

H. P. STATE CONSUMER DISPUTES REDRESSAL
COMMISSION SHIMLA.

First Appeal No.: 37/2023
Date of Presentation: 10.02.2023
Reserved on: 20.10.2023
Date of Decision: 21.11.2023

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Naresh Verma Son of Sh. Kanshi Ram, Resident of
Village Palana, Post Office Kiar, Tehsil Theog, District
Shimla, H.P.

..... Appellant/Complainant

Versus

Singh Brothers (Shoe Palace), 137/1 Lower Bazar,
Shimla-171001, H.P.

.....Respondent/Opposite party.

.....
Coram

Hon'ble Justice Inder Singh Mehta, President.

Hon'ble Mr.R.K.Verma, Member.

Whether approved for reporting?¹

For the Appellant: Mr.Sukh Dev Sharma, Advocate.

For the Respondent: Mr.Atul Sood, Advocate vice to Mr.
Kartik Kumar, Advocate.

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Per Mr.R.K.Verma, Member.

ORDER:

Instant appeal is arising out of the order dated
13.12.2022 passed by learned District Consumer
Commission, Shimla in Consumer Complaint No.172/2019,

¹ *Whether Reporters of the local papers may be allowed to see the order?*

titled as Naresh Verma Versus Singh Brothers (Shoe Palace).

Brief facts of Case:

2. Briefly, case of the complainant is that the complainant purchased a one pair of shoes from the opposite party on 22.04.2019, for a sum of Rs.3,400/-. It is stated that the complainant paid the entire amount to the opposite party in cash and the opposite party issued bill dated 22.04.2019. It is stated that the colour of shoes was black and size was nine number. It is stated that the opposite party assured the complainant that there is warranty of six months on the shoes, but the shoes got spoiled within 2-3 months. It is stated that the complainant approached again to the opposite party to exchange the shoes, but to no avail. It is stated that the aforesaid acts on the part of the opposite party clearly amount to deficiency in service and unfair trade practice. It is prayed that the complaint may be allowed.

3. The complaint so filed has been opposed by the opposite party by filing reply taking preliminary objections therein regarding maintainability, cause of action, suppression of facts, complaint involves complicated question of law and facts, complaint is bad for mis-joinder of

parties, estoppel etc. On merits, it is denied that the complainant had repeatedly approached the replying opposite party after the alleged defect and the replying opposite party did not rectify the same. It is stated that opposite party is seller and not the manufacturer, who is responsible for the same being the manufacturer. It is stated that the complainant is not entitled to any relief from the replying opposite party much less the wrongly claimed reliefs in the complaint. It is stated that when complainant visited the shop he had been requested to keep the shoes in the shop and told that the same will be sent to manufacturer, but the complainant did not turn up. It is denied that the complainant visited the shop of the replying opposite party several times. It is stated that there is no deficiency in service or unfair trade practice on the part of the replying opposite party and prayed that complaint may be dismissed.

4. In rejoinder, the complainant has reiterated the contents of complaint and refuted the objections put forth by the opposite party.

5. Thereafter, the parties led evidence in support of their respective pleadings.

6. After hearing the parties, learned District Commission below allowed the complaint of the complainant.

7. Feeling dis-satisfied by the order of learned District Commission, the appellant/complainant has preferred the instant appeal before this Commission for enhancement of compensation amount.

8. We have heard learned counsel of the parties, and have also gone through the record carefully.

9. The learned Counsel for the appellant/complainant has contended that the compensation awarded by the learned District Commission below is wholly deficient as the complainant was forced to attend as many as 19 hearings before the learned District Commission below. The learned District Commission while awarding the compensation has not kept in view the inflation index. Hence he has prayed that this appeal be allowed and the compensation be enhanced.

10. Per contra, the learned counsel for the respondent/opposite party has submitted that the complainant has been adequately compensated by the learned District Commission below and as such no enhancement of compensation is warranted in this case. He, therefore, prays for dismissal of this appeal.

FINDINGS

11. The learned District Commission below vide impugned order has directed the respondent/opposite party to refund the price of the defective shoes amounting to Rs.3400/- to the appellant/complainant. In addition to this, the appellant/complainant has been awarded a sum of Rs.5000/- in lump-sum as compensation and litigation cost.

12. The grounds taken by the appellant for enhancement of compensation are that the complainant witnessed as many as 19 hearings between 2019 and 2022 and also increase in inflation index.

13. On perusal of the record of the learned District Commission below would reveal that the respondent/opposite party has not availed any unreasonable adjournment. Therefore, he cannot be blamed for number of hearings which took place in the learned District Commission below. The record of the learned District Commission below reveals that the main reason for delay caused in disposal of the complainant was lock down like situations on account of corona virus (Covid-19) and also the post of the President of the Commission remained vacant for a period of two years.

14. The appellant has used the defective shoes and also retained the same. There is no material on record to show the expenditure incurred by the complainant to

prosecute his complaint. Therefore, in the facts and circumstances of the present case and also taking into consideration inflation index we are of the considered view that a sum of Rs.5000/- awarded by the learned District Commission below to the complainant in lump-sum as compensation and litigation cost is just and reasonable and no enhancement in the same is warranted.

15. In view of the above stated facts, we do not find any infirmity in the order passed by learned District Commission below and same does not require any interference. Accordingly, appeal of the appellant/complainant fails and same is hereby dismissed.

16. Parties are left to bear their own litigation costs.

17. Certified copy of order be sent to the parties and their counsel(s) strictly as per rules. File of learned District Commission along with certified copy of order be sent back and file of State Commission be consigned to record room after due completion. Appeal is disposed of. Pending application(s), if any, also disposed of.

Justice Inder Singh Mehta
President

Satish

R.K.Verma
Member