

Amazon Seller Services Pvt. Ltd. vs Sh. Jaskaran Singh. & Anr. on 17 July, 2017

H. P. STATE CONSUMER DISPUTES REDRESSAL
COMMISSION SHIMLA

First Appeal No. : 86
Date of Presentation: 26
Order Reserved On : 08
Date of Order : 1

Amazon Seller Services Private Ltd. resident of 8th Floor Brigade
Gateway 26/1 Raj Kumar Road Bengaluru Karnataka 560055.

..... Appellant/Opposite

Versus

1. Jaskaran Singh care of Harmohinder Kaur Kailash Kutir
Near Dr. Mahajan Clinic Ram Nagar Dharamshala.

.....Respondent No.1/Co

2. Trackon Couriers Private Ltd. A-64 Naraina Industrial Area
Phase-I New Delhi 110028.

.....Respondent No.2/opposite par

Coram
Hon'ble Justice P.S. Rana (R) President
Hon'ble Mr. Vijay Pal Khachi Member
Hon'ble Ms. Meena Verma Member

Whether approved for reporting?1

Yes.

For Appellant :
For Respondent No.1 :
For Respondent No.2:

Mr. Vijay K. Verma Advocate.
In person.
Mr. Diwan Singh Negi Advocate.

JUSTICE P.S. RANA (R) PRESIDENT:

O R D E R :

-

1. Present appeal is filed under section 15 of Consumer Protection Act 1986 against order dated 18.10.2016 Whether reporters of the local papers may be allowed to see the order? Yes. Amazon

Seller Services Pvt. Ltd. Versus Jaskaran Singh & Anr.

(F.A. No.86/2017) passed by Learned District Forum in consumer complaint No.41/2016 title Jaskaran Singh Versus Amazon India Brigade Gateway & Anr.

Brief facts of Case:

2. Jaskaran Singh filed consumer complaint under section 12 of Consumer Protection Act 1986 pleaded therein that complainant purchased a Micromax 40T2810FHD 40 inches LED TV from Amazon website. It is pleaded that order was placed on 12.02.2015. It is further pleaded that when package arrived it was found that product was faulty. It is pleaded that half of the screen of TV did not work. It is further pleaded that matter was reported to Amazon by way of telephone. It is further pleaded that after numerous calls and emails Amazon told the complainant to send package at the responsibility of complainant. It is further pleaded that opposite party told complainant that courier pick up would pick up the faulty product. Prayer for acceptance of complaint sought.

3. Per contra version filed on behalf of opposite party No.1 Amazon seller services private limited pleaded therein that entity operating the URL www.amazon.in is Amazon Seller Services Private Limited. It is pleaded that ASSPL neither sells nor offer to sell any product and merely provide a market place and act as facilitator only. It is pleaded that third party sellers are responsible and ASSPL is not responsible. It is pleaded that ASSPL is not involved in the sale transaction between customer and seller. It is pleaded that complainant has not purchased Amazon Seller Services Pvt. Ltd. Versus Jaskaran Singh & Anr.

(F.A. No.86/2017) the goods from ASSPL and it is pleaded that complainant has not paid any consideration amount to ASSPL. It is pleaded that seller in the present case is Cloutail India Private Ltd. who is not impleaded as co-party and complaint is not maintainable for non-impleadment of necessary parties. It is pleaded that complainant has not impleaded manufacturer of the product i.e. Micromax. It is pleaded that present complaint is also bad for non-joinder of Micromax as necessary party. It is pleaded that there is no privity of contract between opposite party No.1 and complainant. It is further pleaded that complainant has placed the order from the website of opposite party No.1. It is further pleaded that opposite party No.1 is simply a facilitator and not seller/ manufacturer. Prayer for dismissal of complaint sought.

4. Opposite party No.2 was proceeded ex-parte before learned District Forum. Opposite party No.2 did not appear before learned District Forum despite service and did not file any version. Learned District Forum partly allowed the complaint and ordered opposite party No.1 to refund Rs.22791/- (Twenty two thousand seven hundred ninety one) to the complainant alongwith interest @ 9% per annum from the date of complaint till payment. Learned District Forum further ordered opposite party No.1 to pay a sum of Rs.5000/- (Five thousand) to the complainant for mental harassment. Feeling aggrieved against order passed by Learned District Forum opposite party No.1 i.e. Amazon Seller Services Private Ltd. filed present appeal before State Commission.

Amazon Seller Services Pvt. Ltd. Versus Jaskaran Singh & Anr.

(F.A. No.86/2017)

5. We have heard learned advocate appearing on behalf of appellant & respondent No.2 and also heard complainant Jaskaran Singh and we have also perused entire record carefully.

6. Following points arises for determination in present appeal.

1. Whether Cloutail India Private Ltd. and Dr. Harshvardhan are necessary parties for adjudication of complaint filed under section 12 of Consumer Protection Act 1986.

2. Final order.

Findings upon point No.1 with reasons:

7. Complainant Jaskaran Singh filed affidavit Ex.CW1 by way of evidence. There is recital in affidavit that deponent purchased a product i.e. LED TV from www.Amazon.in on 12.02.2015 in consideration amount of Rs.22791/-. There is recital in affidavit that product was delivered to deponent on 19.02.2015. There is further recital in affidavit that product was found defective. There is further recital in affidavit that pickup was arranged by Amazon via Trackon Couriers and product was picked up by Trackon Couriers on 04.06.2015.

There is further recital in affidavit that Amazon did not refund Rs.22791/- to deponent despite several requests.

8. Shri Rahul Sundaram authorised signatory Amazon seller Private Ltd. filed affidavit by way of evidence. There is recital in affidavit that ASSPL did not sell any product and merely provides an online market place where independent third Amazon Seller Services Pvt. Ltd. Versus Jaskaran Singh & Anr.

(F.A. No.86/2017) party can purchase the product. There is further recital in affidavit that ASSPL is not responsible for defective product. There is further recital in affidavit that ASSPL is not involved in the sale transaction between customer and seller. There is further recital in affidavit that ASSPL is only a facilitator and provides only website service. There is recital in affidavit that contract of sale of product on the website is strictly a bipartite contract between the customer and the seller.

9. State Commission has perused the bill Annexure-C1 placed on record. It is proved on record that in bill billing address is mentioned as Dr. Harshvardhan Singh C/o Harmohinder Kaur Kailash Kutir Ram Nagar Dharamshala District Kangra H.P. Pin-176215. It is also proved on record that product i.e. Micromax LED TV was sold by Cloutail India Pvt. Ltd. in consideration amount of Rs.22791/-. It is also proved on record that Amazon has signed the bill on behalf of Cloutail India Private Ltd as authorised signatory only. It is proved on record that Amazon did not sign the bill independently.

10. State Commission is of the opinion that Cloutail India Pvt. Ltd. who sold product i.e. Micromax LED TV and Dr. Harshvardhan Singh are necessary parties in the present complaint in order to decide complaint properly and effectively and to impart substantial justice to parties. State Commission is of the opinion that it is not expedient in the ends of justice to dispose of complaint on merits unless necessary parties are Amazon Seller Services Pvt. Ltd. Versus Jaskaran Singh & Anr.

(F.A. No.86/2017) impleaded and heard in accordance with Consumer Protection Act 1986. State Commission is of the opinion that learned District Forum has committed material procedural irregularity by way of not impleading seller Cloudtail India Pvt. Ltd. and consumer Dr. Harshvardhan Singh as co-parties in the present consumer complaint. Shri Jaskaran Singh has submitted before State Commission that he is beneficiary and has paid the entire consideration amount of Rs.22791/-(Twenty two thousand seven hundred ninety one) from his own pocket. In view of above stated facts point No.1 is answered accordingly. Point No.2: Final Order

11. In view of findings upon point No.1 above appeal is allowed and order of learned District Forum dated 18.10.2016 is set aside. Complaint is remanded back to learned District Forum with order that learned District Forum will implead seller Cloudtail India Private Ltd. and Dr. Harshvardhan Singh as co- parties in the present complaint being necessary parties. It is further ordered that after receiving version of Cloudtail India Private Ltd. and consumer Dr. Harshvardhan and after receiving of evidence of the parties strictly as per mode mentioned under section 13(4) of Consumer Protection Act 1986 learned District Forum will dispose of present complaint afresh strictly in accordance with law and as per proved facts within three months after receipt of file. Bill Annexure-C1 wherein consideration amount to the tune of Rs.22791/-(Twenty two thousand seven hundred ninety one) paid to Cloudtail India Pvt.

Amazon Seller Services Pvt. Ltd. Versus Jaskaran Singh & Anr.

(F.A. No.86/2017) Ltd. will form part and parcel of the order. Parties are directed to appear before learned District Forum Kangra at Dharamshala on 02.08.2017. Parties are left to bear their own litigation costs before State Commission. File of learned District Forum alongwith certified copy of order be sent back forthwith and file of State Commission be consigned to record room after due completion forthwith. Certified copy of order be transmitted to parties forthwith free of costs strictly as per rules. Appeal is disposed of. Pending application(s) if any also disposed of.

Justice P.S. Rana (R) President Vijay Pal Khachi Member Meena Verma Member 17.07.2017.

KD*