

# MUKESH DUREJA v. PRINCIPAL OFFICER, M/S. JAIN ELECTRONICS & ANR.

MUKESH DUREJA

...Appellant

PRINCIPAL OFFICER, M/S. JAIN ELECTRONICS & ANR.

...Respondent

Case No: MISCELLANEOUS APPLICATION NO. 540 OF 2023

Date of Judgement: 02 November 2023

Judges:

KARUNA NAND BAJPAYEE

PRESIDING MEMBER

For Appellant: MR. VIPIN BHASKER, ADVOCATE

For Respondent: None

**Facts:**

*The case involves a consumer complaint filed by Mr. Mukesh Dureja against M/s Jain Electronics regarding defects in an air conditioner purchased from them. Mr. Dureja filed a complaint (No. 604/2015) before the District Consumer Disputes Redressal Commission alleging deficiency in service by M/s Jain Electronics. The complaint contained details of purchase of the air conditioner, issues faced (unwanted sounds, low cooling etc.), complaints lodged with customer care, subsequent recurring of issues etc. The District Commission dismissed the complaint at the admission stage itself holding that merely stating the AC was defective does not make out a prima facie case. Mr. Dureja filed an appeal (No. 557/2016) against the District Commission's order before the State Commission. The State Commission also dismissed the appeal upholding the District Commission's order.*

**Aggrieved by the fora's orders, Mr. Dureja has now filed a Revision Petition (No. RP/86/2018) before the National Commission under section 21(b) of Consumer Protection Act, 1986.**

**Court's Opinions/Observations:**

**The complaint contained necessary details and ingredients which, if proved, would amount to deficiency in service by the respondent company (Para 9). Dismissal of the complaint by the District Commission in a summary manner is inconsistent with the nature and details of grievances expressed in the complaint (Para 10). The fora failed to exercise jurisdiction rightly by not providing opportunity to the complainant to prove his case and denying remedy (Para 10). Without making observations about merits at this stage, the Bench feels it proper to provide opportunity to the complainant to contest his case before the State Commission (Para 11). Any observations made are only for examining maintainability and shall not prejudice either party or color vision of the fora below (Paras 11,12).**

**Arguments by Parties:**

**Petitioner's Arguments:**

**Complaint contained full details of grievances relating to AC to show deficiency in service (Para 9). Dismissal of complaint ignoring its contents leaves complainant without remedy (Para 10). Fora failed to exercise jurisdiction rightly by denying opportunity to prove case (Para 10).**

**(No arguments advanced by the Respondents as they remained unrepresented)**

**Sections:**

**The Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986.**

**Referred Laws:**

**The Consumer Protection Act, 1986. Provisions relating to District Commission, State Commission and National Commission under the Consumer Protection Act have been referred to.**

**Order/Directions by National Commission:**

*Impugned order of the State Commission set aside, Revision Petition allowed (Para 11). Matter remitted back to District Commission to decide the complaint on merits after hearing both parties (Para 11). Parties directed to appear before District Commission on 08.12.2023 (Para 12). Complainant to inform order to Respondents within 3 weeks and file proof before District Commission (Para 13). If Respondents do not appear, District Commission to issue notice to secure their presence (Para 14). Copy of order to be sent to parties and fora, and uploaded on Commission's website (Para 15).*

*Thus, in a nutshell, the National Commission found merit in the Revision Petition filed by the Complainant, Mr. Mukesh Dureja and has accordingly allowed the same by remitting the case back to the District Commission with directions to decide the consumer complaint afresh on merits and as per law after providing due opportunity of hearing to both parties.*

**Case Laws Referred:**

*No case laws were referred in the order.*

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**Court**

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**Full Text of Judgment:**

1. Heard the learned counsel for the applicant/petitioner on the miscellaneous application being M.A. No. 540 of 2023.

2. Learned counsel has tried to explain the circumstances resulting for the non-appearance on behalf of the applicant / petitioner on the date fixed before this Commission as a result of which the petition was dismissed in default.

3. In view of the above submissions made by the learned counsel for the applicant /petitioner and the ground taken in the application for restoration, it appears appropriate to allow the application. Accordingly, the Order dated 08.08.2023 passed by this Commission thus stands recalled and the present petition stands restored to its original number.

4. This Revision Petition has been filed under Section 21(b) of The Consumer Protection Act, 1986 in challenge to the Order dated 24.10.2017 passed by the State Commission in Appeal No.557 of 2016 arising out of the Order dated 29.09.2015 of the District Commission in the complaint no. 604 of 2015.

5. Heard the learned counsel for the petitioner and perused the record including inter alia the Order dated 29.09.2015 passed by the District Commission, the Order dated 24.10.2017 passed by the State Commission and the memo of petition.

6. It appears that the complaint was filed in the District Commission but the same was dismissed in limine holding it to be not maintainable.

7. In order to do better appreciation of the matter, the Order dated 29.09.2015 passed by the District Commission may be quoted herein below:

Case No. 604/15

Dated: 29/09/2015

Only an affidavit has been filed by the petitioner after giving opportunity. No where mention in the affidavit about defect of the A.C. and what is problem therein. Only writing sound or saying not fit. It is not verified by any written document. No Job Sheet has been filed along with the complaint Prima facie this complaint is not maintainable, hence dismissed.

8. It further transpires that feeling aggrieved by the District Commission's Order, an appeal was filed in the State Commission but the same was also dismissed and the District Commission's Order was confirmed. It may be apt to quote the Order dated 24.01.2017 passed by the State Commission, which reads as follows:

24.10.2017

Item No. 5

FA-557/16

Present : None for the Appellant.

None for the Respondent.

The appellant has not filed affidavit for showing service of Dasti

notice to respondent.

Perusal of the file reveals that the appeal is against order dated 29.09.2015 passed by District Forum at the stage of admission. The complaint was dismissed on the ground that the same did not disclose for. Merely the writing that AC was defective did not make out any prima-facie case for summoning the respondent. There is no infirmity in the impugned order. The appeal is dismissed.

File be consigned to Record Room.

9. Learned counsel has submitted during the course of arguments that ingredients of the deficiency of service were well borne out from the contents of the complaint. Learned counsel has taken the Bench through the entire complaint pointing out as to how the grievances of the complainant have been narrated. He has emphasised that full details regarding the complainant's grievances have been given in the complaint i.e the details of purchase of air conditioner, as to how it was not working well; as to how it was producing unwarranted sounds; as to how complaint to customer care was lodged; as to how further development regarding low cooling effect took place, as to how the complaint was again made; as to how it was addressed by the respondents and as to how it again re-occurred. Learned counsel has further elaborated the entire complaint and details of the complainant's grievances enumerated therein. Submission is that the dismissal of the complaint by the District Commission in a summary manner like, which is not only against the facts contained in the complaint, but is also leaving the complainant remediless. Further submission is that even the State Commission has failed to exercise its jurisdiction and correct the District Commission's Order. Argument is that the complaint must be restored and the Orders of the fora below deserve to be set aside.

The Bench has perused the record in the light of the submissions made by the learned counsel for the petitioner at the Bar.

10. The complaint is a part of the record and it is not needed to quote the entire complaint all over again. Suffice it to observe that the complaint did contain full ingredients which, if proved and found true, would amount to deficiency of service on the part of the

respondents. The finding of the District Commission which has been confirmed by the State Commission about the non-maintainability of the complaint, fly's in the face of contents of the complaint, and is quite inconsistent in the nature and grievance expressed in the complaint. The opportunity ought to have been given to the complainant to adduce evidence in accordance with law and prove his case. It appears that the fora below have not rightly exercised their jurisdiction and arrived at findings not borne out from with the record.

11. Without making any observation about the ultimate merits of the case, lest, the same may cause any prejudice to either side and colour the vision of the fora below, in the light of the submissions made by the learned counsel for the petitioner and in view of the totality of the facts and circumstances of the case, this Bench feels it expedient to give a further opportunity of hearing to the petitioner to appear and contest its case before the State Commission on merits. The impugned Order dated 24.10.2017 is hence set aside and the present revision petition is allowed and the same is remitted back to the District Commission with the request to decide the same on merits after affording opportunity of hearing to the both sides.

12. The parties are directed to appear before the District Commission on 08.12.2023.

It may also be mentioned that any observations if any made in this Order shall not be construed to the prejudice by either side as they have been made in the context of the present petition only. The District Commission shall proceed without being by any observation made by this Commission as they have no baring upon the truthfulness of the contents of the complaint, which have got to be adjudicated upon in its due course in accordance with law.

13. The principal onus of informing the respondents about this instant Order shall be of the petitioner / complainant, he shall do so within three weeks from today, without fail, and file proof thereof before the District Commission on or before the next date of hearing before it.

14. However, if for whatever reason, the respondents do not appear before the District Commission on the date of hearing, the District Commission shall issue notice for requiring their presence in order to proceed in accordance with law in the matter, as directed by this Commission. The District Commission in such a situation may also direct the petitioner /complainant to take adequate steps in order to facilitate service on the respondents.

15. The Registry is requested to send a copy each of this Order to the parties in the petition and to the learned counsel for the petitioner as well as to the fora below within three days from today. The stenographer is requested to upload this Order on the website of this Commission within three days.