

Bhikaji Ganpatrao Chavan vs G K Plastic & Others on 8 June, 2020

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FA/473 & 534 of 2017

Date of order :08.06.2020

MAHARASHTRA STATE CONSUMER DISPUTE
REDRESSAL COMMISSION,MUMBAI, BENCH AT
AURANGABAD.

Date of filing :- 08.05.2017.
FIRST APPEAL NO. : 473/2017.
IN COMPLAINT CASE NO.: 266 OF 2016
DISTRICT CONSUMER FORUM : OSMANABAD.

G.K.Platis,
Through its Manager,
Gut No.246/244, Bhalvani Dist.Ahmednagar, APPELLANT
VERSUS
Bhikaji G. Chavan,
R/o Ite Tq. Bhum, Dist. Osmanabad. RESPONDENT

Present : Adv. R.H.Dahat for appellant,
Adv.N.S.Tekale for Respondent No.1.

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DISTRICT CONSUMER FORUM : OSMANABAD.

Bhikaji G. Chavan,
R/o Ite Tq. Bhum, Dist. Osmanabad. APPELLANT
VERSUS
1. G.K.Platis,
Gut No.246/244, Bhalvani Dist.Ahmednagar, RESPONDENT

2. Rashtriya Falotpadan Abhiyan,
Maharashtra State Electricity Distribution Co.Ltd,
Through District Superintendent Agricultural Officer,
Osmanabad, Dist. Osmanabad.

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Present : Adv.Nikhil S.Tekale for appellant,
Adv.R.H.Dahat for Respondent No.1.

CORAM : Smt.S.T.Barne, Hon`ble Presiding Judicial

Member .

Mr.K.M.Lawande, Hon'ble Member.

JUDGMENT

(Delivered on 08/06/2020) Per Smt.S.T.Barne, Hon'ble Presiding Judicial Member.

1. These appeals are arising out of judgment and order in CC No. 266/2016 decided by District Consumer Forum, Osmanabad on 11.4.2017. The appellant in appeal No. 534/2017 Bhikaji Ganpatrao Chavan is the complainant and the appellant in appeal No. 473/2017 G.K.Plastic is the opponent No.1, while Rashtriya Falotpadan Abhiyan, Maharashtra State Krishi Vibhag is the opponent No.2 in the original complaint hence, they are referred hereinafter as per their status in the original complaint.

2. It is the case of complainant Bhikaji Chavan before the District Consumer Forum that he is having agricultural land Gut No. 389 at village It Tq.Bhoom, Dist.Osmanabad. The opponent No.1 is the supplier of plastic sheets for farm pond (shet tale). The opponent No.1 is registered agency, under opponent No.2 for supply of plastic sheet under the scheme undertaken by State Government. The complainant and other agriculturists have purchased the plastic sheet for farm pond jointly installed by complainant and other agriculturists for supply of water to their respective lands in the year 2013-2014, under the scheme undertaken by opponent No.2. The opponent No. 2 sanctioned the farm pond for them. The complainant purchased the plastic sheet of opponent No.1 company ADPE Fabric 500 micron of 3 FA/473 & 534 of 2017 3136 sq. meter for Rs. 2,41,489/- and also paid Rs. 56,449/-. On erecting the farm pond & spreading sheet purchased from opponent No.1 in Gut No. 389, the opponent No.2 & their officials gave visit to said farm pond and inspected the work. Initially for 10 to 11 months the water could be stored in the said farm pond, thereafter it started percolating and within short period said farm pond became empty. The complainant found that its plastic sheet has got holes & it was dislocated. Therefore, the complainant gave intimation to opponent No.1 and one Yuraj Annasaheb Deshmukh contacted opponent No.1 and asked the opponent No.1 to repair or change the sheet . However, opponent No.1 did not pay any heed towards their grievances. The complainant has cultivated orange in 40 R land and grapes in 40 R land, and also erected net shed in 20 R land to take vegetables, however, due to damage to plastic sheet, the water would not be stored in the farm pond. He could not get the crop and sustained loss of Rs. 4 to 5 Lakhs. The complainant gave legal notice to the opponent No.1 on 25.7.2016. However, the opponent No.1 neither replied the notice nor replaced plastic sheet and also not paid compensation. Hence, the complainant has filed consumer complaint and sought direction against opponent No.1 for replacement of plastic sheet or to refund the cost of Rs. 2,17,933/- and compensation of Rs. 5 Lakhs, Rs. 50,000/- towards mental agony and Rs.10,000/- towards cost of proceedings.

3. The opponent No.1 on receipt of notice of District Consumer Forum has filed its written statement its copy is at page No. 31 of appeal compilation in appeal No. 437/2017.

4. The opponent No.1 raised first objection that the complainant has not joined necessary parties. It is mentioned in the complaint that 4 FA/473 & 534 of 2017 he himself and other agriculturists have erected farm pond but the names of other agriculturists are not mentioned in the complaint. It is

also mentioned in the complaint that the complainant has given intimation time to time through one Yuvaraj Annsaheb Deshukh, but he is not joined as a party. The complaint is liable to be dismissed for non joinder of necessary parties. The complainant has also not produced purchase receipt regarding purchase of plastic from G.K.Plastic opponent No.1. There is no relation as consumer and service provider between complainant and opponent No.1. The complainant has also mentioned wrongly that he has fixed the plastic scientifically as per Government scheme. The complainant himself admitted that he could store the water for 10 to 11 months, then he would have used the water for his fruit orchards. There is no specific mentioned or details regarding holes or dislocation of plastic sheet, or how it has got damaged. The allegations are made without proof. Hence, the opponent No.1 has prayed for dismissal of the complaint.

5. The opponent No.2 though served with the notice remained absent.

6. On giving opportunity of hearing to both the parties the District Consumer Forum pleased to allow complaint partly with directions to opponent No.1 to get repaired the plastic sheet of the farm pond of the complainant. However, complainant is not satisfied with the order. He has preferred the appeal No.534/2017 for replacement of plastic sheet and to get compensation, as claimed in the complaint. While the opponent No.1 has preferred appeal No.473/2017 being aggrieved by the order, of District Consumer Forum.

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7. The opponent No.1 has preferred appeal No. 473/2017 on the following grounds.

That, the complainant before issuance of notice, at no point of time intimated the complainant about leakage of plastic sheets. The complainant utilized the plastic sheets since 20.4.2016. The complaint is after thought. It is not appreciated by District Consumer Forum that complainant did not give intimation to opponent No.1 prior to the issuance of notice about any manufacturing defect. The District Consumer Forum pleased to allow the complaint without any proof. The District Consumer Forum has not appreciated terms & conditions of sale agreement wherein it is stipulated that disputes if any will be resolved only in the jurisdiction of Ahmadnagar city only. It is mentioned in the clause No. "G", that HDPF sheet has no guarantee or warranty. The complainant also not produced any expert's evidence or lab report to show that the sheets are not of good quality. The cause of opening the joints of sheets are not given by experts. It is not appreciated that in the year 2014-15 there was deficiency in rain fall. There was no water in the farm pond due to which and due to wind, if sheets were dragging up and down and dislocated or damaged , the opponent No.1 is not responsible for it. The District Consumer Forum has also not appreciated the clause of terms & conditions that every year there will be 20 % depreciation, to this cost of goods. The District Consumer Forum has awarded compensation of Rs. 25,000/- without any basis. Hence, the opponent No.1 has prayed for quashing of order passed by the District Consumer Forum and prayed for dismissal of complaint.

8. While the complainant has preferred his appeal No. 534/2017 on the following grounds.

6 FA/473 & 534 of 2017 That, this District Consumer Forum ought to have directed replacement of sheet or refund of amount. It is not considered by the District Consumer Forum. The plastic sheet provided by opponent is not of good quality. The District Consumer Forum ought to have allowed the complaint filed by the complainant. The District Consumer Forum failed to consider that complainant has pleaded that the opponent be directed either to replace the sheet or refund the cost of sheet. The complainant has also produced panchanama drawn by agriculture officers, moreover the opponent No.1 has accepted the amount towards laying and fitting the sheets, in the farm pond. The District Consumer Forum has not considered that the complainant has sustained loss as the plastic sheets were not of good quality. The District Consumer Forum has not considered that the complainant has sustained loss of Rs. 4to5 Lakhs. Hence, the complainant has prayed for awarding the replacement of sheet or its cost and compensation towards loss, as claimed in the complaint.

9. On respective submissions of the parties following points arise for our determination. We have noted them along with our findings accordingly for the reasons to follow.

Sr.No.	Points.	Answers.
1.	Whether, the complainant proved deficiency in service on the part of opponent?	Partly proved.
2.	Whether, the complainant is entitled for compensation as claimed in the complaint?	No.
3.	Whether, there requires interference in the judgment and order of 7 District Consumer Forum?	No. FA/473 & 534 of 2017
4.	What order?	As per final order.

REASONS

10. Points No.1to3 :- Both the appeals are arising out of one and same order as mentioned earlier. The complainant while claiming deficiency in service on the part of opponent it is submitted that the complainant and some other agriculturists under the scheme have undertaken by State Government through opponent No.2 to store the water to irrigate the crop due to scarcity of rain, erected farm pond (Shet tale) sanctioned by opponent No.2.

11. It is submitted by complainant that they have paid Rs. 2,41,484/- towards purchase of plastic sheet HDPE Fabric pikes 500 micron size 3136 and Rs. 56,449/- for laying of said sheet in farm pond. The officers of opponent No.1 visited the site after digging the farm pond and then on laying the sheet and certified the same.

12. The complainant has produced the copy of application, the report of officer of opponent No.2, the assessment of grant, the inspection report on visit of site after laying of plastic sheet, report of

approval of grant. The copy of letter showing presence of Agricultural Officer of opponent No.2 to the spot, the invoice bills, and photographs on completion of work of Agricultural farm pond, and copy of panchanama, in support of his grievances, copy of the notice issued by complainant to opponent No.1.

13. It is argued on behalf of complainant that the opponent No.2 remained absent and not disputed the complaint. The opponent No.2 8 FA/473 & 534 of 2017 has also not replied the notice issued by complainant before filing the complaint, and also not complied the grievances. The pleadings of document in support of it not appreciated by District Consumer Forum. The District Consumer Forum ought to have awarded either replacement or cost of this plastic sheet and the compensation towards loss of crop sustained by the complainant due to deficiency on the part of opponent, in not providing good quality sheet.

14. On the other hand the learned Adv. for opponent argued that there is no intimation to opponent No.1 about damage to the plastic sheet. Apparently if due to shortage of rain, the farm pond remained empty and due to wind or the solar radiation, if the sheet would have been damaged the opponent No.1 is not to be held responsible for it. The opponent No.1 has got inspected his manufactured plastic sheet and produced report of the CIPET. On the contrary the complainant has not produced the certificate of expert to prove the plastic sheet was not of good quality or defective. The complainant has not laid and fixed the plastic sheet scientifically. The plastic sheet might have dislocated, for want of necessary care while laying the sheet. There is no bill produced regarding purchase of sheet or laying of the sheet by opponent No.1. The judgment of District Consumer Forum is without having any basis. Without expert's evidence or report. The complainant is not maintainable when there are allegations as to defect in goods without proper analysis or test under Sec. 13(1)(c) of the Consumer Protection Act, 1986. The findings of District Consumer Forum is not proper. Hence, reliance is placed on the judgment of Hon'ble State Commission, Mumbai in FA No.10/2002 - Vilas Kekan Vs. Deshmukh decided on 3.12.2009.

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15. It is also argued that the complaint is not within limitation for the purpose of allegation as to defective goods, the date of purchase is material, and the consumer complaint is not filed within two years from the date of purchase. Hence, reliance is placed on the judgment in FA No. 1287/2016 decided by Hon'ble State Commission, Mumbai on 6.3.2017- G.K.Plastic Vs. Shri. Raviraj Dashrath Lad. With the aforesaid submissions the opponent No.1 has prayed for quashing of order of District Consumer Forum and setting aside the judgment and order of District Consumer Forum.

16. In this case so far as objection of limitation is concerned the plastic sheet is purchased on 22.1.2014. According to complainant the water could be stored for 11 months and thereafter when it started dripping he noticed that there were holes and dislocation of joint. Therefore, it may be around Oct.-Nov.2014, the complainant found defect and he has filed complaint on 24.8.2016. Therefore, it is within 2 years from the date of purchase and laying of plastic sheets.

17. It is argued on behalf of opponent No.1 that there are judgments of Hon'ble State Commission where the allegations are made on defective goods, the limitation starts from the date of purchase. Here the complainant made allegations that when he came to know that the water is dripping and farm pond became empty he noticed that joints will open and there found holes to the sheets. Hence, he has made grievance with opponents but the opponent No.1 did not pay any heed and opponent No.2 has drawn panchanama, which is supporting contention of complainant that its joints were open/dislocated and there found some holes.

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18. It is argued that no details regarding said damage is given and the complainant alleged about defective sheet. The District Consumer Forum has also relied upon the panchanama and the notice issued by complainant to opponent No.1 which is not replied and no defects are caused by opponent. Therefore, in the case in hand facts and circumstances are somewhat distinguishing. Therefore, we are of the opinion that since the cause of action and knowledge as to dislocation of the joint at places, the complaint is filed within two years.

19. The another objection raised by the opponent No.1 is that there is no expert's report regarding defects in plastic sheet. Therefore, unless there is examination of sheet under Sec.13(1)(c), the District Consumer Forum cannot give finding as to defective sheet and reliance is placed on the judgment in Vilas Ketan Vs. Dehmukh Agro stated Supra. Wherein the District Consumer Forum has observed that, it is experienced that if the goods are sent to the laboratory for examination, they may not get report for longer period and it is also expensive. Therefore, the opponent No.1 could have sent the same. Of course we are not agreeing with their observations.

20. However, opponent No.1 come with case that they have already got examined their products through CIPET and the report is produced on record.

21. Therefore, in the case in hand, it cannot be ignored that the panchanama states that joint of the plastic sheet, got dislocation of about 3 feet, and there are some holes. Therefore, the District Consumer Forum has rightly observed that it may be occurred due to the wind and there were several patches. Hence, on the basis of the 11 FA/473 & 534 of 2017 report of officers of opponent No.2 the District Consumer Forum gave directions to stitch and to repair the sheets. Therefore, it is not desirable to deny the said relief on technical ground.

22. The opponent has raised objection that there is no evidence about purchase of sheet / laying of sheet by opponent No.1 as the bills are not produced. It is important to note that on submission of form to opponent No.2 with the estimate and invoice of opponent No.1 the work of farm pond and laying of sheets started. It is got inspected by opponent No.2 after digging the farm pond and after laying the sheet. On completion of said tank the grant is sanctioned. Therefore, there is no reason for complainant to involve the opponent No.1 without purchasing or laying sheet from opponent No.1. Even the complainant on getting the farm pond empty and on observing that the plastic sheets were dislocated and there were holes to it, he has issued notice to the opponent No.1. It is not disputed that opponent No.1 has received said notice and also not replied it or complied the same. If

at all there was no purchase of sheet from opponent or laying by opponent, the opponent No.1 would have immediately reacted to it by giving reply or could have disclose his defence. On the contrary it reveals that the opponent No.1 after filing of the complaint has taken defence of total denial and then raised technical objection on the basis of terms and condition of agreement that are mentioned in the invoice in clause No. (c)(d)(e). In fact from these terms and condition it reveals that the warrantee or loss to their plastic sheet is of 5 years. The opponent No.1 argued that District Consumer Forum has not considered that depreciation of 20 % per year in fact there is no direction of replacement of plastic sheet, or repayment are given. Therefore there is no question of considering depreciation value, arise.

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23. The complainant has also claimed that the opponent ought to have given direction of replacement of sheet and damages towards loss sustained to the crop for want of storage of water. On this the District Consumer Forum has rightly observed that the complainant has not adduced any evidence to that effect.

24. The District Consumer Forum pleased to award the compensation of Rs.25,000/- towards the loss. It is apparent that the complainant and other agriculturists have erected said farm pond to irrigate their crops by storing of water, but they could not take the crop for want of storage of water. In spite of spending huge amount with the assistance of opponent No.2 under the scheme undertaken by opponent No.2. Hence, the complainant is entitled for reasonable compensation. We are of the opinion that the quantum awarded by District Consumer Forum towards loss and damage is quite reasonable and there requires no interference.

25. It is also objection raised by opponent No.1 that the complainant has not added other agriculturists as party or they have no grievance. It is important to note that farm pond is erected in the land of complainant . Entire expenditure is taken by complainant, the invoice and bills are in the name of complainant. It cannot be ignored that he is one of the beneficiary and may raise grievance when he cannot take benefits from said farm pond. Hence, on this technical ground relief cannot be denied.

26. Hence, with the aforesaid discussion we are of the opinion that there requires no interference in the judgment and finding of the 13 FA/473 & 534 of 2017 District Consumer Forum. Hence, we answer the points accordingly and pass following order.

ORDER

1. The appeal Nos.473/2017 & 534/2017 are hereby dismissed.

2. No order as to costs.

Mr.K.M.Lawande
Member

Smt.S.T.Barne,
Presiding Judicial Member

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