

PETITIONER:
M/S.VIKAS MOTORS LTD.

Vs.

RESPONDENT:
DR.P.K. JAIN

DATE OF JUDGMENT: 24/08/1999

BENCH:
R.P.Sethi, Saghir Ahmad

JUDGMENT:

SETHI, J.

The respondent booked a Maruti AC Car with the appellant on 7.5.1990 on Priority No.805-C-80197. He was intimated on 1.8.1990 that his car was matured for payment deposit and delivery. Full amount was paid by the respondent on 6.8.1990. He was, however, charged an extra amount of Rs.9,232/- at the time of the delivery of car. Feeling aggrieved by the action of the appellant the respondent filed a complaint before the District Consumer Disputes Redressal Commission, Hisar (hereinafter referred to as "the District Forum") with a prayer for refund of the extra amount paid by him. The District Forum allowed the claim of the complainant vide order dated 18.9.1991. The appellant's appeal before the State Consumer Disputes Redressal Commission, Haryana at Chandigarh (hereinafter referred to as "the State Commission") was dismissed on 10.1.1992 and the revision petition filed by the appellant before the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as "the National Commission") was also dismissed on 10.4.1992. The present appeal has been filed mainly on the grounds of jurisdiction and there being no liability of the appellant after escalation of prices by the manufacturers of the car. The objection regarding jurisdiction was decided by the District Forum vide its order dated 26th July, 1991 against which no appeal or revision was filed by the appellant and that apparently appears to have become final. After participating in the proceedings and being satisfied with the verdict regarding jurisdiction, it is too late for the appellant to urge, at this stage, that the District Forum had no territorial jurisdiction to entertain the complaint and pass orders under the Consumer Protection Act (hereinafter referred to as "the Act"). The appellant is estopped from raising the plea of jurisdiction at this stage, on the ground that he cannot be permitted to both approbate and reprobate after submitting and acquiescing to the territorial jurisdiction of the District Forum. It is also not disputed that the respondent had paid and the appellant had received an amount of Rs.35,000/- towards booking of one CA 805-C-80197 Maruti Car. He was, later on, intimated by the appellant vide letter Annexure A that:

"We are pleased to inform you that based on intimation received from Maruti Udyog Limited, all customer orders placed with us till COD have matured for payment deposit and

delivery. Your FDR deposited with us on (date of deposit of FDR).

Delivery of vehicle will be made according to the date of receipt of full payment. You are, therefore, requested to deposit full payment with us, as early as possible. In the normal course, your vehicle is expected to be delivered immediately on receipt of your payment. However, due to unforeseen circumstances, the delivery may get delayed by a few days."

It is also conceded that as desired the balance amount was paid by the appellant on 6.8.1990 but the vehicle was not delivered to him till 25.8.1990. There being no failure on the part of the respondent to perform his part of the contract, the appellant was not justified in demanding the excess amount of Rs.9,232/- from him. The submission regarding cut-off date for delivery of vehicle, as mentioned in a letter of Maruti Udyog Limited dated 5.7.1990, does not in any way advance or strengthen the case of the appellant because it did not cast any obligation upon the respondent to ascertain its contents and pay the extra amount despite deposit of the full amount within the time prescribed and, admittedly, before the escalation of price by way of rise in excise duty. The appellant, if aggrieved, can have his grievance redressed against the manufacturer but can not force the respondent to pay the extra amount after receipt of the full and final payment as price of the car which was agreed to be delivered to him immediately after the receipt of the full amount. It is not disputed that the cut off date in the instant case was 6.8.90, admittedly before the rise of the prices of the Maruti Cars. The District Forum was, therefore, justified in directing the appellant to refund the extra amount to the complainant within the time specified in its order. The State Commission, after referring to the facts of the case, rightly concluded:

"It is then a matter of record that in compliance with the above, the respondent paid the balance price on the 6th of August, 1990 and completed the other requisite formalities, as well. Far from giving the respondent the delivery of the car forthwith against full payment as promised, it was not till nearly a month thereafter that on the 3rd of September, 1990 that the same was offered to him conditional on his paying the further amount of enhanced price. The appellant's negligence is thus writ large on the face of the record in the context of the complainant's clear assertions that despite telephonic and personal reminders, the needful was not done by the appellants. On their own showing and assurance the car was to be delivered immediately on receipt of the full payment and the only qualifying clause was, if some unforeseen circumstance may happen to delay the delivery and that also was not to be extended beyond a few days. In the present case the appellants even in their counter-version did not even allege that there was any unforeseen circumstance which had prevented them from making delivery of the car which they were bound to do. This apart not an iota of evidence was led on their behalf to show any unforeseen or extenuating circumstance for a delay of nearly one month. Even otherwise because the ground of unforeseen circumstance was not taken in the pleadings, no evidence could be allowed to be led on the point. In any case the appellants neither placed any evidence by way of affidavit nor any proven

conclusive documents to indicate that any unforeseen circumstance of vis-major had occurred to prevent the delivery. Inevitably it must be held in these circumstances that the appellants had acted contrary to their own assurance and the terms of the agreement and unjustifiably with-held the delivery. Obviously the consumer cannot be made to pay for their default if during this unauthorised delay, the price of the vehicle had gone up. Had the appellants conformed to both the letter and spirit of the agreement between the parties, no such situation would have arisen. On the established case there is thus a clear deficiency of service for which they have been rightly held responsible by the District Forum. We find not the least reason to take a view contrary thereto."

We do not find any substance in the appeal which is accordingly dismissed but under the circumstances without any order as to costs.