

Soma Narayana S/O Soma Laxmaiah vs Next Retail Shop And Others on 17 October, 2012

BEFORE A

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A.P.STATE CONSUMER DISPUTES REDRESSAL COMMISSION: AT HYDERABAD

F.A.No.

617 OF 2011 AGAINST C.C.NO.174 OF 2009 DISTRICT CONSUMER FORUM RANGA REDDY
DISTRICT

Between

Soma Narayana S/o Soma Laxmaiah

aged about 61 yrs, Occ: Pvt Service

R/o 15-21-1/L-145, Balaji Nagar

Near Durga Temple, Kukatpally,

R.R.District

Appellant/complainant

A N D

1. M/s

Next Retails Shop

M/s Videocon Distributors

2. M/s

Marvelous Electronics

Both are R/o Patil Buildings

Bhavani Complex, Near IBP,

Petrol Pump, HMT Road, Chintal

Hyderabad-37, R.R.Dist

3. M/s
Videocon Appliances Ltd.,

H.No.24-27/1, Plot No.B8/3

block no.3 IDA Uppal, Hyderabad-29

(added as per orders in FAIA 2134/2011

dt.27.1.2012)

Counsel for the Appellant M/s
A.S.Jayakumar

Counsel for the Respondents M/s
A.Venkatesh (R1&R2)

QUORUM:

SRI
R.LAKSHMINARSIMHA RAO, HONBLE MEMBER

& SRI THOTA ASHOK KUMAR, HONBLE MEMBER WEDNESDAY THE SEVENTEENTH DAY OF OCTOBER TWO THOUSAND TWELVE Oral Order (As per R.Lakshminarsimha Rao, Member) ***

1. The unsuccessful complainant is the appellant. He purchased Videocon washing machine on 18.08.2007 for consideration of `9,400/- and a warranty for a period of two years was furnished by the respondents. The appellant complained to the Manager, central service operations of the second respondent- company through his letter dated 26.04.2009 that the washing machine was not functioning and his complaint was rejected by the second respondent on the premise that the body parts affected is not covered by the warranty. The appellant has submitted that the tub of the machine got tilted due to faulty material used in the manufacture of connecting spindle which resulted in non-rotation of the tub. The appellant got issued notice dated 6.06.2009.

2. The respondents resisted the claim contending that as per the agreement the jurisdiction to try the complaint is limited to the jurisdiction of the courts at Aurangabad and that the machine was not used in accordance with the instructions in the owners guide and the defects caused by improper use of the machine are not covered by the warranty. It is submitted that the appellant had used the machine for two years and just before expiry of warranty period he came up with the present complaint. It is submitted that the washing machine was in working condition. It is submitted that

3. The appellant filed his affidavit and the documents, ExA1 to A10 and on behalf of the respondents, the Assistant Manager of the Respondent no.1 filed his affidavit and no documents.

4. The District Forum dismissed the complaint on the premise that the appellant has not made the manufacturer as party to the complaint. The District Forum felt that as the manufacturer is not made party, the other issues need not be considered.

5. The complainant has filed appeal contending that there is no direct contractual obligation between the manufacturer and the appellant and that the District Forum failed to consider the advertisement and literature and warranty terms and conditions mentioned in the manual and that the spindle is covered by the terms of the warranty and that the respondents had not adduced evidence to show that the washing machine was subjected to inspection and quality control test prior to its sale to the appellant.

6. The points for consideration are:

1. Whether the respondents sold defective washing machine to the appellant?
2. Whether the respondents have rendered deficient service to the appellant?
3. to what relief?

7. POINT NO.1: The appellant has purchased the washing machine from the first respondent on 18.08.2007 and the first respondent furnished warranty for a period of two years for the washing machine. The appellant had addressed letter dated 26.04.2009 that the body of the washing machine was broken due to use of sub-standard material and that he was not informed that the life of the washing machine was two years.

8. The appellant and the respondents had relied upon the terms and conditions of the warranty which read as under:

2. The company or their authorized service Agent/will repair/replace all parts failing due to faulty material or defective workmanship pertaining to the above washing machine.

7. Any damage caused during shifting will be repaired on chargeable basis. In the event of repair/replacement of any part/s of the set, this warranty will thereafter, continue and remain in force only for the unexpired period as per the warranty card issued at the time of purchase of the set. Moreover, the time taken for repair and in transit, whether under the warranty or otherwise, shall not be excluded from the warranty period.
9. The warranty extended herein is in lieu of all implied conditions and warranties under the law and is confined to the repair or replacement of defective parts and does not cover any consequential or resulting liability damage or loss arising from such defects. Furthermore, the warranty in no case shall extend to the payment or any monetary consideration whatsoever of the replacement or return of the Washing Machine as a whole.
10. The defective spare part/s shall be the sole property of company and will be collected by the Authorized Service Centre/Franchisee.
11. It shall be the discretion of the company to replace the required part with suitable and currently available part/s. The company may also use the substitute part for defective part.
12. The warranty does not cover any accessories external to the system.
13. The company's obligation under this warranty shall be limited to repairing or providing replacement of parts, which are found to be defective within warranty period.
14. Any defects in electrical installation on fittings outside Washing Machine shall have to be rectified by the purchaser only.
15. The company shall not be liable for any delay in rectifying the machine, in the event of non-availability of components and shall in no way be responsible for losses, direct or indirect, arising out of the delay, if any.
16. The parts like Lids, Panels, Body and accessories will not carry any warranty unless there is a manufacturing defect observed.

9. The appellant had got issued notice to the respondent complaining about the problems posed by the washing machine and claiming for replacement or refund of the cost of the washing machine in the following terms:

My client states that he has purchased Videocon Washing machine MODEL No.K-5500, for an amount of Rs.9400/- vide cash memo no.949, from your dealer M/s NEXT RETAIL SHOP ON 18.8.2007. That the said machine covers manufacturing and technical warranty for two years period from the date of

purchase. My client states that the said washing machine model No.K-5500 is not working from 07.04.2009 due to wash tub is bend one side from body and ot in use from that day.

My client immediately approached your officials and complained the problem of your product. Based on the complaint your technical attended and said that body is warned out and tub connection was broken and finalized it is a manufacturing and technical defect. My client states that, he has constantly follow up with your service Centre. After several visits and telephone calls to the Service Centre, your officials said that my complaint is rejected, since body parts are not covered with in warranty, unless it is found with manufacturing defect. Even though warranty is valid upto 17.08.2009, you are denied fact, by saying that the body parts are not covered within warranty, unless it is found with manufacturing defect is false and baseless and the body is broken due to using substandard material and technical defect only.

Under the circumstances I hereby call upon you to make the payment of Rs.9,400/- (rupees nine thousand four hundred only) against the Washing Machine or replace the same product within a period of 15 days from the date of receipt of notice .

Failing which my client shall be constrained to initiate appropriate legal action against you to recover the cost of the machine along with the damages and costs in this regard by approaching the consumer forum.

10. Relying upon the Clause 2 of the terms and conditions of Warranty, the learned counsel for the appellant would contend that the Vedeocon company is not necessary part to the complaint and he submits that Clause 2 of the terms of Warranty provides for repairs of the washing machine by the service agent of the company. We are unable to accept the contention of the counsel for the appellant. The Videocon Company had issued the warranty and it is the manufacturer of the washing machine in question. Any manufacturing defect of the washing machine has to be repaired by the Company or on its instructions by its service agent.

11. The learned counsel for the appellant has relied upon the decision of the Honble National Commission in Jaswanth singh vs Malwa Automobiles Pvt ltd and others IV(2011)CPJ 300. In that case, the dealer sold the car for the original price despite circular issued by the manufacturer to its dealers that the old cars were sold at discounted rates. The dealer had not sold the car to the purchaser at discounted rate. It was held that:

We agree with the Fora below that Respondent No.2 is guilty of deficiency in service and unfair trade practice in the present case. So far as Respondent No.1 is concerned, we do not agree with the Fora below that he is to also share the blame. It is on record that Respondent No.1 being the manufacturer of the vehicle had through a circular informed all its dealers that the cars manufactured in the year 2000 could be given at

a discount so that they could clear the stock of older cars. This fact was in the knowledge of Respondent No.2 since he was in receipt of the circular. In fact, Respondent No.1 had levied a fine on this particular dealer for misrepresenting facts to the customers. Further, it is important to note in this context that the Respondent No.2, i.e. the dealer, is not an agent of Respondent No.1 as the cars were sold on principal to principal basis and not on principal to agent basis and, therefore, Respondent No.1 cannot be held liable for any acts of omission and commission including deficiency in service or unfair trade practice on the part of Respondent No.2. We feel that the Fora below erred in not appreciating these facts while holding Respondent No.1 also guilty of deficiency in service. We, therefore, modify the order of the State Commission by concluding that Respondent No.2 was guilty of deficiency in service. We absolve Respondent No.1, the manufacturer, of the same. Since the vehicle has now been used for 9 years, we agree that there is no case to order its replacement. However, to compensate the Petitioner for the mental agony and harassment caused by Respondent No.2, we direct that Respondent No.2 pay him Rs.1 lakh within a period of six weeks from the date of passing of this order failing which interest @ 6% shall also be applicable on this amount from the date of default.

12. The facts of the aforementioned case and the facts of the case on hand are not similar and as such the ratio laid therein has no application to the facts of the present case.

13. We agree with the learned counsel for the appellant that the District Forum had not considered the documents on record . Taking into consideration of the facts of the case, the District Forum could have considered the documents placed on record before dismissing the complaint and it ought to have given opportunity to the appellant to implead the manufacturer of the washing machine.

14. It is not proper for a Court or Tribunal not exercising jurisdiction vested in it. The District Forum has not exercised its jurisdiction vested in it as seen by its failure to consider the evidence placed on record. No order can be passed without assessing evidence on record. Findings of the District Forum should be based on all relevant issues of the case vis--vis the contention and arguments of the parties, absence thereof would result in miscarriage of justice. The order passed without considering the documents placed on record is not sustainable.

15. The Honble Supreme Court emphasised the need for giving reason for decision and failure to give reasons was held the order unsustainable. In VishnuDevSharma vs State of Uttar Pradesh and others 2008(10SCJ 765 the supreme Court held that right to reason is an indispensable part of a sound judicial system, reason sufficient to indicate application of mind to the matter before court .

16. The Apex Court referred to its earlier decision in State of Orissa vs Dhaniram Luhai (2004) 5 SCC 568 and held that The hallmark of a judgment/order and exercise of judicial power by a judicial

forum is to disclose the reasons for its decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice.

17. The Supreme Court held in United India Insurance Company and others vs Roshan Lal Oil Mills Ltd and others (2000)10 SCC19 that non-consideration of documentary evidence would result in serious miscarriage of justice and vitiates the order or judgement passed by the Forum or Court.

18. We are of the considered opinion that the matter need be remitted back to the District Forum giving opportunity to the appellant to implead the manufacturer of the washing machine and proceed with his claim basing on the evidence placed on record and to be adduced if any. It has to come to the conclusion independently, uninfluenced by any observations made by us in the order.

19. In the result, the appeal is allowed setting aside the order passed by the District Forum. The matter is remanded back to the District Forum with a direction to issue notice to both parties, and dispose of the matter as per law after giving opportunity to both sides to lead evidence. In the circumstances, no order as to costs.

MEMBER MEMBER Dt. 17.10.2012 KMK*