

CASE NO.:
Appeal (civil) 1771-1772 of 2002

PETITIONER:
M/S. KERALA AGRO MACHINERY CORPORATION . LTD

Vs.

RESPONDENT:
BIJOY KUMAR ROY & ORS

DATE OF JUDGMENT: 28/02/2002

BENCH:
D.P. Mohapatra & Brijesh Kumar

JUDGMENT:

BRIJESH KUMAR, J.

Leave granted.

Heard the learned counsel for the parties.

This appeal has been preferred against the order passed by the National Consumer Disputes Redressal Commission, New Delhi dated August 5, 1999 dismissing the Revision petition filed by the appellant against the orders passed by the State Consumer Disputes Redressal Commission West Bengal.

The complainant, who is respondent No.1 in this appeal purchased a Kuboto power tiller on 21.4.1988 from the appellant, namely Kerala Agro Machinery Corporation Limited at its Malda branch, through its dealer, West Bengal Agro Industries Corporation. According to the respondent No.1, the Power Tiller started giving trouble within the warranty period, in respect whereof he made a complaint for repairs and replacement of certain parts, but the complaint was not considered nor defects removed, hence ultimately he filed a complaint before the District Consumer Forum Malda on 16.6.1994.

The District Consumer Forum, Malda by order dated 15.9.1994 allowed the claim of respondent No.1 and directed that the Power Tiller be replaced by a new one. A compensation of Rs.2,000/- and all costs were also awarded to the complainant. The District Consumer Forum observed that once the opposite parties to the claim Petition had admitted the defects of the parts as claimed by the complainant, subsequently they could not deny the same as an after thought. The prayer made on behalf of the Kerala Agro Machinery Corporation for filing a reply to the claim was rejected by the District Forum, it is though observed that both the parties were heard at length but no plea of the present petitioner has been mentioned or discussed in the order. An appeal preferred against the order of the District Forum was dismissed by the State Consumer Redressal Commission, West Bengal. The

case of the appellant inter alia was that the claim was barred by limitation. In this connection, the State Commission observed that the claimant had been writing letters and reminders to the manufacturers and dealers and the last one on 5.4.1994, but since no effective steps were being taken by the manufacturers for removing the defects, the complainant had to file the claim ultimately on 27.6.1994. It is further observed that complainant was only getting assurances for removal of the defects but the manufacturer took no final decision in the matter, therefore, the delay occurred on the part of the complainant in filing the claim. The claim thus could not be said to be barred by limitation, which was two years after the amendment of the Act in 1993 and prior to that it was as provided under the General Law. With these observations the State Commission upheld the order passed by the District Forum. The National Commission rejected the Revision observing that the manufacturer specifically did not deny its liability to repair or replace the Tiller and the State Commission rejected the plea of bar of limitation, therefore, at this stage there was no question of interference in the order passed by the State Commission on the point of limitation. It is also observed real cause of the delay was the assurances given by the dealer to get the defects rectified.

Learned counsel for the appellant submitted that its case has not been properly considered on the point of limitation or otherwise by any of the three Forums dealing with the matter. Learned Counsel for the appellant has taken us through the conditions of warranty which indicates that the warranty period is one year from the date of delivery or 500 hours of operation whichever is earlier provided servicing and maintenance of the power Tiller have been strictly observed as per operators manual. Clause 4(c) indicates that damage due to inadequate maintenance and servicing or due to ignorance of operators would not be covered by the warranty. Clause 7 of the warranty provides that it ceases immediately the power tillers suffers an accident. He has then drawn our attention to P-2 dated 2.5.1988 written by the Claimant to the dealer indicating that the Tiller had over turned on 2.5.1988 and was damaged a little. It was made workable for the time being on the repairs carried out by the mechanic.

The claim seems to have been lodged by the complainant with the dealer on 20.2.1989. Learned counsel for the appellant has taken us through the correspondence between the parties to indicate that defect in respect of only one item at S. No.V was admitted, which was replaced as per despatch postal receipt dated 13.7.1989. This fact is also indicated in the letter of the appellant dated 9.7.1993. It was also said in the letter that the claimant was raising very old claims, which had become about 4 years old. We do not think it necessary to go into further details of the matter. As it is clear that the claim was lodged with the appellant in February 1989 in pursuance whereof one admitted defective part had been replaced as indicated earlier and other complaints are said to have been not accepted or appropriately attended to. The counsel for the appellant submitted that the needful was done even though an accident was reported by the claimant himself on 2.5.88 and the servicing schedule was also not adhered to. On behalf of the respondent No.1 there is no denial of the fact that one part was replaced by the manufacturer. The claim relating to defects was lodged with the appellant in February 1989, in respect whereof claim petition was filed in June, 1994 i.e. to say more than 4 years after lodgment of the claim with appellant.

We find that the question of limitation has not been considered seriously at any stage. There is no dispute that the claim petition was barred by limitation. The National Commission has only observed that the delay was due to the assurances given by the dealer to get the defects rectified, but surprisingly no letter has been particularly indicated in the order much less within limitation, by which liability may have been acknowledged by the appellant. The Commission further observed that "at this stage", there could not be any question of interference in the order of the State Commission on the point of limitation. There seems to be no justification for negating the plea of limitation with such cursory and passing observations. The question of stage of the proceeding has no relevance so far question of limitation is concerned. The claim has been filed beyond the period of limitation say more than four years after defects were pointed out.

Learned counsel appearing for the respondent No.1 also could not indicate anything or document to show that the complaint was filed within time. We agree with the submissions made on behalf of the appellant that the claim of the respondent No.1 was not entertainable by the District Consumer Forum being barred by limitation.

In the result the appeals are allowed and the judgment and orders passed by the District Forum, the State Commission and the National Commission are set aside and the claim of the claimant respondent No.1 is rejected.
There will be no order as to costs.

...J
(D.P. MOHAPATRA)

.J
(BRIJESH KUMAR)

February 28 , 2002