

Vipan Kumar and Others Vs. Ashok Kumar

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Court : Himachal Pradesh State Consumer Disputes Redressal Commission
SCDRC Shimla

Decided On : Apr-01-2014

Judge : (Retd.) Surjit Singh, President & the Honourable Mrs. Prem Chauhan, Member

Appeal No. : Consumer Complaint No. 13 of 2012

Appellant : Vipan Kumar and Others

Respondent : Ashok Kumar

Judgement :

Justice (Retd.) Surjit Singh, President (Oral):

1. Complainants have approached this Commission, by means of the present complaint, under Section 17 of the Consumer Protection Act, 1986, seeking directions to the opposite party;

"a) to refund a sum of Rs.21,61,560/-, with interest at the rate of 12% per annum, which amount of money, he has allegedly received in excess of the work executed by him;

b) to pay Rs.18.00 lacs, as compensation for loss of income;

c) to pay Rs.5.00 lacs, on account of compensation for mental torture, harassment; and

d) to pay a sum of Rs.55,000/- on account of litigation expenses."

2. Complainants mother late Asha Rani and her two sons, Vipin Kumar and Ripan Kumar, complainants No.1 and 2, wanted to set up a marriage palace in the periphery of Una town. They submitted project report, Annexure C- 7, to Kangra Cooperative Primary Agriculture Rural Development Bank Ltd., Dharamshala, for seeking a loan. Loan was sanctioned in their favour. Thereafter they approached the opposite party, who is engaged in the business of construction of marriage palaces and providing other items like crockery, furnishing etc. for running the palace. An agreement was executed on 25.03.2011, copy Annexure C-1. The job was undertaken to be completed by the opposite party within three months. A sum of Rs.35.00 lacs, was to be paid to him in all for completing all the works and providing furniture, cutlery, utensils etc. A sum of Rs.1.00 lac was paid by way of advance. Work was started on 27.03.2011.

3. According to the complainants, Asha Rani fell sick sometime in the month of May, 2011, and they got busy in getting her treated at PGI. Opposite party did not do any work in May and June, 2011 on the pretext that labour was not available, as all of his labourers had gone to their native places. By mid July, 2011, opposite party allegedly completed 50% of the aluminum work and 80% of ducting and GI sheets work. Mother of the complainants expired and they remained busy in performing her last rites, because of which they could not supervise the same. Sometime in the month of September, 2011, opposite party abandoned the work and when approached to restart the work, he claimed that already he had done the job, equivalent to the amount of money paid to him and that he would be doing the rest of the work, if more money was paid to him.

4. Complainants allegedly got the work completed at their own level by spending an additional amount of Rs.21,46,867/-. They have pleaded that by September 12, 2011, they had paid a sum of Rs.29,31,030/-, as per detail given in para-3 of the complaint, but the value of the work, which had been executed by the opposite party at the time of abandoning the work, was Rs.7,69,470/-. They have, therefore,

filed a complaint, seeking the aforesaid directions to the opposite party.

5. Opposite party has contested the complaint and raised a number of technical pleas. Complaint is stated to be not maintainable. Complainants are alleged to have no locus standi nor do they have any cause of action. Plea of estoppel has also been raised. It is stated that complicated and complex questions of facts are involved, which this Commission is not equipped to adjudicate and settle. A civil suit is alleged to have already been filed by the opposite party in a Court at Ludhiana for mandatory injunction and settlement of accounts. The present complaint is stated to be counterblast to the civil suit filed by the opposite party. It is alleged that the complainants are not consumer within the meaning of Consumer Protection Act, 1986, as the services, in respect of which complaint has been filed, were availed by them to make profits. On merits, it is stated that 90% of the job had been completed. It is denied that a sum of Rs.29,31,030/- had been paid. It is alleged that only a sum of Rs.16.00 lacs had been paid, against which the opposite party executed 90% of the undertaken job and, thus, the complainants owed money to him.

6. Parties have tendered in evidence various documents by way of evidence and also filed their affidavits. We have gone through the record and heard learned counsel for the parties.

7. Complainants have very categorically pleaded in their complaint that two of them, namely Vipran Kumar and Ripran Kumar and their mother Asha Rani wanted to set up a marriage palace to earn their livelihood by self-employing themselves. As per project report, Annexure C-7, though they were likely to earn around Rs.50.00 lacs, approximately per annum, yet they were supposed to pay a considerable amount of money out of this money towards the repayment of loan, which they raised from a bank. Loan raised by them was to the tune of Rs.25.00 lacs, repayable in seven years, with interest at the rate of 14% per annum. The remaining amount (after repayment of loan instalments) was to be shared by three persons and their shares would not have been more than Rs.10.00 lacs per annum each, and so it cannot be said that their plea that they wanted to set up the marriage palace for earning their livelihood by selfemploying themselves, is not

true. One of the complainants, namely Vipin Kumar, in his affidavit has also sworn that the marriage palace was to be established for earning their livelihood by self-employing themselves. So the objection that the complainants are not consumers and hence the complaint is not maintainable, is overruled.

8. Another objection raised on behalf of the opposite party is that a civil suit has already been filed by him in a Court at Ludhiana for mandatory injunction and settlement of accounts and, therefore, the present complaint is not maintainable. Though a copy of the civil suit allegedly filed is available on record, it is not made out from record as to when this suit was filed. Also, it has not been stated either in the reply or anywhere else as to on which date the civil suit was presented. In any case, in view of the provision of Section 3 of the Consumer Protection Act, 1986, which says that the provisions of the Act are in addition to and not in derogation of the provision of any other law for the time being in force, a consumer can approach the Consumer Fora, even if some other proceedings pertaining to the very dispute, which is raised in the complaint, are initiated by the opposite party.

9. Also, in view of the fact that the agreement was executed at Una and the job was to be performed at Una in Himachal Pradesh by the opposite party, it is doubtful if the Civil Court at Ludhiana, where the suit is alleged to have been filed, would have the territorial jurisdiction to adjudicate the same. Moreover, even though the civil suit is alleged to have been filed before the filing of the reply (date of filing of reply is 16.12.2012) and a period of about one-and-a-half year has lapsed since the filing of the civil suit, it has not been shown as to what progress, if any, has been made in the suit. So, the objection with regard to maintainability of the complaint on this score is also overruled.

10. Coming to the objection that complex questions of facts are involved, both the parties have placed on record documents, from which it can very easily be made out as to what amount of money had actually been paid by the complainants/their mother to the opposite party and of what monetary value work was executed by the opposite party, on the spot. Therefore, it cannot be said that complicated or complex questions of facts are involved.

11. As regards merits of the case, it is not in dispute that agreement, Annexure C-1, was executed between the parties on 25.03.2011, whereby opposite party undertook to execute the work of furnishing and to do certain civil works for making the marriage palace functional, in addition to providing furniture, utensils, cutlery etc. The total amount, which was agreed to be paid by the complainants to the opposite party, was Rs.35.00 lacs. A sum of Rs.1.00 lac was paid by way of advance, as per agreement, Annexure C-1. Execution of Annexure C-1 is not denied by the opposite party.

12. Complainants have stated that they had paid a sum of Rs.29,31,030/-, as per detail given in Annexure C- 10. Opposite party denies the plea and admits receipt of a sum of Rs.16.00 lacs only. The detail given in Annexure C-10 is supported to the extent of Rs.18,61,000/- by the entries in the pass book pertaining to savings bank account of the complainants, the agreement, Annexure C- 1, and some other documents. Original pass book has been placed on record by the complainants. Opposite party's counsel, who had been overlooking the entries in the passbook, when the complainants counsel was going through the same, himself has desired that entries in the passbook to be taken into consideration.

13. As per this pass book, complainants have paid Rs.1.00 lac on 23.03.2011, Rs.3.00 lacs on 04.04.2011, Rs.1.50 lacs on 08.04.2011, Rs.3.00 lacs on 22.04.2011 and Rs.2.00 lacs on 12.05.2011, through cheques, and the entries show that these cheques were issued to AK, implying the opposite party, whose name is Ashok Kumar. Counsel for the opposite party does not dispute these entries. There are five more entries in this passbook and according to the complainants against these entries, a sum of Rs.3.00 lacs was paid on 08.07.2011, another sum of Rs.3.00 lacs on 13.07.2011 and a sum of Rs.1.00 lac each on 20.07.2011, 24.08.2011 and 12.09.2011. However, in the entries pertaining to these dates in the pass book, though it is written that the payments were made through cheques, yet it is not made out as to whom these payments were made.

14. Complainants have relied upon four vouchers, all marked Annexure C-11 collectively in support of four of these entries. These are in the nature of

counterfoils of State Bank of India, Una. As per counterfoil dated 08.07.2011, a sum of Rs.3.00 lacs was transferred from the account of Asha Rani, mother of the complainants, in the account of the opposite party. This voucher, thus, supports the entry in the pass book, which is dated 08.07.2011. Next counterfoil is dated 13.07.2011 pertaining to transfer of another sum of Rs.3.00 lacs from the account of Asha Rani to the account of opposite party. This voucher supports the entry dated 13.07.2011 in the pass book. Next counterfoil is dated 20.07.2011 and the document shows that a sum of Rs.1.00 lac had been transferred from the account of Asha Rani to the account of opposite party. Thus, the entry dated 20.07.2011, in the pass book is also supported. The next counterfoil, which is dated 29.07.201, pertains to the transfer of a sum of Rs.1.00 lac from the account of complainant No.3 in the account of the opposite party. There is no entry with respect to this counterfoil in the passbook nor could have there been one because the counterfoil pertains to the account of wife of one of the complainants, namely Pooja Kapila.

15. With regard to the entries dated 24.08.2011 and 12.09.2011, appearing in the passbook, there is no supporting voucher and, as already noticed, in the entries there is no reference indicating that the money was paid into the account of the opposite party.

16. The aforesaid entries and the supporting vouchers, thus, sufficiently prove that the opposite party had been paid a sum of Rs.18.50 lacs. In addition, the opposite party had received a sum of Rs.11,000/- in cash, as is made out from a receipt in his own hand, forming part of Annexure C-11, at page-186. Thus, the total amount, which the complainants have proved, as having been paid to the opposite party, comes to Rs.18.61 lacs.

17. Opposite party has claimed that he had completed 90% of the work undertaken by him. The total cost of the work was Rs.35.00 lacs, including the cost of the material. That means, he claims to have carried out work worth Rs.31.50 lacs. He himself has placed on record a number of documents showing the cost of material and the payments made to the labourers. Some of these documents have been placed in duplicate and, therefore, only one of such duplicates is required to be taken into consideration. The total number of such

vouchers, excluding one copy of those submitted in duplicate, and those pertaining to payment of taxes, toll tax by the transporters, which too are required to be excluded, is 51. These documents are at pages 32 to 141. The total amount of money expended by the opposite party against these vouchers comes to Rs.7,71,685/-. This is the amount of money spent by the opposite party. He was also supposed to have made some profit out of the amount of Rs.35.00 lacs, for which the work was to be executed. We assume the margin of his profit to be around 25%. Thus, the total cost of the work, which he can be said to have executed, comes to Rs.10.00 lacs, i.e. Rs.7,71,685/-, the expended amount of money plus his margin of profit.

18. Having received an amount of Rs.18,61,000/- by July, 2011, and executing work worth Rs.7,71,685/- only by March, 2011, when he abandoned the work all of a sudden, the opposite party has certainly committed deficiency in service.

19. Opposite party is shown to have received a sum of Rs.18.61 lacs, as discussed herein-above. Therefore, the opposite party is liable to refund the money received by him in excess of Rs.10.00 lacs and this amount comes to Rs.8.61 lacs. In addition, the opposite party is liable to pay damages to the complainants for abandoning the work midway and, thus, causing mental torture and harassment to the complainants. A sum of Rs.1.00 lac, should be reasonable amount of compensation on this score.

20. As a result of the above discussion, we allow the complaint and direct the opposite party to refund a sum of Rs.18.61 lacs, which he received in excess of the value of the work executed by him, with interest at the rate of 9% per annum, from the date of filing of the complaint to the date of payment of the aforesaid amount of money and also to pay Rs.1.00 lac, as compensation, and Rs.15,000/- as litigation expenses.

21. A copy of this order be sent to each of the parties, free of cost, as per Rules.

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