

Hcl Office Automation Ltd. vs Reji K. Varghese on 26 July, 2004

Equivalent citations: IV(2004)CPJ18(NC)

ORDER

Rajyalakshmi Rao, Member

1. This revision petition is filed against the order dated 19th September, 2000 of the Kerala State Commission in Appeal No. 694/98 confirming the order dated 31.8.1998 of Thiruvananthapuram District Forum wherein the complaint was allowed.

2. Brief facts of the case are:

Shri Reji K. Varghese on behalf of Hotel Luciya Continental Thiruvananthapuram filed a complaint before the District Forum alleging that the said hotel placed an order with M/s. HCL Ltd. for the supply and installation of EPABX system in the hotel and that the system supplied was defective and ultimately stopped functioning from 9.5.1994. He, therefore, prayed that the opposite party be directed to replace the EPABX system and also claimed compensation of Rs. 5 lakhs. The District Forum held in favour of the complainant and ordered that EPABX should be replaced within a period of one month. In appeal, the order was confirmed by the State Commission.

3. In the revision petition filed before us, the petitioner HCL Limited took the plea that the entire contract between him and the respondent hotel was wrongly interpreted by the lower Fora and in fact the District Forum did not even have the pecuniary jurisdiction to decide this case. His case is that, the EPABX system was supplied on a hire purchase basis by an agreement dated 15.7.1991. According to the hire purchase agreement, the respondent was required to pay Rs. 60,000/- in advance and the rest in 36 monthly instalments of Rs. 23,425/-. The cost of the system was Rs. 6,18,000/- but under the hire purchase agreement the total amount to be paid by the respondent inclusive of interest works out to Rs. 8,43,200/-.

4. Revision petitioner's further argument is that the equipment was installed on 20.8.1991 and the warranty was for a period of one year. However, it is admitted by the parties that the very first complaint about the alleged defects in the equipment was made on 22.8.1992 i.e., after the expiry of the warranty. After the warranty period the respondent is required to sign an Annual Maintenance Agreement, which he had not signed. Therefore, there was no obligation on the petitioner to attend to the alleged deficiency. But most importantly it is argued that the respondent defaulted in the payment of the monthly instalment. He paid instalment only upto 26.6.1993 and that too with the delay. In view of the default in payment, a notice for foreclosure of the hire purchase agreement was issued to the respondent on 6.10.1994. It is to avoid the consequences of this that the respondent filed the original petition some time in 1995. According to the petitioner, respondent has to pay him an amount of Rs. 7,12,940/- with interest on the day of the petition was filed.

5. As regards the alleged defects, he has argued that there was nothing wrong in the EPABX system. However, one additional facility called Computerized Telephone Cost Management System (TCMS) was also supplied, The grievance of the complainant was that the calls were not being properly recorded in the TCM System, It is argued by the petitioner that the respondent tampered with the system and that none of the complaints were genuine.

6. Finally, it is argued by the petitioner that the contract being a hire purchase one and the amount due is recorded in his books as loan advanced to the respondent till the loan is liquidated in full, the EPABX system remains the property of the financier i.e., the petitioner. After perusing the documents carefully, we agree that it is the hire purchase agreement and there has been a default in the payments of the instalments by the respondent.

7. On the basis of records produced, the respondent/complainant has not shown anywhere that the said EPABX system was defective during the warranty period. Admittedly, in spite of repeated requests by the petitioner, respondent did not enter into Annual Maintenance Agreement with the petitioner. It is also seen that this being purchased by hire purchase agreement, the complainant did not fulfil the obligation of regular payment of instalments and huge arrears are pending. In view of the above findings, we find there is no deficiency of service in the conduct of the petitioner. Under the circumstances the complaint is dismissed and the order of the State Commission is set aside.