

Shankar Mana Choudhari vs Amazon Seller Services Pvt Ltd on 30 January, 2024

1

FA/299/2023

Date of filing :16.02.2023

Date of order :30.01.2024

MAHARASHTRA STATE CONSUMER DISPUTE REDRESSAL
COMMISSION,MUMBAI, BENCH AT AURANGABAD.

FIRST APPEAL NO. : 299 OF 2023
IN COMPLAINT CASE NO.: 256 OF 2021
DISTRICT CONSUMER FORUM : AURANGABAD.

Shankar s/o Mana Chaudhari,
R/o F-1, 1-B, N-4, Cidco,
Aurangabad.

Appellant
(Adv. M.B.Ubale)

VERSUS

1. Amazon Seller Services Pvt. Ltd.,
Through its Authorized Officer/
Administrative Officer, Having its
Registered office at Brigade Gateway,
8th floor, 26/1, Dr.Rajkumar road,
Malleshwarm(W), Bangalore 960055,
Karnataka State.

Respondent
(Adv.V.N.Shelke)

2. Hive of Boradinco Services,
Authorized Officer,
Shop No.01, Building 15-A, Durga Nagar,
JVL R, Andheri East, Mumbai 400093.

CORAM : Mr.Milind.S.Sonawane, Hon'ble Presiding Member.
Mr.Nagesh C.Kumber, Hon'ble Member.

JUDGMENT

(Delivered on 30/01/2024) Per Mr.Nagesh C.Kumbre, Hon'ble Member..

The Appellant has challenge in this Appeal, Judgement and order passed by the District consumer commission, 2 FA/299/2023 Aurangabad, dated 10/01/2023 in C.C.No.256/2021. For the sake of brevity the Appellant is herein after referred as complainant and respondent no.1 and 2 were opponent no.1 and 2 as per their status in consumer complaint and District Consumer Commission, Aurangabad is herein after referred as District commission.

2. Brief facts giving rise to this appeal are as under :-

Opponent no.1 is the Amazon India, engaged in providing online goods as per the order of customers and opponent no.2 is the authorised distributor of opponent no.1. On 15.09.2020, the complainant had purchased the Laptop of Asus Company through a web online portal of opponent no.1 for the purpose of online classes of his son, for an amount of Rs.

61,990/- and the amount has been paid to opponent no.1 by way of online /UPI/Phone pay. Then opponent no.1 and no.2 send the Laptop to complainant. The Laptop was worked properly for the period of one month and thereafter on 01.04.2021 after relaxation of Covid-19 conditions, as the Laptop was not working properly the complainant had been to the authorised service centre of Asus company at Aurangabad for repair it. The service centre had checked the Laptop and it is found that the said Laptop is defective and already repaired with their another service centre. Also it has been informed to the complainant that the warranty of said Laptop was expired. As per the above remark of service centre, the complainant came to know that the opponent no.1 and 2 had provided old Laptop to him by showing the same is new Laptop and received the price of new Laptop from him. Due to the faulty Laptop, the son of complainant sustain heavy loss in his academic year and 3 FA/299/2023 complainant and his family suffered mental shock, torture and agony. As such the complainant filed consumer complaint for the deficiency in service and unfair trade practice committed by opponents towards him and claimed that opponent no.1 and 2 may jointly and severally held liable and direct them to refund the price Rs 61,990/- along with interest, Rs 100,000/- each for compensation towards mental harassment, frustration, unfair trade practice and Rs 20,000/- for cost complaint. The complainant filed copy of cash memo, online payment, and service centre report with his complaint.

3. The opponent no.1 appeared before the District commission and filed written statement, thereby resisted the complaint and denies the allegations. The matter was proceeded ex-parte against opponent no.2. It is submitted by opponent no.1 that, opponent no.1 operate as e-commerce market place, where any seller is free to list any product for sale and any buyer is free to choose and order any product from any seller selling that product on the e-commerce marketplace and opponent no.1 have no influence or interference in the said process. All the transactions are strictly bipartite agreements. Opponent no.1 is neither the seller, nor the manufacturer and is therefore not liable for any issue arising out of product. It is submitted by opponent no.1 that complainant is not its consumer and prayed for dismissal of complaint.

4. On hearing the counsel of both parties and considering the entire record, the District commission held that the opponents committed deficiency in service and unfair trade practice and directed opponent no.2 to refund the price of 4 FA/299/2023 Laptop Rs. 61990/- and directed to opponent no.1 to pay Rs.5000/- as compensation and Rs.1500/- towards cost of the complaint to complainant.

5. Feeling aggrieved by the judgement and order, complainant came to this Commission in appeal. Adv.M.B.Ubale for complainant and Adv.V.N.Shelke for opponent no.1 were present. Opponent no.2 submitted written objection through post. We heard both of the advocates.

6. Adv.Ubale for complainant argued and submitted by way of their pleading that, the complainant proved that opponents had committed unfair trade practice and deficiency in service towards complainant still District commission granted less compensation to complainant. The opponent no.1 and 2 are jointly and severally liable for unfair trade practice and deficiency towards complainant but the District Commission has not held opponent no.1 and 2 jointly and severally liable to pay price of Laptop and compensation. And prayed for allow the appeal as above.

7. On the other hand, Adv.Shelke for opponent no.1 argued and submitted by way of written statement that, opponent no. 1 merely provides an e- commerce marketplace for transactions of sale that takes place between seller and buyer. Opponent no.1 neither seller nor product manufacturer. The opponent no.1 has not received any price from complainant therefore the complainant is not the consumer of opponent no.1. and prays for dismiss the appeal. Opponent no.2 filed their say and submission through post. It is submitted by opponent no.2 5 FA/299/2023 that, they have not belongs to the matter and not have any relations with parties of this case and prays for discard their name from the case.

8. We have gone through the appeal compilation, impugned judgement and order, pleading and written notes of arguments of parties. We have also given our anxious thoughts to arguments as advanced by the Advocates of parties.

9. The complainant submitted the copy of Tax Invoice/cash memo and copy of online payment which shows that the complainant had purchased the Laptop from opponent no.2 by paying Rs.61990/- through opponent no.1.On Tax Invoice the opponent no. 2 was shown as seller of the product, Laptop. The complainant submitted the copy of authorised service centre, ASUS product service form, of opponent no.2 which shows that on 01.04.2021 the Laptop was given for repair and having remark of the service centre. As per remarks of the service centre of opponent no.2 , the Laptop was already repaired by another service centre of opponent no.2.As per the old repair history of Laptop, the warranty of 12 months was already expired. As such the complainant proved that opponent no.2 received the price of new Laptop from the complainant but delivered old Laptop to the complainant and there by committed unfair trade practice and deficiency in service towards complainant. As per the submission of opponent no.1, The opponent no. 1 is not the manufacturer or seller of any product but, provides an e-commerce marketplace for the transaction of sale between seller and buyer, without charging any price. Opponent no. 1 is an intermediary" in terms of section 2(1)(w) 6 FA/299/2023 of Information Technology Act, 2000, as Lakhs of sellers and buyers interact and conduct their transactions which are strictly bipartite agreements between the sellers and buyers and opponent no.1 is not liable for any information, materials or warranties made by the sellers. It is further submitted by opponent no.1 that, opponent no.1 is not liable for any claims arising out of the product sold on the e-commerce marketplace by sellers. On the other hand complainant submitted that opponent no.1 is co seller with opponent no.2 and not merely an intermediary, therefore opponent no.1 is also personally and jointly liable for the deficiency in service and unfair trade practice, but there is no evidence on record which support this contention of complainant. The consumer protection (e- commerce) rules-2000 provides that, every marketplace e- commerce entity shall require sellers through an undertaking to ensure that the descriptions, images, and other contents of goods or services on their platform is accurate and corresponds

directly with the appearance, nature, quality, purpose and other general features of such goods or services. As such the opponent no.1 has not exempt from their liability towards the complainant.. Therefore opponent no.1 is liable for deficiency in service and opponent no.2 being manufacturer and seller is liable for unfair trade practice and deficiency in service towards complainant.

10. Form the above discussion we are of the view that the District Commission after giving opportunity of being heard and perusing entire evidence before it has rightly arrived to a findings and allowed the consumer complaint. We do not find any infirmity and illegality in the impugned judgement and 7 FA/299/2023 order passed by the District Commission. Therefore, we do not find it necessary to interfere in the said impugned judgement and order.

11. In view of aforesaid discussion the appeal deserves to be dismissed. In the fact and circumstances of the appeal there would be no order as to cost. Hence, we pass the following order.

ORDER.

1.The appeal is dismissed.

2.No order to cost.

3.Copy of this judgement be given to both of the parties free of cost.

Mr.N.C.Kumbre
Member

Mr.M.S.Sonawane
Presiding Member

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