

R.K. Engineering Co. (P) Ltd. Vs. Madhu Chawla

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Court : Delhi

Decided On : Nov-13-1990

Reported in : 1991(20)DRJ19

Judge : R.N. Mittal,; B.L. Anand and; Avtar Pennathur, JJ.

Acts : Consumer Protection Act

Appeal No. : Civil Appeal No. A-31 of 1990

Appellant : R.K. Engineering Co. (P) Ltd.

Respondent : Madhu Chawla

Advocate for Pet/Ap. : Kapil Sibal and; H.D. Shourie, Advs

Judgement :

R.N. Mittal, J.

(1) This appeal has been filed by the defendant against the order of the District Forum dated 9-2-1990 by which the defendant was directed to pay Rs. 56,246.90 with interest @ 18% per annum from the date of order till the date of payment.

(2) Briefly, the facts are that the complainant, purchased a generating set from the defendant appellant and it was installed in her factory on 5-2-1988. It is alleged that the generating set did not work, and started living trouble from the date of

installation. She wrote to the defendant that the generating set was not working properly but it could not be repaired by the defendant. She consequently filed a complaint before the District Forum for refund of the price with interest.

(3) The learned District Forum, after hearing the parties passed the above said order. The defendant has come up in appeal to this Commission.

(4) It is contended by the learned counsel for the appellant that the District Forum had no jurisdiction to try the case as the respondent did not fall within the definition of the word 'consumer'. She was carrying on the business of manufacturing the garments and the generating set was installed by her in the factory for the purpose of business. In such circumstances, it is argued, she was not entitled to the benefit of the provisions of the Consumer Protection Act, hereinafter referred as the Act.

(5) On the other hand Mr. Shourie, who represented the respondent 'vehemently urged that the generating set was not used for the purpose of operating any machinery in the factory but was as a stand by for providing light and operating fans in the factory at the time when there was break down in supply of electricity by DESU. therefore, it cannot be said to have been used for commercial purpose. He also argued that the respondent was not having a commercial establishment.

(6) We have heard the parties at a considerable length and given a thoughtful consideration to the matter. The main question that arises for determination is as to whether the generating set has been purchased by the respondent for commercial purpose or not. It is not disputed that the generating set has been fixed in the factory premises and it is being used for providing light to the workers and operating fans therein when there is breakdown in electric supply by DESU. The generating set is thus being used for the workers of the factory. It is not essential that for the commercial use, the electricity generated should be utilised for the purpose of operating machinery in the factory. If the electricity is used for the purpose of helping the labour in carrying on the work of the factory it is as good a commercial purpose as that of using the energy for running the machinery.

(7) It is also not correct to say that the respondent was 'not having a commercial establishment. She has filed the balance sheets of her business. and in the

balance sheet as on 31st March, 1990, it is shown that her capital in business, is more than Rupees three and a half lacs and she had received loans to the tune of Rupees twenty five lac⁸. Her current liabilities were of more than Rupees thirteen lacs and her export sales were of more than Rupees fifty lacs. It cannot, therefore, be said that the respondent was not having a commercial establishment. She has claimed the depreciation on the user of the generating set in the business. In case it was not for commercial purpose, she would not have claimed depreciation in the income-tax returns.

(8) What is commercial purpose has been dealt with by us in Travels & Traders (Pvt.) Ltd. v. Managing Director Mis Swaraj Mazda Ltd. & others (C-97 of 1990 decided on 6-11-1990). It was observed by us that if a person buys goods for earning profit on a large scale, by their use, he will be deemed to be carrying on commercial activity and cannot be termed as a 'consumer'. In that judgment we referred to a large number of judgments decided by the National Commission, to support our view and it is not necessary to refer to them again.

(9) After taking into consideration all the aforesaid factors and provisions of the Act, we are of the view that the respondent does not fall within the definition of the word 'consumer' and she is not entitled to invoke the provisions of the Act.

(10) In view of the circumstances that we have held that the respondent had no right to file the complaint under the Act, it is not necessary to go into the merits of the case.

(11) For the aforesaid reasons, we accept the appeal, set-aside the order of the District Forum and dismiss the complaint. However, in the circumstances of (be case we make no order as to costs.