

Gagandeep Garg vs M/S Sodhi Trading Company on 21 March, 2017

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

First Appeal No.1242 of 2014

Date of institution : 09.09.2014
Date of decision : 21.03.2017

Gagandeep Garg son of Satpal Garg, R/o Village Baho Sivian,
P.O. Teona, District Bathinda.

....Appellant/Complainant

Versus

M/s Sodhi Trading Co. (Regd.), Ist Floor, Sanjivni Blood Bank,
Local Bus Stand, Saddar Bazar, Ambala Cantt., through its
Proprietor/Owner Maninder Singh Sodhi.

....Respondent/Opposite Party

First Appeal against the order dated
13.05.2014 of the District Consumer
Disputes Redressal Forum, Bathinda.

Quorum:-

Hon'ble Mr. Justice Paramjeet Singh Dhaliwal, President
Mr. Harcharan Singh Guram, Member.

Present:-

For the appellant : Shri Vinay Bajaj, Advocate For the respondent : None.

JUSTICE PARAMJEET SINGH DHALI WAL, PRESIDENT The instant appeal has been filed by the appellant/complainant against the order dated 13.05.2014 passed by District Consumer Disputes Redressal Forum, Bathinda (in short, "the District Forum"), whereby the complaint filed by him, under Section 12 of the Consumer Protection Act, 1986 (in short, "the Act"), was ordered to be returned, along with documents, for filing the same before the appropriate Forum, having territorial jurisdiction to entertain and try the same.

2. It would be apposite to mention that hereinafter the parties will be referred, as have been arrayed before the District Forum.

3. Brief facts, as averred in the complaint, are that the complainant allegedly purchased a molding machine (in short, "the machine") for an amount of 48,000/- from the opposite party. It is averred that at the time of selling the above said machine, the opposite party promised to supply him the

raw material (plastic) free of costs and that he would prepare different articles of plastic, which would be purchased by the opposite party on payment of 70 paise per piece. The complainant had paid 25,000/- in advance for the supply of above said machine on 01.07.2013. He also paid 32,000/- to the opposite party on 06.07.2013 i.e. 23,000/- as balance amount of the machine and 9,000/- as security amount. Thus, a total sum of 57,000/- was paid by him to the opposite party. The opposite party supplied the said machine to the complainant on 09.07.2013 and an agreement was executed between the parties on 06.07.2013 on the letter head of the opposite party. As per the agreement, 5 years' warranty was given for the molding machine, i.e. with effect from 06.07.2013 to 05.06.2014. The complainant allegedly prepared 100 kgs. stock, as per the instructions of the opposite party and supplied the same to it on 09.11.2013, through Railway Bulky dated 09.11.2013, through Kalka Mail Train from Bathinda to Ambala. However, the opposite party refused to receive the same and to make the payment of the stock prepared by him. It is further alleged that the above said machine is not working properly and there is some manufacturing defect in it. The complainant sent legal notice to the opposite party on 14.03.2014, to which a vague reply was sent by the opposite party on 29.03.2014. Hence, the complainant approached the District Forum, seeking refund of the amount of 53,400/- along with compensation and costs.

4. The complaint was ordered to be returned to the complainant, for want of territorial jurisdiction, at the preliminary hearing, without issuing summons to the opposite party, vide the impugned order. Hence, this appeal.

5. We have heard learned counsel for the appellant/complainant, as none appeared on behalf of the respondent/opposite party at the time of arguments. We have also perused the record carefully.

6. The District Forum came to the conclusion that the perusal of the documents on the file show that the complainant has purchased the molding machine from M/s Sodhi Trading Co. (Regd.), Ambala Cantt. and quotation of 48,000/- has also been given at Ambala on 07.06.2013. The receipt dated 01.07.2013 of 10,000/- also shows that it was also issued at Ambala. The complainant failed to produce any document and failed to convince us from the record that the District Forum at Bathinda had the jurisdiction to try and decide the complaint. We have time and again requested the learned counsel for the appellant to refer to any of the documents, from which it can be inferred that any part of the cause of action arose in the territorial jurisdiction of District Forum, Bathinda, but he failed to answer the same. We are of the view that there is no agreement between the parties executed at Bathinda. All the documents annexed with the complaint are executed at Ambala. The complainant has relied upon the advertisement issued by the opposite party, but the same does not create any cause of action in his favour. All the documents are executed at Ambala. The District Forum, Bathinda, correctly held that it has no territorial jurisdiction to entertain and decide the complaint and rightly ordered for return of the complaint to the complainant for filing the same before the Forum, having territorial jurisdiction. We do not find any illegality in the impugned order.

7. We would further like to mention here that the complainant specifically averred in Para No.1 of his complaint that the opposite party induced him for purchasing a Molding Machine for 48,000/-, on the pretext that the opposite party shall supply raw material (plastic) free of costs to him and by

using the above said machine, the complainant would prepare different articles of plastic, which would be purchased by the opposite party on payment of 70 paisa per piece. It is further averred in Para No.2 of the complaint that after receiving the said machine, the complainant prepared 100 kgs. stock as per instructions/specifications of the opposite party and supplied the same to the opposite party on 09.11.2013, through Railway Builty dated 09.11.2013, through Kalka Mail Train from Bathinda to Ambala, but the opposite party refused to receive the articles and also refused to make the payment of the same. It is to be noted that there is no averment in the complaint that the complainant purchased the said machine from the opposite party for earning his livelihood by way of self-employment.

8. Since the relief sought in the complaint, keeping in view the pecuniary jurisdiction, falls within the purview of the District Forum, so we refrain ourselves from giving any finding on the above aspect of the case and it will be for the competent Forum, if the complainant files the complaint, to see whether there is any consumer dispute between the parties and whether the complainant falls within the definition of "consumer", as defined in Section 2 (1) (d) of the Act.

9. In view of above discussion, the appeal is dismissed and the impugned order is upheld, with our aforesaid observation.

10. The appeal could not be decided within the statutory period due to heavy pendency of court cases.

(JUSTICE PARAMJEET SINGH DHALIWAL) PRESIDENT (HARCHARAN SINGH GURAM)
MEMBER March 21, 2017.

(Gurmeet S)