

Shyam Lal Gupta vs M/S Hitachi Home And Life Solutions ... on 10 May, 2018

Daily Order

FIRST ADDITIONAL BENCH

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB

SECTOR 37-A, DAKSHIN MARG, CHANDIGARH

First Appeal No.118 of 2018

Date of Institution: 06.03.2018

Order Reserved on : 08.05.2018

Date of Decision : 10.05.2018

Shyam Lal Gupta, Manager, Shri Zahriamal Charitable Vateriaary Hospital Trust, Near Loca

Appellant/Compl

Versus

1. M/s Hitachi Home and Life Solutions (India) Limited, Head Office, Hitachi
2. M/s Standard Radio, # 13, Hardiyal Road, Near Local Bus Stand, Jalandhar C

Respondents/Opposite parties

First Appeal against order dated 07.02.2018 passed by the District Consumer Disputes Red

Quorum: -

Shri J. S. Klar, Presiding Judicial Member.

Smt. Surinder Pal Kaur, Member Present:-

For appellant : Sh. Varun Sharma, Advocate.

For respondent no.1 : Sh. Vivek Sethi, Advocate.

For respondent no.2 : Sh.Kiran Kumar, Advocate

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J.S KLAR, PRESIDING JUDICIAL MEMBER :-

The appellant has directed this appeal against order dated 07.02.2018 of District Consumer Disputes Redressal Forum Jalandhar, dismissing the complaint of the appellant. The respondents of this appeal are opposite parties in the complaint and appellant of this appeal is complainant therein and they be referred as such hereinafter for the sake of convenience.

2. The complainant has filed the complaint U/s 12 of The Consumer Protection Act, 1986 (in short, "the Act") against OPs on the averments that the complainant is trustee of registered charitable trust at Dharamshala under the name of "Shri Zahriamal Charitable Veterinary Hospital Trust" near local bus stand Jalandhar Cantt. Opposite party no.1 is manufacturer of air conditioners

and OP no.2 is authorized sales agency of OP no.1. On the assurance of representative of OP no.2 for providing free installation labour along with connecting pipes of 10 ft per unit, the complainant agreed to purchase four units of Hitachi Logicoool 1.5 Ton split air conditioners. The representative of OP no.2 informed the complainant that due to heavy demand of the particular model, only three AC could be provided at that time and fourth unit would be provided on 22.03.2016 to complainant. He also stated to complainant that installment of total unit would be made together only, as installation engineer has to come from a long distance. Representative of OP no.2 stated that OPs would accept the payment of the first three units in installments, as a goodwill gesture. The complainant purchased three Hitachi Logicoool 1.5 Ton split air conditioners for a sum of Rs.36,000/- per unit. The total amount was Rs.1,08,000/- which was paid in installments on 16.03.2016, 17.03.2016, 18.03.2016, 19.03.2016, 20.03.2016 and 21.03.2016. Bill no. 1124 dated 16.03.2016 for a sum of Rs.1,08,000/- was issued by OP no.2 to complainant for the above amount. The complainant received call from OP no.2 that fourth unit had arrived and it was also the last AC unit available in the market and asked him to make necessary payment. The complainant visited the OP no.2 on 22.03.2016 and made payment of Rs.36,000/- and bill no. 1126 dated 22.03.2016 was issued. The complainant paid total amount to OP no.2 as Rs.1,44,000/- for fourth unit, whereas it was specifically mentioned in bill no.1124 dated 16.03.2016 including installation labour. The complainant made several requests to OP no.2 for installing the AC. OP no.2 did not send the installation Engineer and made lame excuses only. When the complainant contacted OP no.2 in this regard, they declined to make installation of Ac. Since it was hot summer season and hence complainant had to bear additional expenses of Rs.22,000/- on 13.05.2016 for getting the installation done of all four units. The complainant sent legal notice dated 11.07.2016 upon OPs with regard to deficiency in service, but to no effect. The complainant has, thus, filed this complaint against OPs directing them to refund the installation charges with interest @ 18% per annum and further Rs.2 lac as compensation for causing mental harassment and deficiency in service.

3. Upon notice, OP no.1 appeared and filed written reply and contested the complaint of the complainant vehemently by raising preliminary objections that complaint is not maintainable. The complaint has been filed on false and frivolous averments. The complaint is misconceived and complainant has suppressed the material facts from the Forum. Any deficiency in service on the part of OP no.1 was denied. It was further averred that as per Clause 1.0 of the warranty agreement, OP no.2 is the authorized sale agency of OP no.1 and complainant agreed for jurisdiction at Ahmedabad court only for settlement of dispute. The complainant never approached OP no.1 with any complaint. The present complaint is alleged time barred. The complainant is not consumer of OP no.1. OP no.1 denied other averments of complainant even on merits as referred above and prayed for dismissal of the complaint.

4. OP no.2 filed its separate written reply by raising preliminary objections that complaint is not maintainable under CP ACT. The complainant has not come to the Forum with clean hands. The true facts are that complainant-Trust firstly purchased three split AC 1.5 tone logicoool Hitachi company from OP no.2 on 16.03.2016 for a sum of Rs.36,000/- each total amount of Rs.1,08,000/- and the said amount was paid by the complainant-Trust to OP no.2 in installments from 16.03.2016 to 21.03.2016 and complainant-Trust again approached OP no.2 and purchased another set of AC i.e. split AC 1.5 Ton Logicoool Hitachi company from OP no.2 on 22.03.2016 for a sum of

Rs.36,000/- and out of this amount, the complainant-Trust has made payment of Rs.30,000/- only in two installments and rest of the amount of Rs.6000/- was still due from complainant-Trust, which was not paid despite repeated requests by OP. The complainant-Trust was charitable, so OP no.2 out of its own free will, waived the installation labour expenses. OP no.2 denied other averments of the complainant, even on merits and it prayed for dismissal of the complaint.

5. The complainant tendered in evidence his affidavit Ex.CW-1/A along with copies of other documents Ex.C-1 to Ex.C-14 and closed the evidence. As against it; OP no.1 tendered in evidence affidavit of Saurabh Kumar authorized on behalf of OP no.1 as Ex.OW-1/A and closed the evidence. OP no.2 tendered in evidence affidavit of Abhay Aggarwal c/o M/s Standard Radio as Ex.OP-2/A along with copies of documents Ex.OP-2/1 to Ex.OP-2/7 and closed the evidence. On conclusion of evidence and arguments, the District Consumer Forum Jalandhar dismissed the complaint of the complainant by virtue of order dated 07.02.2018. Aggrieved by above order of the District Forum Jalandhar, complainant now appellant, has carried this appeal against the same.

6. We have heard learned counsel for the parties and have also examined the record of the case. The District Forum Jalandhar dismissed the complaint of the complainant on 07.02.2018 holding that complainant himself is at fault for non-payment of remaining amount of Rs.6000/- and due to that reason, he never approached OP no.2, rather proceeded to get AC's installation at own level by making a payment through bill Ex.C-9 dated 13.05.2016. The District Forum found no deficiency in service on the part of OP no.2 and proceeded to dismiss the complaint of the complainant. So far as OP no.1 being manufacturer of AC is concerned, we do not find any basis against it. The complainant entered in some arrangement with OP no.2 for purchasing the split AC and their installation. OP no.1 is manufacturer and since there is no manufacturing defect in them, hence no liability can be fastened upon OP no.1. The District Forum is correct in not finding any liability of OP no.1 manufacturer in this case, because it was not privy to arrangement between complainant and OP no.2.

7. The evidence on the record has been examined by us in addition to the pleadings of the parties on the record. Shyam Lal Gupta complainant manager of Charitable Trust tendered in evidence his affidavit Ex.CW-1/A. He testified his case, as pleaded in the complaint. He alleged that OP no.2 backed out of the promise to install the AC and hence complainant has to incur the extra expenses on their installation from the market. He stated in his statement that representative of OP no.2 represented to him that installation of AC would be done by their engineer and hence complainant would not be required to incur any amount thereon. Ex.C-1 is bill dated 16.03.2016 for receipt of Rs.20,000/- from complainant. Ex.C-2 is bill dated 17.03.2016 for receipt of Rs.20,000/- from complainant for AC and installation. Ex.C-3 bill dated 18.03.2016 for receipt of Rs.20,000/- from complainant for AC & installation. Ex.C-4 is bill dated 19.03.2016 for receipt of Rs.20,000/- for AC & installation. Ex.C-5 is bill dated 20.03.2016 of Rs.14,000/- received by OP No.2 from complainant. Ex.C-6 is bill dated 21.03.2016 for Rs.14,000/- received by OP no.2 from complainant for AC & installation. Ex.C-7 is bill dated 16.03.2016 for Rs.108000/- received from complainant by OP no.2. Ex.C-8 is bill dated 22.03.2016 for Rs.36,000/- received from complainant by OP no.2.. The complainant incurred the amount of Rs.22,000/- on the installation of AC, vide Ex.C-9. The complainant relied upon this bill Ex.C-9 to the effect that he had to incur the expenses of

Rs.22,000/- on the installation of AC to Dharma Air Conditioner, when OP no.2 failed to do the needful, as promised. Ex.C-10 is email field by complainant to OP no.2. Ex.C-11 is legal notice sent to OP no.2 by complainant, which is supported by receipts Ex.C-12 and Ex.C-13. Ex.C-14 is resolution dated 04.09.2016 filed by complainant-trust authorizing Shyam Lal Gupta manager in this case.

8. In rebuttal of this evidence, OP no.1 tendered in evidence affidavit of Saurabh Kumar authorized by M/s Hitachi Home and Life Solutions (India) Limited /OP no.1 is Ex.OW-1/A on the record. OP no.2 tendered in evidence affidavit of Abhay Aggarwal on behalf of OP no.2 /M/s Standard Radio is Ex.OP-2/A. He admitted this fact that purchase of four AC by complainant @ Rs.36,000/- per piece. He stated that since complainant was Charitable Trust, hence they waived the installation charges, whereas other material like pipe, wire etc were to be provided by complainant trust. This witness has further deposed that complainant has not paid the rest of the amount of Rs.6000/- to OP no.2, which is still due. Ex.OP-2/1 is receipt dated 06.04.2016 for Rs.20,000/- issued by OP no.2 in favour of complainant trust. Ex.OP-2/2 is receipt dated 07.04.2016 for Rs.10,000/- issued by OP no.2 in favour of complainant. Ex.OP-2/3 is receipt dated 16.03.2016 for Rs.1,08,000/- issued by OP no.2 in favour of complainant. Ex.OP-2/4 is receipt dated 22.03.2016 for Rs.36,000/- issued by OP no.2 in favour of complainant. Ex.OP-2/5 is ledger account statement for the period from 01.03.2016 to 31.03.2016. Ex.OP-2/6 is account statement for the period from 15.03.2016 to 25.03.2016.

9. The contention of OPs is that complainant is not consumer of OPs and has purchased the ACs for commercial purposes, but it is without substance. The complainant-Trust purchased ACs for charitable purposes and there is no element of generating profits therein. The Charitable Trust is concerned with charitable purposes exclusively and not with any commercial purposes. The ACs have been purchased for the welfare of the people for sole charitable purposes without any element of generating profit and as such it cannot be said that complainant purchased ACs for earning profits and is not consumer of OP no.2.

10. The next submission raised before us is that District Forum Jalandhar has no territorial jurisdiction to try the complaint. The contention of OPs is misconceived. Section 11 of Consumer Protection Act deals with this proposition of law and lays down that District Forum shall have jurisdiction, where either OPs actually and voluntarily resides or carries on business or has branch office or personally works for gain or any of them has been doing it or where the cause of action, wholly or in part, arises. Complainant-Trust purchased ACs and installation was to be carried out at Jalandhar. The clause in warranty agreement confers the jurisdiction on Ahmedabad court only and it is in violation of statutory provisions of Section 11 of the CP Act and as such and contention of OPs cannot be upheld. Consequently, it is held that District Forum Jalandhar has jurisdiction to try the complaint. The District Forum proceeded to dismiss the complaint on the premise that complainant has not paid the amount of Rs.6000/- out of the total price of the ACs to OP no.2. The District Forum went wrong on this point, by not considering the definition of the 'consumer' as defined in Section 2(i)(d) of Consumer Protection Act 1986. Consumer means any person, who buys any goods for a consideration, which has been paid or promised or partly paid and partly promised, or under any system of deferred payment but does not include a person who obtains such goods for resale or

for any commercial purposes.

11. Now, we touch the core point of the controversy in this case. The complainant has alleged deficiency in service on the part of OPs that they have provided installation of AC, as promised by them despite receipt of sale money from them. Our attention has been drawn to the bills Ex.C-1 to Ex.C-6 on the record. Reference to bills has made it clear that OPs issued them and received the amounts including AC & installation also from complainant-Trust. All bills recorded this fact that OP no.2 has received the amount from the complainant for AC & installation as well. There is nothing on the record that OPs entered into any other agreement to separately receive the installation charges from the complainant. The bills Ex.OP-2/1 to Ex.OP-2/4 brought on record by OP no.2 have specifically recorded this fact that OP no.2 received the amount for installation. Since OP no.2 has promised to provide the installation and labour without any charges to complainant and as such backing out of the same by OPs is deficiency in service on its part. We do not agree with the findings of the District Forum on this point in this appeal in exonerating OP no.2 from its liability. Consequently, we hold that OP no.2 is deficient in service in not providing the installation and labour service to complainant, as agreed in the above-referred bills.

12. The complainant seeks refund of Rs.22,000/- for installation charges paid by him in the open market and further sought relief of Rs.2 lac as compensation for mental harassment. The complainant relied upon bill Ex.C-9 to the effect that it paid Rs.22,000/- to Dharma Air Conditioner for installation of ACs. There is no affidavit of Dharma Air Conditioner on the record to prove this fact that he received the amount of Rs.22,000/- from complainant. The complainant also seeks compensation of Rs.2 lac for mental harassment. The complainant is charitable trust and there is no question of awarding any compensation to it for mental harassment.

13. Consequently, we conclude that the total amount of compensation of Rs.20,000/- would be quite sufficient to be paid by OP no.2 to complainant to serve the ends of justice. We accept the appeal of the appellant and set aside the order of District Forum Jalandhar dated 07.02.2018 and direct OP no.2 to pay the amount of Rs.20,000/- as compensation to complainant, besides cost of litigation of Rs.5000/- within 45 days from receipt of certified copy of the order.

14. Arguments in this appeal were heard on 08.05.2018 and the order was reserved. Certified copies of the order be communicated to the parties as per rules.

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

JUDICIAL MEMBER
KAUR)
2018

(J. S. KLAR)

(ravi)

PRESIDING
(SURINDER PAL
MEMBER May 10,