

DHARAMPAL SABHARWAL V. M/S. BOTTOMS UP PUB & RESTAURANT

1. DHARAMPAL SABHARWAL

S/O LATE SHRI SANT RAM SABHARWAL, M.P. RAJYA

SABHA(NOW HAS COMPLETED HIS TENURE ON 10-

04/2010) R/O 53 A, BAHADURPUR

HOSHIARPUR

PUNAJB

.....Petitioner(s)

Versus

1. M/S. BOTTOMS UP PUB & RESTAURANT

THROUGH ITS PARTNER SHRI GUNRAJ SINGH VILLAGE

& POST OFFICE SHERGARH, CHANDIGARH ROAD,

HOSHIARPUR

PUNJAB

.....Respondent(s)

Case No: REVISION PETITION NO. 396 OF 2016

Date of Judgement: 04 Jan 2023

Judges:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

For the Petitioner : Dr C S Marwaha, Advocate

For the Respondent : Mr Amit Wadhwa, Advocate

Facts:

Petitioner Dharampal Sabharwal booked marriage venue 'Daulat Gardens' of respondent Bottoms Up Pub & Restaurant on 16.10.2008 for his daughter's wedding on 23.11.2008. Advance

of Rs 50,000 paid. Respondent agreed to provide catering for 500 persons by Singh Caterer, Chandigarh at Rs 325 per person. Respondent provided photocopy of Singh Caterer menu with soup, snacks etc marked in red/yellow based on which balance payment made. On wedding day, catering not by Singh Caterer and marked menu items in red not served. Quality also not satisfactory. Stage for DJ not provided. Petitioner filed complaint before District Forum, Hoshiarpur claiming Rs 10 lakhs compensation on deficiency in service. Transferred to District Forum Shaheed Bhagat Singh Nagar. District Forum dismissed complaint on 30.11.2010 directing petitioner to approach civil court. Petitioner's appeal remanded matter back to District Forum by State Commission. District Forum allowed complaint on merits by order dated 26.07.2013, directed payment of Rs 1.5 lakhs compensation and Rs 3,000 litigation cost. On respondent's appeal, State Commission set aside District Forum order. This revision petition filed against State Commission order.

Arguments by Petitioner:

State Commission erred in concluding no written agreement between parties. Contracts for marriage venues usually oral with advance payment. Evidence like menu booklet with items marked and respondent's visiting card produced. Respondent did not produce any document that Singh Caterer engaged or marked menu items served. District Forum rightly held deficiency of service since respondent failed to rebut complainant's case. No need for written contract between marriage hall and hirer. Customary to finalize arrangements orally. 12 affidavits of wedding guests filed as evidence. State Commission order perverse.

Arguments by Respondent:

No agreement for catering by Singh Caterers. Petitioner's allegation vague. Onus on petitioner to prove deficiency which he failed to discharge. No separate DJ stage agreed as

permanent arrangement already existed at venue. State Commission correctly set aside District Forum order as it was not a speaking order without reasons. Petitioner's affidavits in identical language to be discounted.

Court's Opinion:

Petitioner engaged respondent's premises for wedding by paying advance and balance payment. Respondent agreed to provide catering and DJ. Petitioner alleged deficiency in not serving menu items marked at time of agreement and no DJ stage provided. He states marked menu copy and visiting card evidences agreement. Respondent denies agreeing for Singh Caterers and says petitioner not discharged onus of proving allegation. State Commission concluded there was no agreement for Singh Caterers' catering. It is evident there was an arrangement where a menu had been agreed by marking items in different colours. Not denied by respondent that all marked items were not served. While respondent denied agreeing for Singh Caterers, he led no evidence to show who actual caterer was. Deficiency evident in not serving identified menu items on payment of consideration. Petitioner succeeds on this ground.

Sections:

Revision petition filed under the Consumer Protection Act, 1986.

Cases Referred:

Dr J J Merchant Vs Srinath Chaturvedi, Supreme Court (2002): Affidavit valid evidence under Section 13(4)(iii) of Consumer Protection Act. Forum can issue commission for witness examination under Section 13(4)(v). SGS India Vs Dolphin India, Supreme Court (2009): Onus on complainant to prove deficiency in service. Ravneet Singh Bagga Vs KLM Royal Dutch Airlines, Supreme Court (1999): Same principle.

Court's Final Decision:

Revision petition has merit and is allowed. State Commission order set aside. Order of District Forum allowing complaint and directing compensation payment restored.

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Court

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Full Text of Judgment:

1. This revision petition filed under the Consumer Protection Act, 1986 (in short, the 'Act') assails the order of the State Consumer Dispute Redressal Commission, Punjab, Chandigarh (in short, 'State Commission') in First Appeal No. 956 of 2013 dated 06.10.2015 emerging from order in consumer complaint no. 80 of 2013 of the District Consumer Disputes Redressal Commission, Shaheed Bhagat Singh Nagar (in short, 'District Forum') dated 26.07.2013.

2. The brief facts of the case, as stated by the petitioner, are that he had booked Daulat Gardens, a marriage venue, on 16.10.2008 for the solemnization of his daughter's wedding on 23.11.2008 and paid an advance of Rs 50,000/- to the respondent. The respondent agreed to provide catering of Singh Caterer of Chandigarh for 500 persons at the rate of Rs 325/- per person. At the time of booking, it is stated that the respondent provided a Xeroxed copy of the menu of the said Singh Caterer. The soup, snacks and other items agreed to be served were marked in red and yellow colour on this menu and on the basis of this agreement the petitioner paid the balance amount to the respondent. However, on the day of the function, it was found that catering by Singh Caterer as agreed to was not provided and the items marked in red colour on the Menu were not served. The quality of food was not up to the desired expectancy of the petitioner too. The respondent also failed to provide a stage for the DJ as agreed earlier. The

petitioner filed a consumer complaint before the District Forum, Hoshiarpur on the basis of deficiency in service and claimed Rs 10,00,000/- as compensation from the respondent.

3. The complaint was transferred to the District Forum, Shaheed Bhagat Singh Nagar (Nawanshahar) and was dismissed on 30.11.2010 directing that the complaint be filed before an appropriate Civil court. On appeal before the State Commission, however, the matter was remanded on 22.05.2013 to the District Forum to be decided on merits. The District Forum vide its order dated 26.07.2013 allowed the complaint and directed payment of compensation of Rs 1,50,000/- and Rs 3,000/- as cost of litigation. The respondent filed an appeal before the State Commission against this order. The appeal was allowed and the order of the District Forum set aside. This order of the State Commission has been impugned before us.

4. It is stated by the revisionist/petitioner that the State Commission erred in concluding that there was no agreement in writing between the parties. It is submitted that agreements relating to marriage function locations are usually oral. However, evidence such as the master Menu booklet marked in red and yellow indicating items selected and the visiting card of the respondent were produced as evidence. It is averred by the petitioner that the respondent had not placed any document on record to support his contention that catering only by Singh Caterers was agreed to and that the items decided upon by marking them in red and yellow colours were served on the day of the function.

3. I have heard the learned counsels for the petitioner and the respondent and perused the material on record carefully.

4. The learned counsel for the petitioner argued that the District Forum had rightly given the finding that there was deficiency in service since it had failed to rebut the petitioner/complainant's averments and the affidavits filed. It is argued that there was no requirement for a written contract between the marriage hall and the hirer as the usual practice was to finalize menu and arrangements orally with payment of advance. Reliance was placed on this Commission's

order in Dr J J Merchant Vs. Srinath Chaturvedi Civil Appeal no.7975 of 2001 decided on 12.08.2002 which had held that an affidavit was evidence enough under section 13 (4)(3) of the Act to prove that the "Act specifically empowers the Consumer Forums to follow the procedure which may not require more time or delay the proceedings. Only caution required is to follow the said procedure strictly. Under the Act while trying a complaint, evidence could be taken on affidavits [under Section 13 (4) (iii)]. It also empowers such Forums to issue any Commission for examination of any witness [under Section 13 (4) (v)]. It is also to be stated that Rule 4 in Order XVIII of C.P.C. is substituted which inter alia provides that in every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence". He argued that 12 affidavits of guests present at the wedding been filed. The order of the State Commission is averred to be beyond the pleadings.

5. On behalf of the respondent it is denied that there was any agreement between the parties for catering by Singh Caterers. It is contended that the allegation of the petitioner is vague and the onus was on him to prove deficiency in service as per the judgments of the Hon'ble Supreme Court in SGS India Vs. Dolphin India in Civil Appeal 5759 of 2009 and Ravneet Singh Bagga Vs. KLM Royal Dutch Airlines & Anr. in CA No. 8701 of 1997 dated 02.11.1999. It is also contended that there was no agreement with regard to provision of a DJ floor as there is a permanent arrangement in existence at the venue and hence no separate arrangement was agreed to be provided. The State Commission order is stated to be in order as the District Forum's order was not a speaking order which did not record reasons. It is also contended that the affidavits filed by the petitioner need to be discounted as they are all worded in identical language.

6. From the record and submissions made by the parties, it is not in dispute that the petitioner engaged the marriage premises of the respondent for a wedding event by paying an

advance followed by the balance payment. It is also apparent that the respondent agreed to provide catering services for the guests and a DJ floor for the celebrations. The petitioner has alleged deficiency in service in the serving of food which did not conform to the agreed menu as per the master menu discussed by the respondent with him and was marked in two different colours for the items selected. Deficiency in service has also been alleged in not providing a DJ floor. While the petitioner has submitted that the marked copy of the menu with the respondent's visiting card was evidence of the arrangement agreed upon, the respondent has denied any such agreement and argued that the onus of proving the same was on the petitioner which he has failed to discharge. The State Commission has concluded that there was no agreement between the parties that catering to be provided would be that of Singh Caterers on the day of the marriage.

7. The impugned order of the State Commission reads as under:

"14. While deciding the case District Forum observed that there is deficiency on the part of OPs without recording the reasons, whereas, the entire evidence produced by the OPs referred above showed that there was no agreement between the parties that on the day of marriage OPs will provide the catering of Singh catering, Chandigarh as well as DJ stage to complainant. As such finding of the District Forum regarding deficiency in services are not according to the evidence on the record. Therefore, the order of the District Forum is not legally sustainable and is liable to be set aside.

15. In view of the above discussion the appeal of the appellant/ opposite party is allowed and impugned order is set aside consequently, the complaint of the complainant is dismissed."

8. From the record it is evident that there was an arrangement by which a menu had been determined by marking the selected items in different colours for the event for which a consideration had been accepted by the respondent. It is not denied by the respondent that all the items selected were not served on the day of the marriage. While the respondent denies

that catering by Singh Caterers was agreed upon, he has not led any evidence to show who the agreed caterer was. Without going into issues of standard and taste, with regard to the food items served, which are subjective issues, there was, clearly, deficiency in the serving of the identified items on the menu on the day of the function for which a consideration had been accepted. The petition is liable to succeed on this ground.

9. In the light of the above, I find merit in the revision petition. The revision petition is accordingly allowed and the impugned order of the State Commission is set aside. Order of the District Forum is restored.