

Gulab Industries Pvt. Limited Vs. R.N.G. Suiting Limited

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Court : Union Territory Consumer Disputes Redressal Commission UT Chandigarh

Decided On : Jan-27-2003

Judge : K.K. Srivastava, President, the Honourable Mrs. Devinderjit Dhatt, Member & the Honourable Mr. Maj. Gen. S.P. Kapoor, Member

Appeal No. : Appeal Case No. 287 of 2002

Appellant : Gulab Industries Pvt. Limited

Respondent : R.N.G. Suiting Limited

Judgement :

Maj. Gen. S.P. Kapoor, Member:

1. This is an appeal filed against the order of District Consumer Disputes Redressal Forum-II, U.T. Chandigarh (hereinafter for short referred to as District Forum) dated 9.9.2002 in Complaint Case No. 777 of 1998; M/s. RNG Suiting Ltd. v. M/s. Gulati Industries Pvt. Ltd.

2. The complainant avers that he had given two consignments of cloth for dying and treatment to the O.P. through the O.Ps. agent Sh. Satinder Sharma, Annexures C-1 and C-2 refer. The first consignment of 1455 metres of Supermatt given in July, 1997 was received back after processing on 24.10.1997 and on the same date the second consignment of 909 metres of Worsted 555 was given to the same Sh. Satinder Sharma, Annexure C-3 refers. Though, on opening the first

consignment it was found by the complainant that colouring had not been done as per specifications yet the complainant started selling this cloth to the retailers and the retailers to the customers. However, soon complaints started coming in regarding dying and finishing. This was brought to the notice of the O.P., who asked the complainant to return the unsold cloth to them for retreatment. The same was done by sending the 297.9 metres of material through public transport on 25.12.1997 vide GR No. 004685 (Annexure C-3). The complaint is that dying and treatment of first consignment of 1455 metres of Supermatt Cloth has not been done as per specifications and 297.90 metres of this consignment returned to O.P. for retreatment as well as 909 metres of worsted 555 cloth of the second consignment have not been returned back after treatment/retreatment, causing the complainant financial loss as well as loss of reputation and for the deficiency on the part of the O.P., the complainant prayed for the following amounts to be paid by the O.P. to him as relief :

(a)Rs. 81,810/- being cost price of 909 metres of worsted 555 cloth not returned after treatment i.e. the second consignment.

(b)Rs. 23,236.20 being cost price of 297.90 metres of Supermatt Cloth not returned after retreatment.

(c) Rs. 90,253.80 being cost price of 1157.10 metres of Supermatt Cloth received back by the complainant from retailers and other customers.

(d)Rs. 50,000/- as damages for loss of reputation.

3. The O.P.s version is that only one consignment of 1455 metres of Supermatt cloth was received and the same was dyed and treated as per instructions and 297.90 metres of this consignment sent back to them was personally received back by the complainant and hence there is no deficiency on the part of the O.P. As regards the second consignment, the O.P. has stated that it did not receive any second consignment and hence has no liability towards it. An affidavit of one Mr. B.K. Roy authorized signatory of the O.P. is on record which has an Annexure marked R.X. 1 by District Forum, which is a receipt dated 24.10.1997 of 909 metres of cloth having been sent by the complainant to M/s. Singla Cloth House,

Ludhiana. The complainants version is that due to a bona fide mistake, the address of the recipient company on this receipt was not corrected and that this document is nowhere on record of the complaint case.

4. Learned District Forum-II in this order held that it has been proved that the first consignment of 1455 metres of cloth was not properly treated by the O.P. and 297.90 metres of cloth out of this consignment given back for retreatment has not been returned after retreatment by the O.P. and the second consignment of 909 metres of cloth has also not been delivered back after treatment/processing by the O.P. to the complainant and this amounts to unfair trade practice and deficiency in service. Learned District Forum-II also held that cloth given in 1997 for treatment would have considerably deteriorated due to passage of time and, therefore, it would be appropriate to order the O.P. to pay its cost to the complainant rather than return the cloth. Resultantly, the learned District Forum directed the O.Ps. to pay the complainant the price of the cloth measuring 909 metres @ 90 per metre and cost of 297.90 metres of cloth @ 78 per metre i.e. total Rs. 1,05,046.20. O.P. has been further directed to pay cost of 1157.10 metres of cloth (received back by the complainant from its retailers as defective) amounting to Rs. 90,253.80 @ Rs. 78 per metre and as against this payment, the complainant shall return this defective cloth measuring 1157.11 metres to the O.P. It also directed the O.P. to pay interest @ 9% on Rs. 1,05,046/- from 24.10.1997 till payment and additionally pay Rs. 1,100/- as costs. No interest was allowed on Rs. 90,253.80. However, if the order was not complied with by the O.P. within two months of the receipt of the certified copy of the order of District Forum, this amount shall also draw interest @ 9% from the date of default till payment.

5. Aggrieved by this order of District Forum, the O.P. has filed this appeal. The appeal was taken on board, record of the complaint case was summoned from the District Forum and notice was sent to the respondent. Mr. R.K. Basandhi, Advocate represented the appellant whereas Mr. Ashok Sharma, Advocate appeared on behalf of the respondent.

6. This case was listed for arguments on 14.1.2003. None appeared on behalf of the appellant. The Counsel for the respondent argued his case and the orders

were reserved. However, on 15.1.2003 the Counsel for the appellant made request to list the case for hearing on 16.1.2003. In the interest of justice, his request was allowed and on 16.1.2003 the case came up for final hearing.

7. In his arguments, Mr. Basandhi, Advocate referring to the impugned order submitted that it only indicated that the consignment was not dyed as per specifications, whereas there is no mention of details of these specifications. He reiterated that the cloth was properly processed and delivered. He also submitted that there is no complaint either of any retailer or customer on record regarding defective dying/processing of the cloth in question. Further, referring to Para 10 of the order, he submitted that the learned District Forum had erred in holding that there is no reliable rebuttal of averment made in the affidavit of the complainant that 1157.10 metres of cloth has been returned to it by its dealers and customers as defective because this averment has been specifically denied by the appellant. Finally, the learned Counsel pleaded that even the learned District Forum is of the view that a Civil Court of competent jurisdiction can deal with this complaint in a better manner as a regular civil suit and has stated so in the impugned order. He prayed that the appeal be allowed and the respondent be relegated to legal remedy in a Civil Court.

8. In his arguments the learned Counsel for the respondent submitted that by accepting back 297.90 metres of cloth of the first consignment for retreatment the appellant has already accepted that the first consignment was not properly treated/processed. He further pleaded that all opportunities to lead evidence to the appellant were granted to prove his case hence now it cannot lie in the mouth of the appellant to say that the remedy lies in the Civil Court because the case involved disputed questions of facts. He finally submitted that the appellant has kept the second consignment as well as 297.90 metres of the first consignment returned for retreatment.

9. The evidence on record when seen in the perspective of O.P. accepting 297.90 metres of cloths Supermatt of the first consignment for treatment makes it clear that the first consignment was not properly dyed/processed and to that extent we are in consonance with the view taken by the learned District Forum that there is

deficiency in service on the part of the appellant/O.P. on this count. As regards non-delivery of 297.90 metres of Supermatt clothes sent for retreatment as well as 909 metres of Worsted 555 i.e. second consignment, it is clear from records that these two quantities of cloths were received by the appellant from the respondent/complainant and it is not the case of the appellant that it has returned the aforesaid cloths back to the respondent. Thus, non-delivery of the aforesaid quantity of cloth is also established and the District Forum was right in holding deficiency on the part of the appellant on this count as well.

10. Coming to the plea of the learned Counsel for the appellant that the learned District Forum erred in law in coming to the conclusion vide Para 10 of the impugned order that there is no reliable rebuttal of the averments made in the complaint, it is relevant to mention here that whereas the learned Counsel for the appellant has submitted that there was denial of the averment that defective cloth had been returned by the dealers and customers to the respondent, we find that on record, this denial is only in the written statement whereas the same is conspicuously missing from the affidavit of Mr. B.K. Roy, filed in evidence by the appellant/O.P. Hence, we are of the clear opinion that the learned District Forum was right in coming to the conclusion that there is no reliable rebuttal of this averment on record.

11. As regards the submission of the learned Counsel for the appellant that it is a fit case for being adjudicated upon by a Civil Court of competent jurisdiction as it raises complicated questions of law and disputed facts, we wholly agree with the finding of the District Forum in going ahead in adjudication of this case keeping in view the fact that the case is already more than 5-year-old and specifically in view of the fact that the appellant was granted sufficient opportunity to lead all evidence to prove its case.

In view of the foregoing discussion, we find no ground to interfere with the impugned order of the District Forum. Resultantly, the appeal lacks merits and hence dismissed with no orders as to costs.

Copy of the order be supplied to the parties, free of charges.