

Mahindra & Mahindra Ltd. vs Prakash Chand on 18 September, 2015

FIRST ADDITIONAL BENCH

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

First Appeal No.1233 of 2012

Date of Institution: 19.09.2012.

Date of Decision: 18.09.2015.

M/s Mahindra & Mahindra Limited, SCO 17, Sector 26-D, Madhya Marg,
Chandigarh through its M.D/G.M.

.....Appellant/opposite party no.3

Versus

1. Parkash Chand aged 35 years son of Uda Ram resident of Village Amar Pura, Tehsil Abohar, District Ferozepur.
.....Respondent no.1/complainant
2. M/s Imperial Motors, Malout Road, Abohar, Tehsil Abohar, District Ferozepur through its Area Incharge/Prop/partners.
3. M/s Imperial Motors, H.O.G.T. Road, Bathinda, Tehsil & District Bathinda through its Area Incharge/Prop/partners.
4. M/s Mahindra & Mahindra Financial Services Limited, SCF 56, Model Town, Phase-I above HDFC Bank, Near TV Tower, Bathinda, Tehsil and District Bathinda through its M.D./G.M.
..... Respondent no.2 to 4/opposite party no.1,2 & 4

First Appeal against order dated
23.04.2012 passed by the District
Consumer Disputes Redressal Forum,
Ferozepur.

Quorum: -

Shri J. S. Klar, Presiding Judicial Member.

Shri. Harcharan Singh Guram, Member Present:-

For the appellant : Sh. Vaibhav Narang, Advocate. For respondent no.1 : Sh. Peeush Gagnoja, Advocate. For respondent no.2&3 : Sh. Mukand Gupta, Advocate. For respondent no.4 : Sh. Nitin Thatai, Advocate.

AND

2) First Appeal No.1546 of 2012 Date of Institution: 19.11.2012.

Date of Decision: 18.09.2015.

Imperial Motors, G.T. Road, Bathinda, through authorized person.

.....Appellant/opposite party no.2 Versus

1. Parkash Chand aged 35 years son of Uda Ram resident of Village Amar Pura, Tehsil Abohar, District Ferozepur.

.....Respondent no.1/complainant

2. M/s Mahindra & Mahindra Limited, SCO no.17, Sector 26-D, Madhya Marg, Chandigarh through its Managing Director/General Manager.

3. M/s Mahindra & Mahindra Financial Services Limited, SCF 56, Model Town, Phase-I above HDFC Bank, Near TV Tower, Bathinda, Tehsil and District Bathinda through its Managing Director/General Manager Respondent no.2 & 3/opposite party no.3 & 4 First Appeal against order dated 23.04.2012 passed by the District Consumer Disputes Redressal Forum, Ferozepur.

Quorum:-

Shri J. S. Klar, Presiding Judicial Member. Shri. Harcharan Singh Guram, Member.

Present:-

For the appellant : Sh. Mukand Gupta, Advocate.

For respondent no.1 : Sh. Peeush Gagnoja, Advocate. For respondent no.2 : Sh. Vaibhav Narang, Advocate. For respondent no.3 : Sh. Nitin Thatai, Advocate.

..... J.S KLAR, PRESIDING JUDICIAL MEMBER :-

By this common order, we intend to dispose of above referred two connected first appeals, because they have arisen out of the same order of District Consumer Disputes Redressal Forum, Ferozepur (in short the 'District Forum') dated 23.04.2012.

2. The appellant of first appeal no.1233 of 2012 (opposite party no.3 in the complaint) has directed this appeal against respondent no.1 of this appeal (the complainant in the complaint) and respondent no.2 to 4 herein (opposite party no.1,2 & 4 in the complaint), assailing order dated 23.04.2014 of District Consumer Disputes Redressal Forum Ferozepur, vide which, the complaint of the complainant was accepted by passing order, as contained in the detailed order. Similarly, first appeal no.1546 of 2012 has been filed by the appellant (opposite party no.2 in the complaint) against respondent no.1 of this appeal (the complainant in the complaint) and respondent no.2 & 3 herein (opposite party no.3 & 4 in the complaint), challenging

order dated 23.04.2014 of District Consumer Disputes Redressal Forum Ferozepur accepting the complaint and passing order, as contained in the detailed order. The order shall be pronounced by us in main first appeal no.1233 of 2012 titled as "M/s Mahindra & Mahindra Ltd. Vs. Parkash Chand & others".

3. The complainant has filed the complaint under Section 12 of the Consumer Protection Act, 1986 (in short, "the Act") against the OPs, on the premises that he purchased one Maximo vehicle bearing chassis no.A6C13413, engine no.HRA6C12945 (manufactured by OP no.3) from OP no.1 & 2 in April, 2010 for a sum of Rs.2,83,000/-, which was got financed by the complainant from OP no.4. OP no.1 and 2 assured the complainant at the time of purchasing the vehicle, that it was free of any manufacturing defect or other hassle. The vehicle started giving troubles after its purchase and complainant encountered with abnormal inconvenience in running the vehicle. The complainant took the vehicle to OP no.1 & 2 and the engine was replaced within three months from the date of purchase. It was further averred in the complaint that despite replacement of engine, the vehicle did not stop giving problems. OP no.1 to 3 have not rectified the defect nor replaced its engine properly to bring the vehicle in perfect working condition. The fault in the vehicle occurred during the operation of warranty period, which necessitated the replacement of the engine of the vehicle. OP no.1 to 3 have not replaced the engine by proper components and due to that reason, the vehicle continued giving troubles. The complainant has, thus, filed the complaint directing the OPs to replace the engine or defective parts of the vehicle to make it roadworthy and further prayed for compensation of Rs.1,00,000/- for mental harassment and financial losses, besides Rs.5000/- as costs of litigation and also prayed for reimbursement for the loss of earning including amounts of installments to be paid @Rs.15,000/- per month from the date the vehicle has been standing in parking with the OPs till the delivery of vehicle with penal interest thereupon.

4. Upon notice, OP no.1 & 2 were set exparte before District Forum, vide order dated 30.08.2011. OP no.3 filed its separate written statement and contested the complaint of the complainant vehemently. It was averred by OP no.3 in preliminary objections that complaint is not maintainable in the present Forum. It was further pleaded that the District Forum Ferozepur has no territorial jurisdiction to entertain or try the complaint. The complainant is alleged to have suppressed the true material facts from the Forum. It was further pleaded that OP no.3 is always concerned about its goodwill and hassle free services to the customers. The terms and conditions of the warranty are duly mentioned in the owner's manual. The complainant filed the present complaint with malafide intention only. The complainant wrongly pleaded that he parked the vehicle in the workshop in March, 2011.

OP no.3, the Company gave the warranty to the customers for one year or upto 40,000 kilometers, whichever occurred earlier. The vehicle of the complainant had already run 52,000 kilometers and hence, the warranty of the vehicle stood expired. The complainant was adamant to change the

engine of the vehicle and hence the engine of the vehicle was replaced and thereafter no problem occurred in the vehicle. The vehicle was got serviced by the complainant from an unauthorized mechanic against the warranty policy of OP no.3 Company. The unauthorized and unqualified mechanic worked on the radiator fan issue, which led to the heating of the engine. The head gasket of the engine then burnt due to the failure of the radiator fan. Despite the work being done at an unauthorized service centre, the Company replaced the head gasket as a goodwill gesture, but it was too late as the vehicle wiring was damaged due to the heat generated in the vehicle. The vehicle was then brought to the workshop and it was advised that the common rail, injectors and the bearings be changed. As the vehicle was out of warranty at the time, the Company offered to share 50% of the charges with the customer/complainant. It was denied that the vehicle was lying in the workshop of OP no.1 & 2 at Bathinda since March, 2011. It was further pleaded that vehicle had not been brought to the workshop of OP no.1 & 2 in March 2011, but it was brought in April 2011, when it had already run over 52,000 kilometers and warranty period was over. The complaint was contested by OP no.3 even on merits on the above referred grounds. OP no.3 controverted the other averments of the complainant. The answering OP prayed for the dismissal of the complaint.

5. OP no.4 filed its separate written statement and contested the complaint of the complainant vehemently. It was averred in preliminary objections by OP no.4 that complaint is not maintainable in the present Forum. Any deficiency in service was vehemently denied by OP no.4. It was further pleaded that there is an Arbitration Clause in the agreement of loan executed between the complainant and OP no.4. The jurisdiction of Consumer Forum was denied by OP no.4, as the Courts at New Delhi only have exclusive jurisdiction to settle the matter. On merits, OP no.4 admitted this fact that it financed the vehicle of the complainant. It was further pleaded that complainant never informed to OP no.4 about the allegations raised in the complaint by him. It was further pleaded that the complainant is bound to make the payment of installments of Rs.6900/- per month to OP no.4, as per terms and conditions of loan agreement dated 05.04.2010, executed between the complainant and OP no.4. The loan amount alongwith interest was repayable in 48 installments payable by 15th of every English calendar month with effect from 15.04.2010. It was agreed that in case, the complainant failed to pay any of the installments in time, he would be liable to pay the additional finance charges. The terms and conditions of the loan agreement have been reduced into writing in the shape of an agreement date 05.04.2010. OP no.4 further pleaded that it is not liable for any manufacturing defect in the vehicle financed by it to the complainant. OP no.4 prayed for the dismissal of the complaint against it.

6. The complainant tendered in evidence his affidavit Ex.C-1 and job card invoice dated 06.07.2010 and closed the evidence. As against it, OP no.4 tendered in evidence, the affidavit of Gaurav Vinocha Legal Executive and General Attorney of OP no.4 Ex.R-1 and loan agreement Ex.R-2 and closed the evidence. OP no.3 tendered in evidence the documents Ex.R-3 to R-8 and closed the evidence. On conclusion of evidence and arguments, the District Forum accepted the complaint of the complainant and directed the OPs to replace the engine, water cooling system, wiring/ electrification system and all other parts which required repair and to make the vehicle road worthy and deliver the same to the complainant in good running condition with a fresh warranty of one year from the date of the delivery of the vehicle, after above replacement to his satisfaction. OP no.1 & 2 further directed to pay Rs.20,000/- as compensation and Rs.3000/- as litigation expenses to the

complainant. It was further ordered by District Forum Ferozepur that OP no.2 shall bear the interest on the loan amount imposed by OP no.4 from March, 2011 till the delivery of the vehicle to the complainant. OP no.4 was further directed to raise the bill of interest on the loan amount to be paid by OP no.2 for the period from March, 2011 to the date of delivery of vehicle by OP no.2. OP no.4 was further directed to start charging interest on due loan amount from the complainant on the amount due against the complainant as on 1st March, 2011 from the date of delivery of vehicle by OP no.1 to 3 to the complainant. Dissatisfied with the order of the District Forum Ferozepur dated 23.04.2012, OP no.3 now appellant has filed first appeal no.1233 of 2012, whereas OP no.2 has filed first appeal no.1546 of 2012 against the respondent of this appeal.

7. We have heard the learned counsel for the parties and have also examined the record of the case. The counsel for the appellants in the above referred appeals contended that the order passed by the District Forum Ferozepur is without territorial jurisdiction and is not sustainable in the eye of law. On the other hand, the submission of counsel for respondent no.1 Parkash Chand of the above referred appeals is that since OPs have branch office at Ferozepur and hence the cause of action would accrue to complainant to file the complaint at Ferozepur. We have to examine the sole point as raised before us as to whether the District Forum Ferozepur was invested with the territorial jurisdiction to decide this complaint or not. We have examined the pleadings of the parties on the record. OPs raised specific plea before District Forum regarding want of its territorial jurisdiction to try the complaint. The District Forum has not met this point in the order under challenge in above referred appeals by discussing it. The judgment of District Forum Ferozepur is sub-silentio on this point. We find that District Forum has not discussed this point as to whether it has the requisite territorial jurisdiction over this matter or not. When a specific objection was raised by the OPs in its pleadings, it was incumbent upon District Forum Ferozepur to meet the same by recording a reasoned order supported by evidence. Whatever the case may be, we now proceed to adjudicate this matter as to whether District Forum Ferozepur has the territorial jurisdiction to try the complaint or not. We have examined the pleadings of the parties on the record. The affidavit of complainant is Ex.C-1 on the record. The complainant has repeated the version of the complaint in the affidavit on oath. Ex.C-2 is the job card invoice issued by OP no.2, which is located at G.T. Road, Bathinda. It was issued at Bathinda. OP no.4 placed reliance upon the affidavit of Gaurav Vinocha, Legal Executive and General Attorney of OP no.4 Ex.R-1 on the record. Loan agreement was executed between the complainant and OP no.4 vide Ex.R-2 on the record. OP no.3 placed reliance upon the affidavit of Inderjit Goshal, D.G.M. Sales of OP no.3 Ex.R-3 on the record. Ex.R-4 is the copy of job card invoice dated 06.07.2010. Ex.R-5 and R-6 are the copies of letters dated 02.08.2011 and 01.12.2011 from OP no.2 to complainant. Ex.R-7 and R-8 are the copies of job card invoice.

8. From critical analysis of above referred evidence on the record and hearing the submissions of counsel for the parties, we proceed to conclude this point as to whether the District Forum Ferozepur has the requisite territorial jurisdiction to try the complaint or not. The counsel for the complainant contended that the branch office of OP no.2 is situated at Ferozepur and as such it has the territorial jurisdiction on account of situation of branch office at Ferozepur to try the complaint. The complainant purchased the vehicle from OP no.1 and 2 in April, 2010 for a sum of Rs.2,83,000/-. The vehicle was not purchased at Ferozepur, as contended by counsel for the OP, which point has not been rebutted by counsel for the complainant on the record. The vehicle was

brought to the workshop at Bathinda, where its engine was replaced. It was again brought to workshop at Bathinda, which gave rise to the present dispute between the parties. Neither the vehicle was purchased by making the payment at Ferozepur by the complainant nor the vehicle was repaired or its engine replaced at Ferozepur by OP no.2. Now, we have to adjudicate this point as to mere location of branch within the jurisdiction of Ferozepur would clothe the District Forum Ferozepur with the jurisdiction to try the complaint. The Apex Court has settled the controversy in "Sonic Surgical Vs. National Insurance Company Ltd." 2010(1)CLT-252, wherein it has been held that expression "Branch Office" has defined in Section 17(2) of the Act and it means the branch office, where cause of action has arisen. The complainant has not pleaded the facta-probanda in the complaint giving rise to cause of action within the territorial jurisdiction of District Forum Ferozepur. We cannot presume it unless and until it is categorically pleaded by the complainant or proved on the record. Consequently, we are of this view that District Forum Ferozepur has failed to appreciate this controversy on this point, despite a specific objection raised by OPs before it in this regard. Neither the vehicle was purchased at Ferozepur nor it was repaired at Ferozepur nor its engine was replaced at Ferozepur, nor the dispute of parking charges arose at Ferozepur as such no part of cause of action accrued to the complainant within the territorial jurisdiction of Ferozepur. The District Forum which lacked the territorial jurisdiction should have returned the complaint to the complainant for its presentation before proper Forum. The District Forum assumed the territorial jurisdiction, which was not vested in it by law.

9. In view of our above discussions, as recorded above, by setting aside the order of District Forum Ferozepur dated 23.04.2012, we accept the first appeal no.1233 of 2012 titled as "Mahindra & Mahindra Limited Vs. Parkash Chand and others" and we also accept the first appeal no.1546 of 2012 titled as "Imperial Motors Vs. Parkash Chand & others" by directing that this case stands transferred to District Forum Bathinda, which has the requisite jurisdiction to try the complaint. The District Forum Bathinda shall procure the presence of the parties before it and then decide the case denovo in accordance with law. The registry is directed to send the case file to District Forum Bathinda within 30 days period.

10. The appellant of first appeal no.1546 of 2012 had deposited the amount of Rs.11,500/- with this Commission at the time of filing the appeal. This amount with interest which accrued thereupon, if any, be remitted by the registry to the appellant by way of a crossed cheque/demand draft after the expiry of 45 days.

11. Arguments in above referred appeals were heard on 16.09.2015 and the orders were reserved. Now the orders be communicated to the parties. The above referred appeals could not be decided within the statutory period due to heavy pendency of court cases.

(J. S. KLAR) PRESIDING JUDICIAL MEMBER (H.S.GURAM) MEMBER September 18, 2015.

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