

# Samsung India Electronics Pvt Ltd vs Mahadev Kharbe on 23 August, 2024

BEFORE THE GOA STATE CONSUMER DISPUTES  
REDRESSAL COMMISSION,  
PANAJI-GOA

In the matter of First Appeal 08 of 2024 in Consumer  
Complaint 95 of 2021.

Before: Adv. Mrs. Varsha R. Bale, Officiating President  
Adv. Ms. Rachna Anna Maria Gonsalves, Member

Samsung India Electronics Private Limited  
6th Floor, DLF Centre, Sansad Marg,  
New Delhi-110001. ....Appellant

V.

Mr. Mahadev Kharbe,  
r/o House No. 240/4, Sodiem  
Siolim, Bardez Goa-403517. ....Respondent-1

Mr. Preetam Kerkar  
r/o Siolim, Bardez Goa 403517 ....Respondent-2

Savex Technologies Private Limited,  
No. 1/B, Indo Space Logistics Par,  
Puduvoyal, Durainallur Village,  
Ponneri Taluka, Thiruvalluvar,  
Tamil Nadu, 601206. ....Respondent-3

Savex Technologies Private Limited,  
CIN No. U31909MH1988PTC046237,  
124, Maker Chambers III, Nariman Point,  
Mumbai, 400021, Maharashtra. ....Respondent-4

Samsung Service Centre  
Above Canara Bank  
Shop No. F6, No. 7/257/6/5,  
Khalap Building, Mapusa Goa-403507 ....Respondent-5

Adv. Shri James Lopes present for Appellant.  
Adv. Ms. Uttara Kundaikar present for Respondents.

DATE: 23/08/2024

[per Adv. Mrs. Varsha R. Bale, Officiating President]

1. This Appeal is directed against the Judgment & Order dated 27/07/2023 passed by the District Consumer Disputes Redressal Commission, North Goa, (The 'District Commission' for short) in Consumer Complaint No. 95/2021. The Appellants were the Opposite Parties (OPs for short) and the Respondents were the Complainants in the said Complaint. Parties shall hereinafter be referred to as per their status in the said Complaint.
2. The Complainants had filed the said Complaint praying therein to direct OPs to provide new/fresh piece of mobile handset of Samsung Galaxy M21 with fresh warrantee period and/or pay to the Complainant Rs.13,999/- alongwith interest @18% p.a. from 29/07/2021 till actual payment; to direct OPs to pay Rs.6,299/- i.e. Rs.5,000/- + Rs.1,299/- to the Complainants the amount spent to purchase second mobile; to direct to pay compensation of Rs.30,000/- to the Complainants towards compensation for causing mental agony, harassment, torture unnecessary stress, to direct to pay cost to the Complainant.
3. Case of the Complainants in short is as follows:

That the Complainant-1 purchased the mobile phone Samsung Galaxy for Rs.13,999/- for his mother from Amazon App through Complainant-2 on 11/08/2020. In July 2021 the Complainant-1 started facing problems like network issue, battery draining, data loss, hanging, bluetooth not working, etc. So, he visited OP-4 on 29/07/2021 and handed over the said mobile to them. When he visited OP-4 on 10/08/2021 he was informed that the said mobile was not repaired. Complainant-1 thereafter visited them for almost 4-5 times, but it was neither repaired nor was any fault found in the same. On 24/08/2021, OP-4 ordered a part of the mobile in the presence of Complainant-1 which was out of stock, and asked him to collect the mobile after one week. That on 10/08/2021 the Complainant-1 extended warranty period for next one year on payment of Rs.1,299/- and hence the mobile had warranty till 14/08/2022. Thereafter, the Complainant-1 visited OP-4 for nearly twice or thrice until 06/09/2021 but found that the mobile was not repaired. Since he was facing a lot of difficulties in the absence of his mobile, he was forced to purchase a second mobile of Rs.5,000/- for his temporary use. The Complainant stated that during the period of the subject mobile warranty, he found that the said mobile was defective and faced deficiency in service on account of the faulty, imperfect, shortcoming or inadequacy in the quality, nature and manner of its performance. The Complainant-1 therefore addressed a Legal Notice on 08/09/2021 to the OPs and called upon them to replace a new mobile handset of Samsung Galaxy M21 with fresh warranty within a period of 15 days. But the OPs-2, 3 & 4 failed to reply to the same. OP-1 replied to the said notice and informed Advocate of the Complainant that the mobile was repaired on 09/09/2021 and the Complainant-1 was not ready to accept the same. That on 09/09/2021, the Complainant-1 received an email from OP-4 informing that his mobile is ready to be collected. Since, he had already sent Legal Notice to OPs and had claimed for a new mobile in replacement he

did not collect the same. The said mobile was with OP-4 for 15 days and hence the Complainant-1 faced a problem because of it. The Complainant-1 stated that the mobile which was supplied to the Complainant was defective and there was also deficiency in service by OP-4 at the time of carrying out alleged repairs of the same. The Complainants thus filed the Complaint.

4. The Complainant relied upon copy of Tax Invoice/Bill of Supply/Cash Memo dated 11/08/2020, copy of customer information slip dated 29/07/2021 issued to the Complainant-1, copy of legal notice dated 08/09/2021 alongwith postal receipts, 2 AD cards and 3 postal tracking report, copy of reply of OP-1 dated 30/09/2021, copy of email dated 10/08/2021 activating the extended warranty of his mobile, copy of email dated 23/08/2021, 24/08/2021 and 09/09/2021, copy of few reviews of the customers appearing on OP-4's site.

5. OPs-1 to 4 filed their Written Version, resisting the Complaint and denying the allegations made against them. Case of OPs-1 to 4 in short, is as under:

That the mobile which was purchased by the Complainant was used by him with satisfaction from the date of purchase till 29/07/2021 i.e. almost for 1 year and hence one cannot presume or assume that the product has any manufacturing defect. That the electronic items are subject to terms and conditions of warranty and its validity. That the OP appointed service engineer to look into the complaint of the Complainant and found that there was a fault in the motherboard which was duly replaced. That immediately after the repairs, the Complainant was communicated vide email dated 09/09/2021 to collect the same and thereafter for multiple times the OP requested the Complainant to collect the repaired mobile but the Complainant failed to collect the same. When they received the Legal Notice from the Complainant, OP-4 once again informed the Complainant to collect the repaired mobile. But the Complainant failed to collect it. The OP stated that as per the terms of warranty, the Complainant is entitled for replacement of the part if there is fault of particular part and the Complainant is not entitled for replacement of the product. The OP further stated that the part of the mobile was out of stock and hence they asked the Complainant-1 to collect his mobile after one week. They denied that and because of the defective mobile the Complainant faced mental torture and inconvenience.

6. The OP relied upon warranty card, service acknowledgment request, email dated 09/09/2021, reply dated 30/09/2021.

7. The Complainant filed Affidavit-in-Evidence. The OP also filed their Affidavit-in-Evidence. Both the parties filed their Written Arguments.

8. Vide the Impugned Judgment, the District Commission observed that the manufacturer has to initiate the process to inspect, investigate and understand the casual factor so as to rectify, repair or replace as required from case to case i.e. manufacturer has to consider the issue described by the

Complainant and then resolve it as being the grievance redressal point on priority either through their customer service centre/authorised technician of the manufacturer of the product/goods which is an expected post sales services anticipated by the consumer from the manufacturer upon purchase of their product without causing them undue inconvenience. The District Commission further observed that the deficiency in service has caused a lot of undue inconvenience and discomfort to the Complainant on account of the inordinate delay caused to repair/replacement as assured under the warranty period. The Complaint has been partly allowed and the District Commission directed the OPs-1 & 4 to ascertain the reason for non- functioning of the mobile and handover the repaired and fully functional mobile to the Complainant within 30 days from the receipt of the Order, the OPs-1 & 4 are further directed to pay compensation of Rs.22,000/- to the Complainant. The OPs are aggrieved by the said Judgment and Order.

9. Records and Proceedings of CC/95/2021 were called for. Complainant filed Written Arguments. The OPs also filed their Written Arguments. We have heard the Advocates for both parties. We have gone through the entire material on the record.

10. That the mobile was purchased by the Complainant on 11/08/2020 and the problems in the said mobile started in July 2021 i.e. almost after 11 months. The Complainant began claiming that there is a manufacturing defect in the said mobile. But it is also to be noted that the said mobile had no problem for 1 year. The Complainant peacefully enjoyed the mobile and after 1 year and began asking for replacement of the mobile because of manufacturing defect in the same. The said mobile was repaired and the OP-4 also informed the Complainant to collect the same. But the Complainant refused/choose not to collect the mobile as he was interested in replacement. One should remember that if the product can be repaired, the Complainant is not entitled for replacement of the product. In the present case, the mobile has no manufacturing defect, as it worked for 1 year. The defective part is also repaired by the OPs. It is the adamant behaviour of the Complainant who has chosen not to collect the repaired mobile from the OP-

4. Also it is trite law that manufacturing defect ought to have appeared instantaneously and the District Commission ought to have referred to the meaning of manufacturing defect rather than jump to such conclusion.

11. We are not at all agreeable with the findings of the District Commission that there is deficiency in service on the part of OP and this deficiency has caused a lot of undue inconvenience and discomfort to the Complainant. Even if there is a delay in repairing the said mobile, it is because the part was not available for the same period. The mobile was given for repairs on 24/08/2021 and was repaired on 09/09/2021 if there is any inconvenience and discomfort it is only and only the fault of the Complainant for not accepting the repaired mobile. The Complainant atleast ought to have collected the mobile and if even, after repairs the same problem occurred in the mobile, he could have asked for the replacement or repairs. But refusal to receive the repaired mobile is not at all acceptable. The Impugned Judgement & Order is passed without any proper application of mind.

12. We have also observed that the District Commission despite of having been directed to keep language simple and avoid lengthy Judgments, have seemed to have disregarded the same and have

ignored time and again the directions. The District Commission has rather copied almost the entire pleadings and meandered into several pages. The Judgments lack brevity and more of verbose and additionally a quick glance at the Order is nothing but every bit ambiguous and devoid of any simplicity. The District Commission is warned in future to avoid lengthy Judgments which serve no purpose containing irrelevant and unnecessary material.

13. In a recent Judgement, the Hon'ble Supreme Court emphasized that 'a Judgment must be written in simple language and should not be verbose'. The Hon'ble Supreme Court further stated that 'Brevity is the hallmark of quality Judgment. Judgment is neither a thesis nor a piece of literature' and 'The Judge has to decide a case and not preach. The Judgment cannot contain irrelevant and unnecessary material'.

14. We find that the District Commission has failed to exercise Jurisdiction vested in it by Law in a judicious manner. The Impugned Judgment and Order deserves to be quashed and set aside.

15. Hence, we pass the following:

ORDER

- a) The Appeal is allowed.
- b) The Impugned Judgment and Order is quashed and set aside.
- c) In the interest of justice the Complainant is given the liberty to collect the said mobile from OP-4.
- d) The Records and Proceedings to be sent back to the District Commission, North.
- e) No Order as to costs.

[Adv. Mrs. Varsha R. Bale] Officiating President [Adv. Ms. Rachna Anna Maria Gonsalves] Member  
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