

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5165 OF 2009
[Arising out of S.L.P.(C)No.20515 of 2005]

Madan Kumar Singh (D) Thr. LR.Appellant

Versus

Distt. Magistrate, Sultanpur & Ors. ...Respondents

WITH

CIVIL APPEAL NO. 5166 OF 2009
[Arising out of S.L.P.(C)No.11210 of 2006]

J U D G M E N T

Deepak Verma, J.

1. Leave granted.

2. For the sake of convenience, facts have been taken from the appeal arising out of S.L.P.(C)No.20515 of 2005.

3. Appellant was an auction purchaser of a truck bearing registration No. UP I-4775, put to an auction sale, on account of default in payment of instalments committed by its previous owner Iqbal, having taken loan from Union Bank of India under "Self Employment Scheme". Recovery Certificate was issued to the Collector, Sultanpur (U.P.) by the said bank. The auction was held in the Tehsil

Compound, Sultanpur, on 19.8.1999. The appellant's bid for a sum of Rs. 70,000/- being the highest, was knocked down in his favour and accepted by respondent No. 1.

4.As per the terms and conditions of the auction, appellant deposited a sum of Rs. 20,000/-, as soon as the bid was knocked down in his favour. Since no objection was received against the said auction sale, the appellant deposited balance amount of Rs. 50,000/- on 20.8.1999.

5.On 19.9.1999, the said auction was confirmed, since no objections were received much less, from the previous owner Iqbal. Thus, it was treated to be a final sale in favour of the appellant.

6.Obviously, after the sale having been confirmed in favour of the appellant, he was entitled to receive possession of the truck, which was not delivered to him by the respondents. Thus he made a representation on 30.11.1999 for delivery thereof. He continued to make several representations with the respondents for delivery of the truck purchased in the auction and also to hand over to him the documents so that the vehicle could be transferred in the name of the appellant so as to enable him to ply the same. It appears

that truck was delivered to the appellant after about six months from the date of auction sale, for which no plausible reasons were assigned by the respondents.

7.Despite handing over possession of the truck at a belated stage, respondents did not deliver necessary documents of the truck to the appellant so as to enable him to get the vehicle transferred in his name, thereby depriving him of its commercial use, the purpose for which he had purchased.

8.He was therefore, constrained to file a petition under Section 12 of the Consumer Protection Act, 1986 (for brevity, 'the Act') claiming damages.

9.Appellant was ultimately delivered the possession of the truck on 14.3.2000, during the pendency of the complaint before the District Forum. The relevant papers thereof were not handed over to him for a long time but on persistent requests, the same were handed over to him some time in the month of January, 2005. Thus after a lapse of more than five years from the date, the auction was confirmed in favour of the appellant.

10.The District Consumer Forum dismissed the complaint of the appellant holding therein that

appellant is not a "consumer" within the definition of the Act.

11. Feeling aggrieved, appellant filed an appeal before the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow which was registered as Appeal No. 2327 of 2000. The State Commission dismissed the appeal with certain observations reproduced herein below:

"The District Consumer Forum Sultanpur has dismissed the complaint on the finding that such matters are not cognizable by it under COPRA. No error at all can be found in the aforesaid finding. It is open to the appellant to file copy of this order before District Magistrate Sultanpur with such prayer relating to the documents of the vehicle as advised. The District Magistrate will deal with such representation in accordance with law and pass necessary orders within two months."

12. Pursuant thereto, appellant submitted representation to the District Magistrate on 17.2.2003 and continued to remind them that they have to deliver the necessary documents to the appellant so as to enable him to get the vehicle transferred in his name, which would further enable him to use the same for commercial purposes.

13. Against the order of the State Commission, appellant filed Revision Petition No. 929 of 2003

before the National Consumer Disputes Redressal Commission, New Delhi. The same came to be disposed of vide impugned order on 18.5.2005 and the complaint filed by appellant has partly been allowed with the following directions:

"In view of the long delay, we are inclined to grant damages to the extent of Rs. 25,000/- along with cost of Rs.5000/- payable by the respondents to the Petitioner jointly and severally. In view of the facts and circumstances of the case, we direct the District Magistrate, Sultanpur, U.P. to conduct an inquiry into the matter and fix the responsibility including the recovery of this awarded amount from the officers who are found guilty of deficiency/negligence in this case."

14. Feeling aggrieved thereby the auction purchaser Madan Kumar Singh (since dead) preferred a Special Leave Petition whereas respondents have also preferred Special Leave Petition against Madan Kumar Singh (since dead).

15. The original appellant having died during the pendency of the appeal, his legal representative was brought on record.

16. We have, accordingly, heard the learned counsel for the appellant Mr. R.K. Kapoor and learned counsel for the respondents Mr. R.K. Gupta at length. Perused the record.

17. The questions which arise for consideration in the aforesaid appeals are (i) whether the appellant

can be said to be 'consumer' within the definition of Section 2(1)(d) of the Act; and (ii) whether it can be said that there has been deficiency in the services committed by respondents as contemplated under Section 2(1)(g) of the Act.

18. It is pertinent to mention here that even though respondents were parties before the District Consumer Forum, State Commission, as also before the National Commission but they neither preferred to file any objections nor participated in the proceedings. Thus were proceeded ex-parte throughout.

19. Even though there has been long and chequered history of various litigations in the High Court of Allahabad and a civil suit which were either at the instance of previous owner of the truck Iqbal Ahmed or by Maqsood Ahmed, apparently set up by Iqbal Ahmed but we are not concerned with the same, in the aforesaid appeal. Needless to say that in none of the proceedings either initiated by Iqbal Ahmed or his stooge Maqsood Ahmed there was any order of stay granted by any court that appellant herein should not be delivered the relevant documents of the truck, so as to enable him to start plying the same.

20. It is trite to say that mere filing of a Petition, Appeal or Suit, would by itself not operate as stay until specific prayer in this regard is made and orders thereon are passed.

21. There is nothing on record to show that any stay was granted in favour of any party, restraining the respondents not to deliver the papers of the truck to the appellant. It would go to show that respondents were unlawfully holding back the papers with them, for which, otherwise they were not entitled to do so.

22. To deal with the question projected hereinabove in the aforesaid appeal, it is necessary to go through the definition of 'Consumer' as contained in Section 2(1)(d) of the Act.

"2(d) "Consumer" means any person who -

(i) 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 and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) [hires or avails of] any services for a consideration which has been paid or

promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person.

[Explanation- For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]".

23. Plain reading of the same makes it abundantly clear that appellant herein would fall in the category of a 'consumer' as he had bought the truck for a consideration which was paid by him. It was bought to be used exclusively for the purpose of earning his livelihood by means of self-employment. The said pleading by way of amendment was incorporated by the appellant in his application filed under Section 12 of the Act, before the District Consumer Forum but proper cognizance thereof has not been taken.

24. A further reading of the aforesaid definition of 'consumer' makes it clear that Parliament wanted to exclude from the scope of the definition the persons, who obtain goods for resale and also those who purchase goods with a view to use such goods

for carrying on any activity for earning. The immediate purpose as distinct from the ultimate purpose of purchase, sale in the same form or after conversion and a direct nexus with profit or loss would be the determinants of the character of a transaction-whether it is for a "commercial purpose" or not. Thus, buyers of goods or commodities for "self consumption" in economic activities in which they are engaged would be consumers as defined in the Act.

25. Apart from the above, it may also be seen that the purchase of the truck by the appellant would also be covered under explanation to Section 2(1)(d) of the Act. The appellant had mentioned categorically that he had bought the said truck to be used exclusively by him for the purpose of earning his livelihood, by means of self-employment. Even if he was to employ a driver for running the truck aforesaid, it would not have changed the matter in any case, as even then appellant would have continued to earn his livelihood from it and of course, by means of self-employment. Furthermore, there is nothing on record to show that he wanted to use the truck for any commercial purpose.

26. Thus, the question No.1 is answered in favour of the appellant that he would be deemed to be a consumer within the definition as contained in Section 2(1)(d) of the Act.

27. Coming to question No.2 whether there has been a deficiency in the services committed by respondents as contained in Section 2(1)(g) and (o) of the Act or not, "deficiency" and "services" have been defined as under:

"2(1)(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

2(1)(o) "service" means service of any description which is made available to potential users and includes provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, [housing construction], entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

28. The facts mentioned hereinabove would go to show that appellant having been declared as highest bidder had deposited the initial money and next day deposited the balance of the consideration. The

truck in question was actually handed over to him almost after six months from the date of auction in his favour. Even after getting delivery of the truck he could not have started plying the same unless he was delivered the relevant papers thereof. There is no dispute, which even otherwise stands proved from the voluminous material available on record that despite best efforts made by the appellant, the relevant papers of the truck were handed over to him only after six years from the date of the auction. No plausible or convincing reasons have been assigned by the respondents for not doing so.

29. From the narration of the aforesaid facts, it is clearly made out that respondents were at fault in performance of the services which was otherwise required to be performed by them. What more could be the deficiency in service cannot be described. According to us, respondents were certainly imperfect and the same would amount to shortcoming in quality in providing the service to the appellant.

30. Thus, in our considered opinion, all the ingredients, to enable the appellant to claim damages under the Act were made out. This has in

fact been found by the National Commission also, that is why it proceeded to award compensation of Rs. 25,000/- to the appellant.

31. Now, the question that arises for consideration before us is whether the amount of compensation awarded to the appellant is just and proper or deserves to be enhanced.

32. Even though the appellant claimed damages @ Rs.500/- per day and interest at 5% on the amount of Rs.70,000/- deposited by him for the price of the truck in addition, he further claimed damages for mental and social injuries to the tune of Rs.50,000/- + litigation expenses but in absence of any cogent and valid evidence available on record, it is not proper to consider the reliefs as claimed by the appellant. However, there is no doubt that the appellant suffered loss of earning firstly due to non-delivery of vehicle and then due to highly belated supply of requisite documents. Moreover, the value of the truck also depreciated resulting in further loss to him. Thus, in our opinion, the amount awarded by National Commission is too meagre and deserves to be enhanced.

33. During the course of arguments, Sh. R.K. Gupta, learned counsel for the respondents also

made submissions that since the documents pertaining to the truck were received late from the bank, therefore, the same could not be delivered to the appellant herein. However, this plea had not been taken by the respondents nor it is reflected from any of the documents filed by respondents in their own appeal. It is, therefore, clearly an afterthought and has been taken so as to shield the unwarranted action of the respondents.

34. The conduct, behaviour and attitude of the respondents, throughout, has been highly reprehensible. When the bank had issued a *Fard Nilami* and respondents were entrusted with the job of auction then the said auction should have been implemented fully in letter and spirit. Once the highest bid of the appellant was knocked down in his favour, pursuant thereto, he had deposited the requisite amounts, then as a necessary consequence thereof he should have been delivered the truck immediately along with the necessary documents. For the reasons best known to the respondents they had not only delayed delivery of the truck but had also, despite the efforts made by the appellant, not handed over the papers of the truck to him for long number of years. Any explanation offered

during the course of the arguments is not acceptable to us, which certainly shows their malafide intentions.

35. Even assuming for a moment that bank had not delivered the papers of the truck to the respondents then it was the duty of the respondents to have insisted the bank for delivery of the papers which they had failed to do. Thus, in any case, there cannot be any escape of the respondents from shaking off the liability fastened on them by the National Commission.

36. Taking the totality of the situation as it exists, we are of the opinion that a total amount of Rs. 1,00,000/- payable by respondents jointly or severally to the appellant would subserve the justice.

37. Even though the Act specifically does not authorise to grant interest but in appropriate cases, grant of interest on the facts and circumstances of the case is permissible. The same has been done by this Court in long catena of cases.

38. In this case also, keeping the circumstances under which appellant was made to run from pillar to post, to get the documents of the truck from the

respondents, we are of the opinion that ends of justice would be met if interest at the rate of 6% p.a. from the date of the original application till actual payment of the aforesaid enhanced awarded amount is made by the respondents. We accordingly do so. The appeal arising out of SLP(C) No.20515 of 2005 is allowed with costs and Appeal arising out of SLP (C) No.11210 of 2006 is dismissed with costs. Counsel fee assessed at Rs.10,000/- each.

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...J.

[S.B. SINHA]

.....J.
[DEEPAK VERMA]

New Delhi.
August 07, 2009.



JUDGMENT