescribed period of 30 days because the order being impugned in the present proceedings was passed by the learned District Forum on 20.2.2003 and the present appeal has been filed by the appellant on 22.4.2003. Therefore, the question requiring consideration at the very threshold is as to whether the appellant has shown sufficient cause for not filing the appeal in time within the meaning of proviso to Section 15 of the Act.

10. The appellant, along with the appeal has filed an application seeking condonation of delay in filing the present appeal. The reason for not filing the appeal in time has been stated in para 1 of the above said application which reads as under:

That I was out of town for business proposes and came to know of the facts only a couple of days back and hence was unable to file the appeal within the stipulated time period. Therefore, the delay in the same may please be pardoned and the appeal be entertained.

11. On a perusal of the memorandum of appeal, it is apparent that the copy of the order, being impugned in the present proceedings, was received by the appellant on 7.3.2003 and if the period of limitation for filing the present appeal is to be computed as commencing from the date of communication of order, as has been held by the Honble supreme Court in case Housing Board, Haryana v. Housing Board Colony Welfare Association and Others, reported as III (1995) CPJ 28 (SC), the present appeal should have been filed by the appellant by 7.4.2003 as 6.4.2003 was a public holiday due to being Sunday. The same, as already, stated, has been filed beyond the prescribed period of limitation on 22.4.2003. The reason assigned for not filing the appeal in time is that the appellant was out of town for business purposes and came to know of the facts only a couple of days back. In the application no details have been given regarding the date on which the partner of the appellant went out of town and on which date he came back. No details of the destination has also been given. The age-old saying that men may lie but not the circumstances is aptly applicable to the facts of the present case because in the memorandum of appeal it has been clearly stated by the appellant that

certified copy of the order, being impugned in the present proceedings was received by the appellant on 7.3.2003 whereas in the application it is stated that the appellant came to know of the same when he came back after his business tour. It appears that the plea now been taken by the appellant is an afterthought and has been taken only with a view to cover up the lapse on the part of the appellant. Delay in filing the appeal cannot be condoned as a matter of generosity. Proof of sufficient cause is a condition precedent for the exercise of such discretion by the Appellate Authority. In our above views, we stand fortified by a decision of the Honble National Commission in case Vice-Chairman, Delhi Development Authority v. O.P. Gauba, reported as III (1995) CPJ 18 (NC)=1986-96 CONSUMER 2731 (NS).

12. In the presence of the above facts and the position explained above, in our opinion, whatever liberal interpretation might be put on the word sufficient cause it would be impossible for us to hold that there was no negligence on the part of the appellant. In our opinion, as a matter of fact, the appellant has miserably failed to show sufficient cause for condoning the delay in filing the present appeal. The above mentioned application seeking condonation of delay in filing the appeal is, therefore, devoid of substance. The same merits rejection. Accordingly, the same is hereby rejected.

13. The above mentioned appeal, filed by the appellant, besides being barred by limitation, is also devoid of substance on merits because, as already stated, the learned District Forum vide impugned order has partly allowed the complaint, filed by the respondent, on the ground that there was delay in the delivery of the complete system on the part of the appellant to the respondent. Admittedly, the printer was not delivered by the appellant to the respondent at the time of the delivery of Compaq Presario-3600 P.C. Even thereafter the agreed printer was not offered for delivery and the printer offered for delivery was different than the one ordered by the respondent and the respondent, therefore, was fully justified in refusing to take the delivery of the same.

14. In the presence of the above facts, no fault can be found with the findings of the learned District Forum. The order, being impugned in the present proceedings,

as a matter of fact, suffers from no infirmity so as to call for any interference by this Commission in exercise of its appellate powers. The present appeal filed by the appellant is, therefore, devoid of substance. The same merits dismissal. Accordingly, the same is dismissed in limine with no order as to costs.

Appeal dismissed.

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