

Ricoh India Limited vs Kiran Bala on 23 January, 2013

2nd Bench

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

First Appeal No.1150 of 2006.

Date of Institution: 07.09.2006.

Date of Decision: 23.01.2013.

Ricoh India Limited, having its branch office at SCO no.50-51, IInd Floor,
Sector 17-A, Chandigarh, through its Technical Support Manager Vinay Sood.

....Appellant.

Versus

Kiran Bala w/o Manjit R/o H.No.B-XI-266-A, Gali No.1, near S.D. College,
Barnala, Distt. Sangrur, Punjab.

....Respondent.

First Appeal against the order dated
05.07.2006 of the District Consumer
Disputes Redressal Forum, Sangrur.

Before:-

Shri Inderjit Kaushik, Presiding Member.

Shri Baldev Singh Sekhon, Member.

.....

Present:- Sh. Rahul Bhargava, Advocate, counsel for the appellant.

Sh. Shiv Pal Sharma, Advocate, Rep. of the respondent.

INDERJIT KAUSHIK, PRESIDING MEMBER:-

Ricoh India Limited, appellant (In short "the appellant") has filed this appeal against
the order dated 05.07.2006 passed by the learned District Consumer Disputes
Redressal Forum, Sangrur (in short "the District Forum").

2. Facts in brief are that Smt. Kiran Bala, 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 appellant, asserting that she paid Rs.1.00 lac in advance for the purchase of photostat machine Model 4065, costing Rs.1,19,659/- which was supplied vide bill no.C/JB/274 dated 02.03.1996 and was installed in the Court Compound, Barnala in the shop of the respondent. This machine was purchased by the respondent through Sh. Shivpal Sharma and through him the agreement 'Comprehensive Customer Care Contract' was executed on 17.04.1996. The appellant company agreed to provide service after 50,000 copies upto 10,00,00 copies as per the meter reading and toner and other required materials were to be supplied and was to receive 29 paise per copy. The agreement came into force w.e.f. 23.03.1996. On 19.01.1996, the agent of the company through one performa invoice machine Model 4065 costing Rs.1,17,619-20 net, took the order and agreed to supply the machine.

3. The appellant company, by misstating the facts and in order to cheat, represented the Model 4065 as latest model and obtained the order. The machine 4065 Model which was supplied by the appellant did not function and on repeated requests, no service was provided nor the same was replaced. At the time of taking the order, it was mis-represented that 4065 Model is of Ricoh Company of Japan, whereas the machine supplied was manufactured at Gandhinagar, India.

4. On 23.03.1996, the meter reading was 0352 and after one or two days of its use, it became out of order and remained out of order for 62 days. In 1997, it remained out of order for 68 days and in 1998, it remained out of order for 65 days. It also remained out of order and totally un-functional from 29.09.1998 to 03.11.1998 for 34 days, from 04.11.1998 to 30.11.1998 for 26 days and from 01.12.1998 to 15.12.1998 for 14 days. The machine is still lying out of order and no service was provided to make it functional despite the request made. The respondent suffered the loss of Rs.75,000/-. The respondent also suffered loss in business and the contract was unilaterally cancelled. The appellant received excess amount than the actual price and the respondent is entitled to get the excess amount refunded along with interest and in all, Rs.97,039/- are refundable.

5. It was prayed that the appellant may be directed to refund Rs.97,039/- along with interest, Rs.75,000/- as damages and an amount of Rs.70,000/- paid in advance be also got refunded along with interest,, in all Rs.1,73,681/- be paid to the respondent.

6. In the written reply filed on behalf of the appellant, the preliminary objections were taken that the matter should be referred to the arbitrator, as per the provisions of the agreement. The District Forum has no jurisdiction. The District Forum has also no territorial jurisdiction.

7. On merits, it was denied that Sh. Shivpal Sharma was the contact person. Model 4065 is not outdated model and the appellant is still marketing it. The appellant company is a subsidiary of Ricoh Japan with its manufacturing unit in Gandhi Nagar (Gujarat) under technical and financial guidance with Ricoh Japan. The appellant provided the service to the respondent on every call and the machine was attended by the technical person and every time, the service call sheet was signed by the respondent, showing the satisfactory working of the machine. The machine was delivered on 23.03.1996 and no manufacturing defect was found during the time of warranty. No written

complaint was received from the respondent. The service contract was rightly cancelled as the respondent indulged in cheating, by tampering with the meter of the machine, which was evident from the visit of the company engineer and the meter was confiscated as per clause 5 of the agreement and for any breach of the agreement, the contract is liable to be cancelled/terminated. The respondent tampered with the meter in order to cheat the appellant with malafide motive to deprive the appellant from receiving the due amount as agreed upon, to cause loss to the appellant. This complaint is a counterblast of that. The receipt of the payment and other payments made by the respondent were admitted. All other allegations were denied and it was prayed that the complaint may be dismissed with costs.

8. Rejoinder was filed in which the averments of the complaint were reiterated and that of the written reply were controverted.

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

10. After going through the documents and material placed on file and after hearing the learned counsel for the parties, the learned District Forum vide order dated 02.05.2000 observed that this is a complicated case and there is commercial transaction and the complaint is not maintainable, and dismissed the complaint. The respondent was at liberty to seek her remedy anywhere she so likes.

11. The respondent filed appeal i.e. F.A. No.810 of 2000 before this Commission and the same was decided vide order 12.05.2004 and the order dated 02.05.2000 was set aside and the case was remanded back to the District Forum for fresh decision in accordance with law, after affording appropriate opportunity to the parties.

12. The District Forum vide the impugned order dated 05.07.2006 allowed the complaint partly and ordered as follows:-

a) Appellant (opposite party) will provide to the respondent (complainant) RPG Ricoh FT 4065 specially developed by Ricoh in Japan.

b) The appellant will take back the machine provided by the appellant which is made in Gandhinagar (Gujarat) India and

c) the appellant will refund Rs.70,000/- taken at Barnala by their agent along with 10% interest from the date of collection till the payment.

d) In case by any reasons the appellant is unable to provide the machine made in Japan, the appellant will refund the amount of Rs.1,19,669-20 to the respondent along with interest @ 10% p.a. from the date of deposit till the date of payment and take back the old machine.

e) The appellant will also pay Rs.10,000/- as consolidated amount for litigation expenses, mental tension and harassment.

13. Aggrieved by the impugned order dated 05.07.2006, the appellant has come up in the present appeal i.e. F.A. No.1150 of 2006 and the same was dismissed in default vide order dated 13th July, 2011. The restoration application filed by the appellant was also dismissed by this Commission vide order dated December 01,2011. The appellant filed the revision petition No.690 of 2012 before the Hon'ble National Commission and the Hon'ble National Commission vide order dated 10th October, 2012 set aside the order of dismissal of appeal and restored the same on the board of this Commission, subject to costs of Rs.15,000/- to be paid to the respondent/complainant. The parties were directed to appear before the State Commission on 09.11.2012.

14. The parties through counsel accordingly appeared. Cost was paid.

15. We have gone through the pleadings of the parties, perused the record of the learned District Forum and have heard the arguments advanced by the learned counsel for the parties as well as perused the written arguments filed on behalf of both the parties.

16. In the written arguments filed on behalf of the appellant, it was submitted that the respondent approached the appellant company for the purchase of photostat copier machine bearing Model No.FT 4065 and after full satisfaction, purchased the said machine at the price of Rs.1,19,659-20 and the same was installed on 23.01.1996 by the appellant. The agreement dated 17.04.1996 was executed between the parties. The machine was running properly. On 27.11.1998, the officials of the company visited the place where the machine was installed and it was found that the respondent has tampered with the meter of the said machine. The respondent filed the complaint and the written statement to that was filed.

17. It was further submitted that the impugned order dated 05.07.2006 passed by the District Forum is liable to be set aside on the grounds that the respondent never approached the appellant for any complaint regarding the said machine during the period of two years i.e. from 1996 to 1998 and the machine was working properly. The complaint was filed after the expiry of the period of two years. The said machine was under

warranty for the period of 90 days from the date of installation or 50,000 copies whichever is earlier. However, the complaint was attended by the officials of the appellant company. The respondent tampered the meter of the machine and the meter was confiscated as per clause 5 of the agreement and the contract was revoked. The District Forum has no jurisdiction. The price of per copy from 0.29 paise to 0.33 paise was raised as per clause 4 of the agreement. No material or evidence has been produced to prove that there was manufacturing defect in the machine and the impugned order has been passed without application of mind and is liable to be set aside.

18. It was further submitted that the District Forum relied upon the receipts Ex.C-20 to Ex.C-22, but the District Forum overlooked that receipts Ex.C-3 and Ex.C-4 are related to the machine in question and not Ex.C-8.

The receipt Ex.C-27 has been read by the respondent as excess payment receipt of Rs.9,000/- dated 09.03.1996, whereas it was the refund receipt and the impugned order is liable to be set aside. The documents were ignored. On November 20, 1998, the engineers of the appellant caught the respondent red-handed while tampering with the meter and warned the respondent that due to this violation, the contract would be terminated and a letter Ex.OP-2 dated 27.11.1998 was sent. The evidence was not considered in right prospective. The machine has been exhaustively used and it has copied more than 1,00,000 copies before making the complaint. The warranty period had already expired. The document Ex.C-28 negates the statement of the respondent that the machine is not functional, whereas on July 23, 1993, the meter reading was 97,639 and on 30.11.1998, the meter reading was 1,06,929/-. Vide Ex.C-7/Ex.C-13, Rs.30,000/- were refunded whereas the District Forum ordered to refund Rs.70,000/- again. The District Forum has ignored all these documents and the order is liable to be set aside.

19. In the written arguments filed on behalf of the respondent, pleadings were repeated. It was submitted that the appellant has not supplied the machine as promised and played fraud upon the respondent. No technical person attended the machine and no call sheet has been produced. The appellant has produced five documents before the District Forum. Ex.OP-2 is false and concocted letter illegally terminating the contract and Ex.OP-3 is unsigned document. Ex.OP-4 or Ex.C-6 is the letter from the appellant regarding 4C contract enforcing from 23.03.1996 and shows the reading of 0352 which proves that the machine became out of order from the very beginning. Ex.OP-5 is blank form, having no means or evidential value. Ex.OP-6 is the resolution. Ex.OP-1 is the affidavit of the Area Manager. Ex.OP-7 is the affidavit of Sh. Vinay Sood, agent of the appellant which is contradictory to the previous affidavit. The respondent has submitted the documents Ex.C-1 to Ex.C-35 and the appellant has challenged the document Ex.C-15, Ex.C-18 and Ex.C-24 only. In the affidavit of Sh. Naresh Bhatia, the abusing language has been used against the respondent. The respondent made the payments to the appellant, by withdrawing FDRs as per Ex.C-32 to Ex.C-34 prematurely and suffered great loss financially and emotionally. The order passed by the District Forum is correct and the appeal may be dismissed.

20. We have considered the respective submissions of the parties and have thoroughly scanned the entire record and other material placed on the record.

21. Admittedly, the respondent purchased RPG Ricoh Automatic Plain Paper Copier Model 4065 along with installation kit for Rs.1,19,659-20 vide copier invoice Ex.C-4 dated 02.03.1996. The Copier Customer Care Contract Ex.C-5 was executed between the parties and the meter reading at that time was 0352 and the said agreement was effective from 23.03.1996 as per the letter dated 20.09.1996 Ex.C-6. As per Clause-3 of the General Terms, on completion of 10 Lakhs copies, a major refurbishing job may be necessary on the equipment and the appellant was to carry out inspection and submit the recommendations and all charges and expenses and the respondent was having the option of agreeing to those recommendations and in case, customer does not agree to such recommendations, then the appellant has to give 60 days prior notice to terminate the contract. As per the allegations of the appellant, the service contract was cancelled as the respondent indulged in cheating, by tampering with the meter of the machine and the meter was confiscated as per Clause-5 of the agreement. It was for the appellant to prove that the respondent was indulging in

any such activity of tampering with the meter. As per the letter Ex.OP-2, Sh. Manvinder Singh visited the site where the machine was installed and he found that the meter was tampered, but no report of the said engineer has been placed on file, nor his affidavit is on the record and, as such, the version of the appellant is not believable, as it is not supported by any evidence. Ex.OP-3 is the same contract. Ex.OP-4 is another letter, showing some amount due. Ex.OP-5 is the proforma invoice and Ex.R-6 is the copy of the resolution. Ex.R-7 is the affidavit of Sh. Vinay Sood, Technical Support Manager of the appellant and this is nothing, but is the repetition of the written statement.

22. From the above documents, it is clear that the appellant has failed to prove that the respondent was indulging in tampering of the meter. The log book of the said machine is on the record and as per this, the meter reading on 23.06.1998 was 97,639 and on 22.01.1999, the same meter was taken for checking and the complete main board and L.V.P.S. were replaced. Perusal of the log book shows that earlier also, the parts have been replaced to keep the machine in fit condition. Ex.C-3 and Ex.C-4 are Copier Proforma Invoices of the machine and Ex.C-8 is also Copier Proforma Invoice as per which, the RPG Ricoh Automatic Plain Paper Copier Model 4065 as per Leaflet Code and installation kit was sold for Rs.1,17,619-20 and it is signed on behalf of the appellant. As per Ex.C-17, excess payment of Rs.9,000/- was received which was refunded to the respondent and it was received on behalf of the respondent by Shivpal Sharma. Ex.C-28 is the copy of the log book, discussed above. Vide receipt Ex.C-7, the refund of Rs.30,000/- was made to the respondent and Ex.C-13 is the same matter.

23. As discussed above, the cancellation of the Comprehensive Customer Care Contract vide letter Ex.C-14 dated 27.11.1998 is not based on any evidence and, as such, the version of the appellant is not believable. The appellant, through the proforma invoice Ex.C-3 and Copier Invoice Ex.C-4, agreed to supply the machine RPG Ricoh Automatic Plain Paper Copier Model 4065 along with installation kit and the same machine was sold vide invoice Ex.C-8 to the respondent and the address of the appellant was of Secunderabad (Andhra Pradesh) in all the invoices and the appellant has supplied the machine manufactured by RPG Ricoh FT-4065 which was developed by Ricoh in Japan, to meet Indian user requirements and even on the pamphlet Ex.C-33, the name of RPG Ricoh Limited, Bombay, India was mentioned and the observation of the District Forum that the machine is not made in Japan, but in Gandhinagar (Gujarat), India is against the facts and evidence on record and is not tenable. As per the log book, after 23.01.1999, the appellant has stopped the service and has unilaterally revoked the contract and for that the respondent is to be compensated, but the directions of the District Forum that the appellant will provide to the respondent RPG Ricoh FT-4065 specially developed by Ricoh in Japan and will take back the machine provided by the appellant made in Gandhinagar (Gujarat) and to refund Rs.70,000/- taken at Barnala by their agent along with interest @ 10% p.a., are not sustainable in the eyes of law.

24. In view of above discussion, the appeal filed by the appellant is partly accepted and the impugned order under appeal dated 05.07.2006 passed by the District Forum, with regard to the above details as mentioned in Paras (a), (b), (c) and (d) of the impugned order, are set aside. However, the appellant is to pay compensation to the tune of Rs.60,000/- (Rupees Sixty Thousand) to the respondent and Rs.10,000/- awarded as consolidated amount is converted to litigation expenses alone. With this modification, the appeal is disposed of. The above amounts shall be paid

by the appellant within one month from the receipt of copy of the order, failing which the entire amount shall earn interest @ 9% per annum from 23.01.1999, i.e. the date of leaving the service by appellant and revoking the contract, till realization.

25. The appellant had deposited an amount of Rs.25,000/- with this Commission in the appeal on 09.09.2006. This amount along with interest accrued thereon, if any, was ordered to be refunded to the respondent/complainant vide order dated 01.12.2011 passed in Misc. Appl. No.2165 of 2011 for restoration of the appeal and in compliance of above order, as per the report of the account branch dated 16.02.2012, the payment of Rs.25,000/- plus Rs.11,029/-, total Rs.36,029/- has been made vide cheque no.622462 dated 15.02.2012.

26. Remaining amount as per this order shall be paid by the appellant to the respondent within one month of the receipt of copy of the order.

27. The arguments in this appeal were heard on 10.01.2013 and the order was reserved. Now the order be communicated to the parties.

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

(Inderjit Kaushik) Presiding Member (Baldev Singh Sekhon) Member January 23, 2013.

(Gurmeet S)