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Devaashish Vs. Shakuntala Malhotra

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Sep-07-1997

Judge : A.P. Chowdhri, President &Amp; Desh Bandhu, Member

Appeal No. : Case No. A-345 of 1995

Appellant : Devaashish

Respondent : Shakuntala Malhotra

Judgement :

A.P. Chowdhri, President:

1. Smt. Shakuntala Malhotra, complainant for short, placed an order with M/s. Devaashish for an Enfield Portable Generator Model TP-1100 on 28.5.93. The price stated was Rs. 15,995/- and according to Sale Promotion Scheme, in force, at that time, a discount of Rs. 1,250/- was given on the said price. In addition to the price, the complainant had to pay Rs. 800/- for an automatic change-over switch and Rs. 105/- on account of installation. The complainant paid on 8.6.93 Rs. 15,000/- for which the opposite party issued a receipt in writing. He had earlier paid Rs. 545/- for which no receipt had been issued. According to the complainant, the generator was brought to the complainant premises on 14.6.93 but the mechanic failed to start the same. Since it had become late on that day, the generator was left with the complainant who returned the same to the opposite

party on the next following date i.e., 15.6.93. The complainant's husband made an entry regarding the return of the generator to the opposite party in the complaint book maintained at the dealer's shop. The complainant decided against buying the generator for the reasons, (a) that it had not been supplied within time limit undertaken by the opposite party, (b) The particular piece which had been selected had not been supplied but another generator set had been sent which did not work, and (c) the behavior of the opposite party left much to be desired. In fact when the complainant's husband alongwith his son went and asked for refund of the price, he was manhandled.

2. The case was contested. On a consideration of the matter, the District Forum recorded the following findings:

(i) The opposite party Was hot justified in not refunding the price.

(ii) The opposite party failed to show that the generator was installed on 8.6.93.

(iii) The opposite party also failed to prove that the generator was free from any defect.

(iv) In fact, the generator was installed only on 14.6.93

(v) That the complainant was not allowed to make entry regarding the generator being defective in the complaint book.

(vi) The payment of Rs. 545/- averred by the complainant could not be accepted in the absence of a receipt in writing.

3. The District Forum directed refund of the whole amount of Rs. 15,000/- paid by the complainant together with the interest @18% per annum and Rs. 2,000/- towards costs and compensation.

4. Aggrieved by the order, the opposite party has preferred this appeal. We have heard Mr. S.L. Hans, Advocate for the appellant and Mr. P.K. Malhotra, Authorised Representative of the respondent and have perused the record carefully. We are unable to affirm the finding that the generator was not installed on 8.6.93 but was brought to the house of the complainant only on 14.6.93 and that too at a late

hour. While recording this finding, the District Forum observed that no documents regarding installation and satisfactory working which is normally to be expected was produced. It was further pointed out that no document to show movement of the generator from the shop of the dealer on 8.6.93 like a transit challan had been produced. As against the above, the District Forum appears to have failed to notice that payment, of Rs. 15,000/- had been made on 8.6.93. In the case of sale of goods, the delivery of the goods is normally made against the payment especially when it is made in cash as in this case. Where delivery is to follow at a later date, this fact is expected to be recorded specifying the date by which the goods would be delivered. It is, therefore, normally to be expected that on the day payment had been made, the goods are likely to have been delivered. There was affidavit of Mr. Nikesh Pahuja, Salesman, as also of Mr. Rohit Sharma to the effect that generator had been installed on 8.6.93. Another clinching circumstance available in this case is that in the complaint in para 11 it was admitted that the complainant's husband approached the opposite party with a request to deduct some amount on account of penalty and refund the balance amount. This is implied in the facts and circumstances of the present case that the opposite party was allowed to deduct some amount by way of hiring charges of the generator set for the period for which it had been used by the complainant. Going by the version of the complainant if the generator set had been brought to her house only on 14.6.93 and was returned on the following day, there was no question of offering to pay any penalty. It has been proved on record that installation charges of Rs. 105/- had been received and handed over to Ram Avtar, mechanic earlier and change-over switch had already been affixed.

5. The finding that the opposite party failed to prove that the generator was free from defect cannot also be affirmed for the simple reason that the onus of proving the defect was on the complainant. In fact he did not allege any defect in the generator. In the letter written by the complainant to the manufacturer dated 17.9.93; the complainant did not mention about he generator being defective and her grievance, on the contrary, was that she had been cheated by the dealer inasmuch as the dealer had received the money but had neither given her the generator nor refunded the amount. Dissatisfaction with the dealings of the dealer also found a prominent mention in the affidavits filed on behalf of the complainant

by her husband. It is also very significant that even though Mr. P.K. Malhotra made an entry in the complaint book, he failed to mention that the generator supplied suffered from any defect. The plea now taken is that he was prevented from making that entry. This is belied by the record. The entry is complete and duly signed by Mr. Malhotra. Moreover, if the opposite party wanted to avoid anything adverse coming on record against it, it would not have given the complaint book to the complainant's husband to write in his hand about the complaint relating to the generator in question. No case, is, therefore, made out that generator set suffered from any defect. The opposite party kept the same generator set bearing engine No. 12533 and it was brought in a packed condition at the time of hearing of appeal for two purposes; one, if the respondent was still interested it could be handed over to her and two to show that the generator in its original condition suffered from no defect and the entire story put forward by the complainant was false. The respondent's Representative stated that the respondent had purchased another generator and was not interested in taking the aforesaid generator. It was rightly pointed out by Mr. Hans that the plea put forward by the complainant that instead of sending the particular generator, the opposite party had sent another defective piece was false to the knowledge of the complainant. The matter stands concluded by the fact that in the complaint book the complainant himself noted the engine No. of the generator being returned by him to be bearing Engine No. 12533. It is also important to mention that this was a case relating to sale of goods covered under Section 2(1)(d)(i) relating to sale of goods and not Sub-clause (ii) relating to service. It cannot, therefore, be held that there was any deficiency in service as far as the opposite party is concerned.

6. What appears to have been happened is that the complainant's husband was not meted out the behaviour expected of a good salesmen and he made up his mind to return the generator set.

7. In view of our conclusion that there was no defect established on record as far as the generator is concerned and no deficiency in service having been proved; what to do with the money, which was ultimately received by the opposite party and had been kept by him during the intereggnam period. Leaving the money with the opposite party would mean putting a seal on unjust enrichment. Burdening the

opposite party with @ 18% interest and costs and compensation would be unfair.

8. After careful consideration of the facts and circumstances of the case, we partly allow the appeal and direct the appellant to return Rs. 13,750/- i.e., Rs. 15,000/- 1,250/- with 10% interest from 8.6.93 upto the date of refund. The order of the District Forum stands modified to the extent indicated above. A copy of the order be communicated to both the parties, as well as D.F.-II.

Appeal partly allowed.

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