

M/S Bahadur Chand & Co vs Dr. Suhinder Madan on 16 August, 2013

FIRST ADDITIONAL BENCH

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
PUNJAB
SECTOR 37-A, DAKSHIN MARG, CHANDIGARH.

First Appeal No.1570 of 2009.

Date of Institution: 06.11.2009.
Date of Decision: 16.08.2013.

1. M/s Bahadur Chand & Co., Hall Bazar, Amritsar.
2. Hitachi Home and Life Solution India Limited, Hitachi Complex, Karan Nagar, Kadi District Mehsana (Gujarat), through its Area Manager Sumeet Singh.
3. Hitachi Service Centre, Shop No.12, Krishna Market, opp. Vidya Bhawan Complex, Batala Road, Amritsar.

.....Appellants.

Versus

Dr. Suhinder Madan D/o Sh. Joginder Singh Madan, R/o Lane No.2,
House No.21-B, Hukam Singh Road, Amritsar.

...Respondent.

First Appeal against the order dated
21.08.2009 of the District Consumer
Disputes Redressal Forum, Amritsar.

Before:-

Shri Inderjit Kaushik, Presiding Judicial Member.

Shri Vinod Kumar Gupta, Member.

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Present:- Sh. Vipul Aggarwal, Advocate, counsel for the appellants.

Respondent Exparte.

INDERJIT KAUSHIK, PRESIDING JUDICIAL MEMBER:-

M/s Bahadur Chand & Co., Hall Bazar, Amritsar and others, appellants/opposite parties (In short "the appellants") have filed this appeal against the order dated 21.08.2009 passed by the learned District Consumer Disputes Redressal Forum, Amritsar (in short "the District Forum").

2. Facts in brief are that Dr. Suhinder Madan, respondent/ complainant (hereinafter called as "the respondent") filed a complaint under section 12 of the Consumer Protection Act, 1986 (in short, "the Act") against the appellants, making the narrations that she is the senior citizen, working as Professor & Head, Department of Paediatrics, Sri Guru Ram Dass Institute of Medical Sciences & Research, Sri Amritsar. The respondent purchased one split Hitachi 1.5 ton A.C. machine from the shop of appellant no.1, who are the local dealers of appellant no.3, for a sum of Rs.34,500/- vide invoice No.296 dated 23.04.2007. The appellant no.1 also advised to purchase voltage stabilizer of their choice, costing Rs.1,500/- and the same was purchased and the appellant no.1 installed the A.C. machine and the stabilizer in the bedroom of the respondent in the first week of May, 2007.

3. From the very first day of installation, loud and disturbing sound (thak-thak) was coming from the back of the internal unit. The mechanic of the shop of appellant advised the respondent to continue using the machine for 4-5 days and to note if the sound is continuing, but there was no change and the respondent approached appellant no.1, who sent Sh. Gaurav Bhandari, Service Engineer of appellant no.2 in the middle of May, 2007, who told that he would try to correct the AC unit, but the voltage stabilizer which was sold by appellant no.1 was unsuitable to that machine. Appellant no.1 refused to replace the same or refund the cost and the respondent was forced to purchase Amson's transformer from her own pocket. Even thereafter, there was no improvement and the disturbing sound kept on coming. Sh. Gaurav Bhandari made three visits, but could not rectify the defect and he assured the respondent that he will speak to Chandigarh based Service Station of appellant no.3, for solving the problem. He told that in June, 2007, the engineer from Chandigarh will come, but nobody turned up and later on, he started avoiding telephone calls.

4. The respondent visited appellants 7-8 times, but nothing was done. The appellant no.1 told the respondent that it would replace the unit by the end of February, 2008, if the machine was not corrected, but nothing was done and the respondent suffered lot of harassment, agony and financial loss and that amounts to deficiency in service on the part of the appellants.

5. A legal notice dated 04.04.2008 was also sent through registered post and after receipt of the same, appellant no.3 sent Sh. Mohinderpal Singh, Service Manager, Hitachi to check up the machine and he admitted that there is disturbing sound coming out of the unit and on the next day, he sent the mechanic, but he was unable to rectify the fault and thereafter, no one cared.

6. It was prayed that the appellants may be directed to pay Rs.34,500/- plus Rs.1,500/- paid by the respondent to appellant no.1, along with interest @ 10%, Rs.50,000/- as compensation and Rs.5,000/- as costs of litigation.

7. In the written version filed on behalf of appellants no.1 & 3, preliminary objections were taken that the complaint is barred by time and the respondent has not approached the District Forum with clean hands and has suppressed the true and material facts. No cause of action has arisen in favour of the respondent against appellant no.1. The complaint is false and frivolous.

8. On merits, it was admitted that the respondent is a consumer of the appellants. It was also admitted that the respondent purchased the A.C. as well as the stabilizer from appellant no.1. The respondent of her own purchased the stabilizer. No disturbing sound was coming out. It was admitted that Sh. Gaurav Bhandari, Service Engineer of the appellants visited the respondent, but did not find any fault in the unit. The sound, if any, was coming from the stabilizer. The receipt of the legal notice was admitted. It has been admitted that Sh. Mohinderpal Singh, Sales Officer, Hitachi visited the place of the respondent along with Service Manager, but there was no disturbing noise. All other allegations were denied and it was prayed that the complaint may be dismissed with costs.

9. In the written version filed on behalf of respondent no.2, all the allegations levelled by the respondent against respondent no.2 in the complaint were denied. It was further submitted that respondent no.2 has always provided satisfactory services to the respondent. Respondent no.2 is an Indian Subsidiary of world renowned Japanese Home Appliance Giant 'Hitachi' through its 100% subsidiary 'Hitachi Home & Life Solutions Incorporation Japan', which has earned a lot of goodwill in India and holds the highest reputation in the manufacturing of Air Conditioners. From the service reports of appellant no.1 & 3, it is clear that they have provided all the requisite services to the respondent and has taken reasonable care and caution to solve the grievance of the respondent, as and when the same were brought to their notice. The defect of the AC was rectified by respondents no.1 &

2. As per warranty agreement, in the event of any dispute, the courts of Allahabad only have the jurisdiction. Other similar pleas were repeated and denying allegations of the complaint, it was prayed that the same may be dismissed with exemplary costs.

10. Parties led evidence in support of their respective contentions by way of affidavits and documents.

11. After going through the documents and material placed on file and after hearing the learned counsel for the parties, the learned District Forum observed that the appellants have proved the allegations of the respondent, by producing documents Ex.R-3 to Ex.R-6 which are job cards which prove the repairs carried out and also the replacement of major components i.e. PCB on two occasions. The Air Conditioner supplied by the appellant was defective right from the date of its purchase and it is required to be replaced. The complaint was partly allowed and the appellants were directed to replace the air conditioner with a new air conditioner of the same make and brand, along with new stabilizer and if the same is not available, then the appellants should refund the price of the air conditioner and stabilizer. Rs.3,000/- were awarded as compensation and Rs.1,000/- as litigation expenses.

12. Aggrieved by the impugned order dated 21.08.2009, the appellants have come up in appeal.
13. We have gone through the pleadings of the parties, perused the record of the learned District Forum and have perused the written arguments submitted on behalf of the appellants.
14. The respondent has not contested the appeal and was proceeded against exparte.
15. In the written arguments filed on behalf of the appellants, it was submitted that the respondent purchased the split air conditioner of Hitachi make on 23.04.2007 for Rs.34,500/- and a voltage stabilizer for Rs.1,500/-. On the complaint made by the respondent, the appellants got checked the said air conditioner and no noise was found coming from the A.C., but it was coming from the stabilizer due to voltage fluctuation. The service engineer again visited on 05.10.2007 and checked up the unit and the same is established from the job card Ex.R-6 as per which no noise was coming. From the job cards Ex.R-4 and Ex.R-5, no problem was found in the unit nor any noise was coming. The said A.C. worked properly for two years and the respondent never made any complaint. On 16.05.2009, after the lapse of two years, the respondent made a complaint and the same was attended. The Printed Circuit Board which is very small electronic part is just a sensor/chip and the same was changed and the unit functioned properly. After two months, the PCB was again replaced on 10.07.2009 as per Ex.R-3. There is no expert evidence to prove that the defective air conditioner was supplied. There was no inherent manufacturing defect in the air conditioner. No disturbing noise was coming. The change of PCB does not prove that the A.C. was having manufacturing defect. The District Forum also has observed that after replacing PCB on two occasions, it worked properly. The order of the District Forum is not sustainable and the appeal may be accepted.
16. We have considered the written submissions submitted on behalf of the appellants and have minutely scrutinized the entire record.
17. The respondent did not examine any expert to prove that the noise of 'Thak-Thak' was coming from the air conditioner, but relied upon only on the Field Card Reports Ex.R-3 to Ex.R-6, to come to the conclusion that the air conditioner in question was having the inherent defects. The perusal of the Field Card Reports Ex.R-3 to Ex.R-6 do not support this version and on one occasion, PCB was replaced and thereafter, as per Field Card Report Ex.R-5, no noise was found and as per Field Card Report Ex.R-6 dated 05.10.2007, again the air conditioner was found 'OK' and there was no noise. The appellants have also filed the affidavit of Sh. Gaurav Bhandari, Service Engineer Ex.R-2 and he has categorically stated in his affidavit that there is no such noise as "Thak-Thak", coming from the machine. He personally visited the premises of the respondent and after checking the machine, he found no fault in the same, but the noise was coming out from the stabilizer which may be due to voltage fluctuation. The respondent refused to sign the service report.
18. The respondent ought to have examined some expert or some engineer to prove that the noise was coming out from the machine, but nothing such is produced on record, except producing the bills and invoices and the legal notice. The order passed by the District Forum is based on conjectures and surmises and is not sustainable in the eyes of law and is based on no evidence.

19. Sequel of above discussion, the appeal filed by the appellant is accepted and the impugned order under appeal dated 21.08.2009 passed by the District Forum is set aside. Consequently, the complaint filed by the respondent/complainant is dismissed. Parties are left to bear their own costs.

20. The appellants had deposited an amount of Rs.2,000/- with this Commission at the time of filing of the appeal and another sum of Rs.5,000/- vide receipt dated 11.01.2010 in compliance of the order dated November 30, 2009 passed by this Commission. Both these amounts with interest accrued thereon, if any, be remitted by the registry to appellant no.2 by way of a crossed cheque/demand draft after the expiry of 45 days.

21. The arguments in this appeal were heard on 05.08.2013 and the order was reserved. Now the order be communicated to the parties.

22. The appeal could not be decided within the stipulated timeframe due to heavy pendency of court cases.

(Inderjit Kaushik) Presiding Judicial Member (Vinod Kumar Gupta) Member August 16, 2013.

(Gurmeet S)