

## M/S Amazon Seller Services Pvt. Ltd. vs Sh. Shyam Mohan Chauhan & Ors. on 1 June, 2016

H.P. STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
SHIMLA.

First Appeal No.: 28/2016  
Date of Presentation: 15.02.2016  
Date of Decision: 01.06.2016

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M/s. Amazon, Brigade Gateway,  
8th Floor, 26/1, Dr. Raj Kumar Road,  
Malleshwaram(W), Bangalore-560 055.

Correct Particulars:-

M/s. Amazon Seller Service Pvt. Ltd.  
Brigade Gateway, 8th Floor,  
26/1, Dr. Raj Kumar Road, Bangalore-560 055.

... Appellant.

Versus

1. Shyam Mohan Chauhan,  
Son of Shri K.S. Chauhan,  
Resident of Set No.54, Type III,  
Brock Hourst, Shimla-9.
2. M/s. Roceky Marketing (Chennai) Private Ltd.,  
3/8 Mayor Sambandam Street, Rangarajapuram,  
Chennai 600 024, Tamilnadu.
3. M/s. Roceky Marketing (Chennai) Private Ltd.,  
3/8, Unit No.1, Khewat/Khata No.373/400,  
Mustatil No.31, Village Tauru, District Mewat  
on Bilaspur-Tauru Road, Mewat, Haryana 122 105.

... Respondents

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Coram

Hon'ble Mr. Justice Surjit Singh, President.  
Hon'ble Mrs. Prem Chauhan, Member.  
Hon'ble Mr. Vijay Pal Khachi, Member.

Whether approved for reporting?1

For the Appellant: Mr.Digvijay Singh, Advocate.  
For Respondent No.1: In person.  
For Respondents No.2 & 3: Ex-parte.

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O R D E R:

Justice Surjit Singh, President (Oral) Appellant has preferred this appeal against order dated 26.10.2015, of learned Whether reporters of the local papers may be allowed to see the order? M/s.

Amazon Seller Services Private Ltd. Versus Shyam Mohan Chauhan & Ors.

(F.A. No.28/2016) District Consumer Disputes Redressal Forum, Shimla, whereby a complaint, under Section 12 of the Consumer Protection Act, 1986, filed against it and respondents No.2 and 3, by respondent No.1, Shyam Mohan Chauhan, has been allowed ex-parte and a direction given only to it to refund the amount of `49,990/-, charged from respondent No.1, on account of price of television set, within forty-five days, failing which to pay interest at the rate of 9% per annum, on the aforesaid amount of money and also to pay a sum of `25,000/-, as compensation for inconvenience and `1000/-, on account of litigation expenses.

2. Respondent, Shyam Mohan Chauhan, has a son, by the name of Robin, who wanted to buy him (the complainant) a television set, manufactured by Samsung. The above named son of the respondent is stationed at Bangalore. He booked a Samsung Television Set, costing `49,990/-, through M/s Amazone.in. Television set was delivered to the appellant at Shimla, on 21.02.2015. The same was found to be defective. Appellant, through whom the set was purchased, was informed immediately. Appellant responded M/s. Amazon Seller Services Private Ltd. Versus Shyam Mohan Chauhan & Ors.

(F.A. No.28/2016) and directed respondent No.1 to return the set through a named courier. Respondent contacted that courier, but the latter refused to carry it to the supplier. Appellant was informed that the courier was not cooperating. Appellant named another courier, who too refused to carry the television set. Appellant then suggested that television set could be sent through postal service. Post office concerned also refused to handle the television, being electronic gadget. Appellant was again contacted, who suggested another courier by the name of Gatti Courier Ltd. This Courier also did not agree to carry the parcel to the supplier. Respondent then filed a complaint, under Section 12 of the Consumer Protection Act, 1986, against the appellant and respondents No.2 and 3, by whom the television set was supplied to respondent No.1, through the agency of the present the appellant.

3. Notices of the complaint were sent to the appellant, as also respondents No.2 and 3. Neither the appellant nor respondents No.2 & 3, put in appearance before the Learned District Forum, despite service and, therefore, they were M/s. Amazon Seller Services Private Ltd. Versus Shyam Mohan Chauhan & Ors.

(F.A. No.28/2016) ordered to be proceeded against ex-parte. On the basis of ex-parte evidence, adduced by respondent No.1, complaint has been allowed by the learned District Forum, vide impugned order.

4. Appellant is aggrieved by the impugned order and has preferred this appeal. With the grounds of appeal, appellant has submitted certain terms and conditions regarding online sale of items. It is stated in the grounds of appeal that the appellant did not put in appearance before the learned District Forum, because its name, as mentioned in the complaint, is not correct. According to the appellant, it is a company and its name is Amazon Seller Service Pvt. Ltd, whereas in the complaint, it was impleaded as M/s. Amazon, Brigade Gateway. Also, it is stated in the grounds of appeal that

manufacturer of the television set, in question, is Samsung, warranty was given by the manufacturer and the marketing was done through respondents No.2 and 3 and, therefore, appellant could not have been directed to refund the price and to pay compensation and in any M/s. Amazon Seller Services Private Ltd. Versus Shyam Mohan Chauhan & Ors.

(F.A. No.28/2016) case, the appellant alone could not have been held liable.

5. We have heard learned counsel for the appellant, as also respondent No.1 and gone through the record.

6. Though, it is stated in the grounds of appeal that appellant's name is not correctly mentioned in the complaint, yet it is not denied that registered cover, containing the notice, was delivered at the address of the appellant and AD Card was signed by one of its functionaries. That means, the appellant was well aware of the institution of complaint, in which the impugned order has been passed and despite its having been delivered the notice and the copy of complaint, it chose not to defend itself.

7. No doubt, the manufacturer of television set is Samsung, but the appellant, when approached by respondent No.1 that the television set was defective, asked the respondent to return the television set. It suggested three couriers and also the post office, as modes, by which the television set could be returned, but none of them was prepared to book M/s. Amazon Seller Services Private Ltd. Versus Shyam Mohan Chauhan & Ors.

(F.A. No.28/2016) the television set for transportation to the opposite parties.

8. Enclosures 1 and 2 to the complaint show that it was the appellant, with whom the order was booked and who confirmed not only the booking order, but also the dispatch of television set. Not only this, as per enclosure-2, it was the appellant, who suggested that for tracking the order, its return centre could be visited (by internet). Also, we find on record email messages, exchanged between the appellant and the son of respondent No.1, with regard to the television set being defective and the appellant agreeing to its return. These messages clearly show that the appellant took upon itself the responsibility for accepting the return of defective television set and to ensure the refund of price. However, the television set could not be returned to the appellant by respondent No.1, on account of the couriers, suggested by the appellant, refusing to carry the parcel back.

9. Not only this, after the passing of impugned order and even before the filing of the appeal, against the impugned order, appellant M/s. Amazon Seller Services Private Ltd. Versus Shyam Mohan Chauhan & Ors.

(F.A. No.28/2016) has refunded the price of television set to respondent No.1. This conduct of the appellant clearly suggests that it took upon itself the responsibility of accepting the return of defective television set and refunding the price.

10. Learned counsel for the appellant submits that as per terms & conditions, available on the website of appellant, which the respondent's son is supposed to have gone through before booking the order, provide for the return of goods to the supplier and not to the appellant, who just acts as an intermediary between the supplier of the goods and the party booking the goods. Terms & conditions were required to be produced before the Learned District Forum by the appellant, after taking the plea of this kind by filing reply. Appellant, however, chose not to appear before the learned District Forum and has suffered an ex-parte order, despite its proper and effective service and delivery of the copy of complaint. Therefore, it is too late in the day for the appellant to argue that the liability for accepting the return of television set and to refund the price and also to pay M/s. Amazon Seller Services Private Ltd. Versus Shyam Mohan Chauhan & Ors.

(F.A. No.28/2016) compensation, for the inconvenience, is that of the supplier of goods or the manufacturer of goods and not its own.

11. In view of the above stated position, appeal is dismissed.

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

(Justice Surjit Singh) President (Prem Chauhan) Member (Vijay Pal Khachi) Member June 01, 2016.

GAURAV)