

Reyazuddin Vs. Md. Mumtaz

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Court : Bihar State Consumer Disputes Redressal Commission SCDRC Patna

Decided On : Aug-19-1996

Judge : B.N. Sinha, President & the Honourable Mrs. Kalpana Ashok, Member

Appeal No. : Appeal No. 432 of 1994

Appellant : Reyazuddin

Respondent : Md. Mumtaz

Judgement :

B.N. Sinha, President:

1. This appeal is directed against order dated 4th of October, 1994 passed by the District Forum, Hazaribagh in case No. 55 of 94 in which the appellant and the respondent No. 2 here were the opposite party and the respondent No. 1 here was the complainant before the District Forum.

2. The facts of the case as put in by the complainant may be briefly noticed. The complainant happens to be a simple literate unemployed person and he after taking training at Calcutta of the work of Lathe Machine wanted to install a Lathe machine in order to earn his livelihood. He therefore met the General Manager, District Industries Centre, Hazaribagh for registration of Small Scale Industrial Unit and got a registration certificate and his application for loan was forwarded by the Head Manager, District Industry Centre to the Branch Manager of the State Bank

of India (hereinafter called the Bank), Singhrawan Branch, Hazaribagh, the opposite party No. 1, for financial assistance. The Branch Manager of the Bank introduced opposite party No. 2 to him and suggested to purchase Lathe machine from opposite party No. 2 who agreed for it. The Bank issued in favour of the opposite party No. 2 two Bank Drafts taken together for Rs. 1,76,625.00 and the opposite party No. 2 agreed to supply the machine with their parts and to install it within one month from the date of the receipt of the Bank Draft. The opposite party No. 2 however brought only two pieces of the machine which were found to be damaged, not serviceable, of inferior quality, and not in accordance with the quotation. The complainant therefore requested the opposite party No. 2 to supply the machine as per quotation and returned to him the two parts supplied by him. The complainant thereafter made several requests and sent several reminders to the opposite party No. 2 for supply of the machine. But the Opposite Party No. 2 had not supplied the same. The opposite party No. 1 also contacted opposite party No. 1 to make arrangements for supply of the machine but the bank also did not take any interest in the matter as a result of which the complainant could not start the work and he remained unemployed and suffered loss and damage. The complainant filed the case before the District Forum claiming Rs. 1,76,625.00 alongwith interest of 18% per annum thereon and compensation for the loss and damage sustained.

3. On being noticed both the opposite party appeared and they filed separate written version controverting the claim of the complainant.

4. It has been asserted by the opposite party No. 1 that the bank, that the case is not maintainable against the bank and a certificate case bearing No. 459/92-93 was filed by the bank against the complainant for realisation of Rs. 1,73,588.00 which is due against the complainant on account of the laon advanced and the case has been disposed of after hearing both the parties by the District Certificate Officer, Hazaribagh directing the complainant to deposit the amount which the complainant has failed and hence Distress Warrant had been issued against the complainant. It has been further averred by the Bank that the complainant himself brought the quotation of the opposite party No. 2 and requested the bank to issue draft in the name of opposite party No. 2 and that the complainant himself handed

over draft to the opposite party No. 2 and it was for the complainant not to deliver the draft if the machine was defective or it was not supplied. It has further been stated by the bank that the complainant was in collusion with opposite party No. 2 which is evident from the facts that the complainant did not make any complaint to the bank regarding non-supply of the machine or defect in the machine soon after delivery of the draft and the complainant has filed this case after more than three years.

5. The opposite party No. 2 in his written version has challenged the maintainability of the case on the ground that the complainant purchased the machine for commercial purpose and hence is not a consumer under Section 2(1)(d)(i) of the Consumer Protection Act (hereinafter called the Act) and the case has been filed after the period of limitation specified u/Section 24 of the Act. It has been averred that the complainant was working as a Mistry for cleaning petrol and diesel jeeps at Calcutta that he later on established his own motor garage at Barhi on G.T. Road and he has been doing the job of repairing light vehicles for last 12 to 14 years and that the complainant has incorrectly stated that he is unemployed and he purchased the Lathe machine for earning his livelihood. It has been further averred that the complainant invited quotations from different agencies including the opposite party No. 2 for Lathe machine and this opposite party had supplied machines to some other persons at Barhi, who recommended the opposite party No. 2 to the complainant. It has been asserted by opposite party No. 2 that he supplied all the parts as per quotation and at the price agreed to by the complainant and there was no complaint about the price or quality of the machine but since 6 KVA 3 Phase alternator was not available during the relevant period the opposite party supplied 10 HP B.S.A. Brand motor with diesel engine of higher value. It is further averred that the complainant insisted for 6 KVA Motor which the opposite party procured for delivery to the complainant, but the complainant, refused to part with 10 HP BSA Brand Motor supplied to him earlier. It has been further stated by the opposite party that for the delay in the delivery of the machine the opposite party paid a sum of Rs. 7,944.50 to the complainant in November by way of interest and he also paid in December a sum of Rs. 4000 /- to the complainant as the complainant wanted to purchase personally a valve polish machine at Calcutta which was in accordance with the decision of the mediator

one Bholu. It has been further stated that in order to avoid payment of the bank loan and to delay the recovery process in respect thereof the complainant has filed this case with false allegations and the complainant is not entitled to any relief and his case is fit to be dismissed.

6. The District Forum has accepted the case of the complainant and directed the opposite party No. 2 to return Rs. 176625/- with interest @ 18% p.a. from 21.2.91 till the date of its payment and also to pay Rs. 5,000/- as compensation for the harassment and financial loss caused to the complainant and Rs. 500/- as cost of the case.

7. The learned Counsel for the respondent No. 2 has challenged the maintainability of the case under the Act on the ground that the purchase of Lathe Machine was for commercial purpose. It may be mentioned that the learned Counsel for the appellant was not present on the day the arguments were heard. But this ground has been taken by the appellant also in the memo of appeal.

8. Now it may be noticed that the case of the complainant is that he had received training of the work of Lathe Machine and he had purchased the machine for earning his livelihood. The learned Counsel for the complainant-respondent No.1 submitted that the complainant being unemployed purchased the machine for earning his bread and his case, therefore, is covered by the Explanation to Section 2 (1)(d)(i) of the Act which reads as follows :

"(Explanation : For the purpose of sub-clause (i) "commercial purpose does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood by means of self-employment.)"

9. But it appears that in the certificate proceeding brought by the Bank against him (Case No. 459/92-93) he showed cause photostat of which has been filed in this case by the complainant, specifically stating that M/s. Calcutta Engineering Company is a Small Scale Industrial Unit registered as such by the District Industrial Centre, Hazaribagh and that the loan was granted to M/s. Calcutta Engineering Company for the purchase of that machine. But simply because the purchase of the machine was by the firm, it cannot preclude the complainant from

the protection of the explanation to Section 2(1)(d)(i) of the Act if the members of the firm themselves operate the machine exclusively for the purpose of earning his livelihood by self-employment. We are fortified in our view by the observations made by the Supreme Court in the case of *Luxmi Engineering Works v. P.S.G. Industrial Institute II* (1995) CPJ 1 (SC)=(1995) 3 CTJ 239 (CP). which are as follows :

"Controversy has, however, arisen with respect to meaning of the expression "commercial purpose". It is also not defined in the Act. In the absence of a definition, we have to go by its ordinary meaning, "Commercial" denotes "pertaining to commerce" (Chamber's Twentieth Century Dictionary), it means "connected with, or engaged in commerce; mercantile; having profit as the main aim" (Collins English Dictionary) whereas the word "commerce" means "financial transactions especially buying and selling of merchandise, on a large scale" (Concise Oxford Dictionary). The National Commission appears to have been taking a consistent view that where a person purchases goods "with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit" he will not be a "consumer" within the meaning of Section 2(1)(d)(i) of the Act. Broadly affirming the said view and more particularly with a view to obviate any confusion the expression "large scale" is not a very precise expression the Parliament stepped in and added the Explanation to Section 2(1)(d) (i) by Ordinance/Amendment Act 1993. The Explanation excludes certain purposes from the purview of the expression "Commercial purpose" a case of exception to an exception. Let us elaborate a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others' work for consideration or for plying the car as a taxi can be said to be using the typewriter/car for a commercial purpose. The Explanation however clarifies that in certain situations, purchase of goods for "commercial purpose" would not yet take the purchaser out of the definition of expression "Consumer". If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment given above, if the purchaser himself works on typewriter or plies the car as a taxi himself, he does not cease to be a consumer. In other words, if the buyer of goods uses them himself, i.e., by self-employment, for earning his livelihood, it would not be treated

as a "commercial purpose" and he does not cease to be a consumer for the purposes of the Act. The Explanation reduces the question, what is a "commercial purpose" to a question of fact to be decided in the facts of each case. It is not the value of the goods that matters but the purpose to which the goods bought are put to. The several words employed in the Explanation, viz., "uses them by himself," "exclusively for the purpose of earning his livelihood" and "by means of selfemployment" make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood. A few more illustrations would serve to emphasise what we say. A person who purchases an autorickshaw to ply it himself on hire for earning his livelihood would be a consumer. Similarly, a purchaser of a truck who purchases it for plying it as a public carrier by himself would be a consumer. A person who purchases a Lathe machine or other machine to operate it himself for earning his livelihood would be a consumer. (In the above illustrations, if such buyer takes the assistance of one or two persons to assist help him in operating the vehicle or machinery, he does not cease to be a consumer). As against this a person who purchases an autorickshaw, a car or a lathe machine or other machine to be plied or operated exclusively by another person would not be consumer. This is the necessary limitation flowing from the expressions "used by him", and "by means of self-employment" in the explanation. The ambiguity in the meaning of the words "for the purpose of earning his livelihood" is explained and clarified by the other two sets of words.

It is argued by the learned Counsel for the appellant that such a narrow construction may not be warranted by the scheme and object of the enactment. He says that these may be a widow or an old or invalid man who have no other means of livelihood and who purchases an autorickshaw or a car or other machinery to be plied or operated by another person either on payment of consideration on a daily, weekly and monthly basis or as a servant or agent. While there is certainly some logic in the said submission it can not be accepted in view of the language of the Explanation. We are also of the opinion that the definition of the expression "person" in Section 2(1)(m) as including a firm (whether Registered or not), a Hindu Undivided Family, a co-operative society or any other association of persons (whether registered under the Societies Registration Act,

1860 or not) makes no difference to the above interpretation. If a firm purchases the goods, the members of the firm should themselves ply, operate or use the goods purchased. Same would be the case of purchase by Hindu Undivided Family, co-operative Society or any other association or person."

10. The complainant filed the instant case as proprietor of M/s. Calcutta Engineering Works. It appears that M/s. Calcutta Engineering Company mentioned in the cause shown by the complainant before the Certificate Officer is a mistake for M/s. Calcutta Engineering Works as from the Certificate dated 20.11.88 (Photostat of which has been filed by the complainant before the District Forum) issued by the Directorate of Industries, Government of Bihar, it is M/s. Calcutta Engineering Works which has been registered as a Small Scale Industrial Unit mentioning the complainant as its proprietor. Hence according to the complainant's case in the cause shown by the complainant before the Certificate Officer it was M/s. Calcutta Engineering Works which purchased the machine from the opposite party No. 2. The complainant neither in his complaint petition nor in the petition containing the detailed facts of the case filed with the complaint petition has stated that the machine was purchased for "being used by him exclusively for the purpose of earning his livelihood by means of self-employment". On that date he as the proprietor of M/s. Calcutta Engineering Works purchased the Lathe Machine to be operated by himself exclusively for the purpose of earning his livelihood by means of self-employment. He has simply stated that "he wanted to establish Lathe Industry to earn his livelihood." Under these circumstances the instant case is not covered by the Explanation to Section 2(1)(d)(i) of the Act. Hence we find and hold that the purchase of the machine was for commercial purpose and the complainant therefore is not a consumer under the Act.

11. Moreover, it appears that according to the written agreement dated 12.2.91 entered into between the complainant and the opposite party No. 2 a photostat copy of which has been filed by the complainant, Lathe machine was to be supplied by the opposite party No. 2 by 12.3.91 which the opposite party No. 2 failed to do and thus there was breach of contract entered into between them. Hence the complainant with regard thereto could be filed within three years from 12.3.91. But the present case was filed by the complainant on 24.3.94 for his state

claim after expiry of the period of three years from that date after the certificate proceeding being decided against him.

12. Further, the word "complaint" has been defined by Section 2(1)(c) of the Act which reads as follows :

(c) "complaint" means any allegation in writing made by a complainant that

(i) an unfair trade practice or a restrictive trade practice adopted by any trader;

(ii) (the goods bought by him or agreed to be bought by him) suffer from one or more defects;

(iii) (Service hired or availed of or agreed to be hired or availed of by him) suffer from deficiency in any respect;

(iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods;

(v) goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.)

with a view to obtaining any relief provided by or under this Act;"

13. But the instant case is with regard to the breach of contract between the parties and for the refund of the consideration money paid in respect thereof. This is not covered by any of clauses of Section 2(1)(c) of the Act. Hence this complaint is not maintainable under the Act.

14. Lastly, as is evident from the facts stated above there is dispute between the parties with regard to the supply of the Lathe Machine. According to the complainant it has not been supplied. But according to the opposite party No. 2, it was supplied to the complainant. The District Forum has accepted the complainant's version without any evidence either in the form of sworn affidavit or

oral evidence by examination of witnesses, produced by the complainant. According to Section 13(2) of the Act the consumer dispute has to be settled on the basis of evidence. Hence there has been non-compliance of this mandatory provisions of the Act.

15. For these reasons, the impugned order can not be sustained. Hence the appeal is allowed and the impugned order is hereby set aside. The complaint is dismissed.

16. The respondent No. 1 is directed to pay Rs. 500/- as cost to the appellant.

Appeal allowed with costs.

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