

Cloutail India Pvt Ltd., vs 1.Ande Poshetty on 23 October, 2024

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BEFORE THE TELANGANA STATE CONSUMER DISPUTES
REDRESSAL COMMISSION:HYDERABAD

(ADDITIONAL BENCH)

FA. No. 482/2018
AGAINST ORDERS
IN
CC. No. 311/2016
ON THE FILE OF DISTRICT FORUM -II, HYDERABAD

Between :

CLOUDTAIL INDIA PVT.LTD.
6th and 7th Floors, Divyasree Chambers,
Wing "B",# 11 0' Shaughnessy Road,
Langford Town, Bangalore, Karnataka-560025.

.....Appellant/Opposite party No.4

And

1.

Ande Poshetty S/o. Muttaiah, R/o Flat No.502, Shivareddy Residency, East Maruti, Hyderabad,
Santhosh Nagar, Hyderabad, Telangana -500059, Contact No.9490865846.

.....Respondent No.1/Complainant

2. Amazon, Brigade gateway, 8th Floor, 26/1, Dr. Rajkumar Road, Malleshwaram (W),
Bangalore-560055, IndiaRespondent No.2/Opposite party No.1

3. One plus Service Centre, #5-9-88, 2nd Floor, Besides Lavish Hotel, Opp.KLK Building, Near LB
Stadium, Abids, Hyderabad, Pin Code-500001, Contact No.7673933732.

.....Respondent No.3/Opposite party No.2

4. Oneplus One India Head Office, 5th Floor, Kabra Excelsior, Opposite Wipro Park, 8oft Road,
Koramangala, 1st Block, Bangalore, Karnataka, India.

.....Respondent No.4/Opposite party No.3 Counsel for the Appellant/opposite party : M/s. D.S.V.G.
Naga Raju Counsel for the Respondent/Complainant : Mr. Thomas George- R2.

QUORUM: Hon'ble Sri K.Ranga Rao - Presiding Officer-

Member (Judicial).

& Hon'ble Smt.R.S.Rajeshree, Member (Non Judicial). WEDNESDAY , THE TWENTY THIRD DAY OF OCTOBER, TWO THOUSAND TWENTY FOUR ***** Order : (Per Hon'ble Sri K.RangaRao, Member -Judicial)

1. This appeal is filed by the Appellant/Opposite party No.4 U/s.15 of the Consumer Protection Act, 1986, praying this State Commission to set aside the impugned order dt.26.05.2017 of the District Forum-II, Hyderabad, passed in CC. No. 311/2016 and consequently dismiss the complaint.

2. For the sake of convenience, the parties are referred to as arrayed in the complaint. The Appellant herein is the opposite party No.4 and the Respondents No.1 in this appeal was the complainant and Respondents No.2 to 4 in this appeal are opposite parties 1 to 3 in the CC. No. 311/2016 before the District Forum-II, Hyderabad.

3. The brief averments of complaint are as follows:-

The complainant placed an order on Amazon website for One plus 2 (Sandstone Black, 64GB) mobile phone having IMEI No. 869289024075656 costing Rs.24,999/- from Oneplus One company on 06.01.2016 which was delivered on 08.01.2016 with one year warranty.

But within 15 days many problems like shutting down automatically, restarting on its own, freezing and not responding etc., started and complainant immediately took up the matter with Oneplus One technical team through email and he did exactly what was suggested in the email like hard resetting, system upgrade etc., even after doing the suggested measures, the problem remained the same, hence he approached the service center namely B2X Service Centre, Abids, Hyderabad, Telangana for replacement of the defective mobile but they refused to replace it with a new one and he further requested the service center to take up the matter with the company for replacement but his request was declined by the authorized service center without any reason and he also informed the same through email to the company but in vain, hence filed the complaint. Written Version filed on behalf of the opposite party no.1:

Denied the allegations mentioned in the complaint and further mentioned that the instant case has not provided the complete details of the Order placed by him like the order ID. Further no details such as his email ID, phone number used for opening an account on Amazon.in and other details pertaining to his purchase clearly reflected in the complainant case making it impossible for the Applicant to trace the complainant's account and file a valid and detailed reply before this Forum, hence direct the complainant to provide the details. Written Version filed on behalf of the opposite party no.4:

Denied the allegations mentioned in the complaint and further mentioned that this opposite party is not a necessary party to the proceedings. The Oneplus 2 (Sandstone Black, 64GB) sold by this opposite party is manufactured by OnePlus India, opposite party no.3 and the product carried manufacturer's warranty. As a reseller, involvement of this opposite party in the entire transaction is limited to selling the product. Therefore there is no deficiency of service on the part of this opposite party. The liability to provide after sale service does not lay upon this opposite party and this opposite party is neither the manufacturer of the product nor the authorized service centre of the manufacturer who has the sole and prime responsibility to provide after sale services to the consumers under manufacturer's warranty clause. Hence it is submitted no cause of action lies with this opposite party.

4. The opposite party is an online reseller registered on Amazon India Marketplace and this opposite party is not the manufacturer of the produce but only sells it online. Product purchased by the complainant is manufactured by opposite party no.3 and carries warranty provided by the manufacturer against the manufacturing defects subject to the terms and conditions determined by the manufacturer only. Hence this complaint is not maintainable with this opposite party. Hence complaint may be dismissed. Opposite party no.2 & 3 are called absent.

5. During the course of enquiry, before the District Forum, to prove his case of the Complainant filed his evidence affidavit and got marked got marked Exs.A1 and A2.On behalf of the first Opposite Party One Rahul Sundaram, the senior Corporate Counsel (Litigation) of Amazon Seller Services Private Limited filed his evidence affidavit. Similarly on behalf of opposite party S.Haristh Rathan Authorized signatory opposite party No.4 filed his evidence affidavit. But no documents are marked on behalf of Opposite party No.1 and Opposite party No.2.

6. The District Forum after considering the material available on record, allowed the complaint in part as follows.

In the result, " the complaint of the Complainant is partly allowed directing the opposite party No.1 to 4 jointly and severally :-

1.To pay the cost of the mobile Rs.24,999/- along with interest @9% P.A. from the date of purchase till the date of payment and after payment the complainant shall return the mobile to the opposite parties.

2.To pay a sum of Rs.3,000/- towards costs.

3.Rest of the claim is dismissed.

7. Aggrieved by the above order of the District Forum, the Appellant/opposite party No.4 preferred the present appeal FA. No.482/2018 with the following grounds of appeal:-

(i) The order of the District Forum is illegal, unjust and unwarranted and same was passed without proper appreciation of the facts and law as such the same is liable to be set-aside.

(ii) The District Forum failed to appreciate the fact that the contract of service is between complainant and opposite party No.3, to which this appellant/opposite party No.4 is a stranger. It is the manufacturer and its service center that are responsible for the allegations raised in the complaint and the role of this appellant is limited to only a reseller as such he is not responsible for manufacturing defects and in view of the same, no liability can be fastened on this appellant/opposite party No.4.

(iii) The District Forum failed to appreciate the fact that the complainant nowhere in his complaint alleged any act of deficiency in service on the part this appellant/opposite party No.4.

8. With the above grounds, the Appellant/opposite party No.4 prayed to allow the appeal by setting aside the impugned order of the District Forum-II Hyderabad, passed in CC. No.311/2016, dt.26.05.2017 and consequently to modify the order exonerating fastening the liability on appellant/opposite party No.4 or to dismiss the complaint.

9. This appeal relates to the year 2018. The docket shows that for several adjournments there has been no representation for the appellant. A conditional order is passed in the Docket Proceeding to the effect that if the appellant/opposite party No.4 fails to get his arguments advanced, the same will be treated as heard and the appeal will be reserved for orders so as to decide the same on merits basing on the material borne by the record. The counsel for R2/Opposite party No.1 namely Amazon Briadige Grate Way, Bangalore, filed a memo stating that R2/Opposite party No.1 has no objection to allow the appeal. While recording the same, it is noted on the docket that said memo can be considered on merits in the ultimate disposal of the appeal.

In view of the above conditional order, since there is no representation for the appellant/opposite party No.4, the appeal is reserved for orders.

10. The point that arises for consideration is:-

(i) Whether the impugned order dt.26.05.2017 passed by the District Forum-II, Hyderabad in CC 311/2016, suffers from any error or irregularity or whether it is liable to be set aside, modified, or interfered with, in any manner?

(ii) To what relief?

11. To decide the points for consideration, we have carefully examined the whole material borne by the record and the same would manifest that it is the specific case of complainant that he purchased One Plus 2 Sand Stone Black, 64GB Mobile Phone under Ex.A1 which is invoice of purchase order of the said phone for Rs.24,999/- from One Plus One company on 06.01.2016 and the said phone was

delivered to him 08.01.2016 with a warranty period of one year. But within 15 days many problems like shutting down automatically, restarting on its own, freezing and not responding etc. Immediately the complainant took up the matter with one plus one technical team through Ex.A2 E-mail Conversation. The complainant did exactly what was suggested in the E-Mail like hard resetting, system upgrade Etc. But even after doing suggested measures the problem remained same. Hence he approached the service center Opposite party No.2 namely B 2 X Service Center, Abids Hyderabad, Telangana State , for replacing of defective mobile but they have refused to replace it with a new one. Further he requested service center to take up the matter with the company for replacement but his request was declined by opposite party No.2 Authorized service Center. Then he informed the same through E-Mail to the Company but the same proved like flogging the dead Horse. Hence he knocked the doors of the District Forum by filing the complaint seeking the reliefs mentioned therein.

12. As stated supra to prove his case the complainant besides filing his evidence affidavit, got marked Ex.A1 and Ex.A2. Ex.A1 invoice of purchase order of One plus 2 Mobile Phone. Ex.A2 copies of Mail conversation with One Plus One company.

It is admitted fact that Complainant purchased One plus 2 Sand Stone Black, 64 GB mobile Phone under Ex.A1. It is the stand of Opposite party No.4 (Appellant herein) that he is only a reseller of the mobile phone purchased by the complainant and therefore he is not liable. As per the settled law a seller of a product is equally liable along with the manufacture of a particular product if the same is found to be defective. In other words by virtue of opposite party No.4 sold the mobile phone to the complainant, there is Privity of contract between the complainant and op4 as such the above contention of op4 cannot be accepted as the same is not sustainable under law. As seen from the pleadings in the written version, opposite party No.3 is the manufacture of the product/mobile phone purchased by the complainant and opposite party No.2 is the service center of opposite party No. 3. Ex.A2 E-mail correspondence shows that within few days of purchase, the mobile phone gave problem due to which the complainant approached opposite party No.2 and he also approached the customer care service of opposite party No.3 manufacture but the defect was not rectified.

13. Admittedly the warranty for the phone purchased by the complainant is for one year. If any defect arose in the phone, it is the duty of manufacturer to replace the defective item/ Mobile Phone or if any minor problem arose, the service center of opposite party No.3 is under obligation to attend to the repairs of the same but as per the evidence of complainant, the service center of opposite party No.3 did not effect any repairs and the complainant approached the said service center number of items and also made correspondence through Email with opposite party No.3 but they did not gave any response and therefore the complainant filed consumer complaint against opposite party 1 to 4.

If the material evidence is taken into consideration, it is observed that the mobile phone is in the custody of the complainant as the service center refused to take the same. The evidence borne by record conclusively establish the fact that the mobile phone purch ased by the complainant through online is defective as such we are of the considered view that opposite parties 1 to 4 are jointly and severally liable to repay the cost of mobile phone of Rs.24,999/- with interest @9% P.A. from the

date of purchase till the date of payment and after the payment of the said amount by the opposite parties 1 to 4, the complainant shall return the mobile to the opposite party. Viewed from any angle nothing appears to us to interfere to the well- reasoned order of the District Forum passed in CC 311/2016 as such this appeal is liable to be dismissed as devoid of merits .

In the result, the appeal is dismissed, confirming the impugned order dt.26.05.2017 passed in CC 311/2016 by the District Forum-II Hyderabad.

Each party shall bear their own costs.

Typed to the dictation to the Steno on system, corrected and pronounced by us in the open bench on 23.10.2024.

SD SD

M EMBER(J)

MEMBER(NJ)

Dated : 23.10.2024.

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