

Paper Converting Machine Vs. S. Banerjee

Paper Converting Machine Vs. S. Banerjee

SooperKanoon Citation : sooperkanoon.com/1112925

Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Mar-13-2003

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

Appeal No. : Appeal No. A-639 of 2000

Appellant : Paper Converting Machine

Respondent : S. Banerjee

Judgement :

Rumnita Mittal, Member:

1. The present appeal is directed against order of District Forum-II, Udyog Sadan, New Delhi dated 5.2.2000, passed in Complaint Case No. 2935/1998 entitled Shri S. Banerjee v. M/s. Paper Converting Machine.

2. Briefly stated, the relevant facts are, that the respondent had filed a complaint before the District Forum under Section 12 of the Consumer Protection Act, 1986 (hereinafter referred to as the Act) averring therein that the respondent had paid a sum of Rs. 50,000/- to the appellant for supplying one Tissue Paper Converting Machine, vide cheque No. 08115 drawn on Central Bank of India, Khan Market, New Delhi. The appellant, however failed to supply the said machine , despite personal visits and telephonic reminders. The appellant also refused to refund the amount deposited with them and as such the respondent got a legal notice served

on the appellant. Since there was no response from the appellant, the respondent filed a complaint before the District Forum praying for the refund of the amount of Rs. 50,000/- deposited with the appellant together with interest, compensation and costs.

3. Despite service the respondents failed to appear before the District Forum and as such were proceeded ex parte vide order/proceedings dated 27.10.1999. Accordingly, the learned District Forum on the basis of document/material on record, allowed the complaint and directed the appellant to refund the amount of Rs. 50,000/- together with interest at the rate of 18 per cent per annum compounded yearly with effect from 11.4.1998 till the date of payment together with compensation of Rs. 4,000/-.

Aggrieved by the aforesaid order, the appellant has filed the present appeal.

4. We have carefully perused the documents/material placed on record, as well, as have heard the arguments advanced on behalf of the parties on the merits of the present appeal. The contentions raised by the appellant in the instant appeal are that the appellant had been proceeded ex parte by the learned District Forum without proper service on the appellant and as such the appellant was deprived of an opportunity of being heard. On merits it is contended on behalf of the appellant that the appellant had been making attempts to deliver the machine to the respondent, however, the respondent had avoided to take the delivery of the same on account of some ulterior motive and as such there is no deficiency in service on its part. As regards the first contention of the appellant is concerned, the impugned order of the learned District Forum specifically records the fact that it was only after the receipt of the acknowledgement due in respect of service by registered A.D. on the appellant, that the appellant had been proceeded ex parte. We have no reason to disbelieve the said finding of fact by the learned District Forum. Even otherwise the present appeal is a continuation of the proceedings before the District Forum and as such the appellant has been afforded full opportunity of being heard on merits. The appellant has nowhere in the present appeal denied the receipt of the payment of Rs. 50,000/- for the supply of Tissue Paper Converting machine, the only defence raised before us is that the appellant had

always been ready and willing to deliver the machine to the respondent and it was the respondent who had avoided to take the delivery of the same on account of some ulterior motives. The said contention of the appellant is not supported by any document or any other evidence on record. Furthermore, it is inconceivable that the respondent who has placed an order for machine and has also deposited the price for the same with the appellant, would refuse to take the delivery of the machine. Therefore, since the appellant has miserably failed to rebut the case of the respondent we are unable to uphold the contention of the appellant that there is no deficiency in service on its part.

5. However, insofar as the other contention of the appellant is concerned that the relief granted by the learned District Forum is highly excessive in the facts and circumstances of the case, appears to be justified as the learned District Forum vide impugned order has awarded compounded interest at the rate of 18 per cent per annum on the amount of Rs. 50,000/- and has also awarded compensation of Rs. 4,000/-. It is a settled law that both the compensation and interest cannot be awarded as the redressal agencies established under the Act cannot be made Foras for unjust enrichment of the consumers. Accordingly, simple interest at the rate of 18 per cent per annum instead of compound interest at the rate of 18 per cent per annum is allowed on the amount of Rs. 50,000/-. Further, Rs. 4,000/- granted as compensation and cost is reduced to Rs. 1,000/- on account of cost of litigation only.

6. Accordingly, the present appeal filed by the appellant is partly allowed and the impugned order of the learned District Forum is modified to the extent that instead of compound interest at the rate of 18 per cent per annum on the amount of Rs. 50,000/-, simple interest at the rate of 18 per cent per annum is awarded with effect from 11.4.1998 till the date of payment and the compensation and cost of Rs. 4,000/- is also reduced to Rs. 1,000/- only as cost of litigation. The present appeal, filed by the appellant, stands disposed of in above terms.

Appeal partly allowed.