

Rajinder Singh vs Goyal Motors, & Ors. on 30 August, 2011

2nd Bench

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB
SCO NO.3009-12, SECTOR 22-D, CHANDIGARH.

First Appeal No.675 of 2008.

Date of Institution: 02.07.2008.
Date of Decision: 30.08.2011.

Rajinder Singh S/o Sh. Baldev Singh, R/o near State Bank of Patiala,
Bhawanigarh, Tehsil and District Sangrur.

.....Appellant.

Versus

1. Goyal Motors, opposite Sewa Singh Thikri, Rajpura Road, Patiala through its Manager.
2. Goyal Motors, Patiala Road, Sangrur, through its Manager.
3. Tata Motors, SCO-170-171-172, Ist Floor, Sector 17-C, Chandigarh, Regional Office, Northern, through its Regional Officer.
4. Tata Motors, Marketing and Customer Support, Passenger Car Business Unit, 8th Floor, Centre No.1, World Trade Centre, Cuffe Parade, Mumbai-400005, through its Managing Director.

...Respondent.

First Appeal against the order dated
16.05.2008 of the District Consumer
Disputes Redressal Forum, Sangrur.

Before:-

Shri Inderjit Kaushik, Presiding Member.

Mrs. Amarpreet Sharma, Member.

Present:-

For the appellant	:	Sh. Aminder Singh, Advocate.
For the respondents	:	Sh. S. R. Bansal, Advocate.

INDERJIT KAUSHIK, PRESIDING MEMBER:-

Sh. Rajinder Singh, appellant/complainant (In short "the appellant") has filed this appeal against the order dated 16.05.2008 passed by the learned District Consumer Disputes Redressal Forum, Sangrur (in short "the District Forum").

2. Facts in brief are that the appellant filed a complaint under section 12 of the Consumer Protection Act, 1986 (in short, "the Act") against the respondents, pleading that he purchased a Tata Indica V2 Diesel Car on 04.10.2006 from respondent no.1, bearing registration no.PB-13-R-2007, Chassis No.600181HTZPB8464, Engine No.475ID16HTZPB5238. The entire payment was made, but immediately after the purchase of the said car, the tyres started giving problem and after the car had run 20000 kmts., the tyres were replaced twice. The doors were knocking when the car was running at the high speed and the appellant approached the respondents, but the said defects were not removed. At the time of every service, the appellant complained about these defects, but the same were not removed.

3. The appellant when studied the record to know the reasons for the defects, it was revealed that respondent no.1 has sold the accidental car after repairing it and played fraud with the appellant. When this fact was brought to the notice of respondent no.1, respondent no.1 refused to replace the car, knowing well that the said car was accidental and that amounts to deficiency in service and prayed that the respondents be directed to refund the amount of Rs.3,82,250/- along with interest @ 18% p.a. or in the alternative, to replace the car with a new one and to pay Rs.50,000/- as compensation and Rs.10,000/- as litigation expenses.

4. In the reply filed on behalf of respondent no.1, preliminary objections were taken that the complaint is not maintainable and the Forum has no territorial jurisdiction as the vehicle was purchased and the payment was made at Patiala. The vehicle was purchased under Hire Purchase Agreement with ICICI Bank and the appellant is not owner and the said financier is owner of the vehicle till the entire payment is not made. The complaint is false and frivolous as the appellant purchased the car after satisfying himself about its condition and signed all the documents and the complaint deserves dismissal. The warranty period is over. The vehicle was brought first time in the workshop of the answering respondent on 08.09.2007, when it had covered 54122 kmts, as mentioned in the job card and story is concocted and there is no deficiency in service on the part of answering respondent.

5. It was further pleaded that the vehicle had some minor injuries while unloading from the truck and the insurance claim was lodged under the Transit Insurance Policy which is issued by the manufacturer to the destination of the dealer and there was no major accident which can affect the working of the vehicle and the complaint has been filed to pressurize the answering respondent.

6. On merits, purchasing of the vehicle in question was admitted, but it was pleaded that the vehicle was sold on 06.10.2006 and not on 04.10.2006 and the appellant made entire payment on various dates running from 05.10.2006 to 14.11.2006 and some amount was received from ICICI Bank Limited. The vehicle was received for the first time on 08.09.2007 for a single complaint about 'the vehicle pulling to one side' after covering 54122 kmts. and the vehicle was delivered after carrying out the wheel alignment/check and adjustment and a sum of Rs.168.54 was paid by the appellant,

leaving behind no other complaint and signed the satisfaction note. It was made clear to the appellant about the repair while unloading from the truck to the showroom and claimed the said amount from the Transit Insurance Policy, in order to cover the transit loss. A discount of Rs.5500/- was given to the appellant and after the expiry of 12 months, the plea that the accidental car was sold, is not believable. All other allegations were denied and similar pleas were repeated and it was prayed that the complaint may be dismissed with costs.

7. In the reply filed on behalf of respondent no.2, it was submitted that the answering respondent has not sold the car in question to the appellant and the answering respondent has been unnecessarily dragged into litigation. Legal objections qua mis-joinder, complaint being not maintainable, false and frivolous were taken and prayed that the complaint may be dismissed.

8. In the reply filed on behalf of respondents no.3 & 4, it was submitted that the entire transaction has been made by the appellant with respondents no.1 & 2 and there is no whisper of the allegations/involvement of the answering respondents. However, the answering respondents are filing the reply only as a matter of caution and to assist the Forum in reaching to a logical conclusion. The appellant has not filed the documents i.e. job cards, satisfaction note etc. Further objections were taken that there is no consumer dispute and the appellant has concealed the material facts and he is not a consumer. The complaint is not maintainable as there was a Hire Purchase Agreement. The relationship between the parties is of principle to principle basis. The record shows that the vehicle in question travelled more than 54000 kms. in 11 months which shows that the vehicle was running properly and the defects pointed relate to bear and tear problems. Relying upon authorities and repeating the pleas again and again, it was prayed that the complaint may be dismissed.

9. Parties led evidence in support of their respective contentions by way of affidavits and documents.

10. After going through the documents and material placed on file and after hearing the learned counsel for the parties, the learned District Forum observed that the allegations are against respondent no.1 only and the vehicle in question was purchased from respondent no.1 at Patiala and the documents Ex.C3 to Ex.C6, Ex.C10 and Ex.C11 and job cards Ex.R7 and Ex.R8 were executed at Patiala and the appellant wants to derive the jurisdiction on the ground that office of respondent no.2 is at Sangrur, but no nexus between respondents no.1 and 2 is established and there is no jurisdiction and the complaint is also not maintainable as fraud and cheating are involved and the civil court is the appropriate court, and dismissed the complaint.

11. Aggrieved by the impugned order dated 16.05.2008, the appellant has come up in appeal.

12. We have gone through the pleadings of the parties, perused the record of the learned District Forum and have heard the arguments advanced by the learned counsel for the parties.

13. Learned counsel for the appellant contended that the appellant purchased the car in question from respondent no.1 on 06.10.2006 and the car developed the defects and he took the same to respondent no.2, who is the authorized dealer of the respondents. The car in question was an

accidental car and after repair, it was given to the appellant and it was admitted in the written reply by respondent no.1 that while unloading from the truck, the car got damaged. The District Forum has the jurisdiction as respondent no.2 is the authorized dealer and the complaint is also maintainable and the District Forum could decide the dispute and the appeal may be accepted.

14. On the other hand, learned counsel for the respondents argued that the car in question was purchased from respondent no.1 at Patiala. The payments were made at Patiala and the entire transaction took place at Patiala and no cause of action has arisen at Sangrur. It has been argued that respondent no.2 is not the authorized dealer of respondent no.1 and no part of cause of action can be stated to have arisen at Sangrur, by just taking the car for service/repair to respondent no.2. The District Forum had no jurisdiction to try and decide the complaint and has rightly been dismissed.

15. We have considered the submissions made by the learned counsel for the parties and have carefully perused the entire record.

16. Admittedly, the car in question was purchased from respondent no.1 at Patiala vide Sale Invoice Ex.C3. Temporary registration certificate Ex.C4 was issued by respondent no.1 at Patiala. The payment vide receipts Ex.C5 and Ex.C6 was made at Patiala. Documents Ex.C6 to Ex.C12 relate to respondent no.1. The appellant has failed to bring on record any document to prove that the District Forum at Sangrur has the jurisdiction. The appellant has not brought any evidence on record that any part of cause of action arose at Sangrur and the District Forum at Sangrur has the jurisdiction. The District Forum has dismissed the complaint, whereas it should have been returned to the appellant for presenting it before the Forum having jurisdiction.

17. Accordingly, the appeal is disposed of except with the above modification, the impugned order dated 16.05.2008 passed by the District Forum is upheld. The complaint as well as the documents filed by the appellant/complainant are ordered to be returned to him, for presenting the same to the Forum having jurisdiction. The time spent while pursuing the complaint before the District Forum, Sangrur as well as in the appeal before this Commission, is ordered to be excluded for the purpose of computing the limitation, as it seems that the appellant has been pursuing the case in good faith believing that the Forum or this Commission has the jurisdiction to try and decide the complaint as well as the appeal.

18. The arguments in this appeal were heard on 26.08.2011 and the order was reserved. Now the order be communicated to the parties.

19. The appeal could not be decided within the stipulated timeframe due to heavy pendency of court cases.

(Inderjit Kaushik) Presiding Member (Amarpreet Sharma) Member August 30, 2011.

(Gurmeet S)