

**BEFORE THE GOA STATE CONSUMER DISPUTES
REDRESSAL COMMISSION,
PANAJI-GOA**

In the matter of First Appeal 16 of 2023 in Consumer Complaint 23 of 2022.

**Before: Adv. Mrs. Varsha R. Bale, Officiating President
Adv. Ms. Rachna Anna Maria Gonsalves, Member**

M/s Lakaki Drycleaners & Art Dyers,
*having its registered office and principal
place of business at*
Shop No. 14333, Dr. Antonio Dias Building,
Opp. Margao Municipal, Council,
Margao, Goa. 403601.Appellant-1

through its two partners,
Mr. Venkatesh Atchut Naik Dalal,
s/o late Atchut Datta Naik Dalal.Appellant-1(a)

Mr. Vinit Venkatesh Naik Dalal,
s/o Venkatesh Datta Naik Dalal.Appellant-1(b)

both above residents of
House No. 9/550, Flat No. D,
Ground Floor, Shamiana Co-operative,
Housing Society Ltd., Dalal Mill Complex,
Comba, Margao, Goa. 403601.

V.

Mr. Francisco Abel Joao,
s/o Mr. Jose Leocadio Joao,
through its Attorney,
Mr. Jose Leocadio Joao,
House No. 565/F-1, Sea Goas,
Apartments, St. Cruz, Cujira, Tiswadi, Goa.Respondent

Adv. Shri Mangirish Angle present for Appellant.

Adv. Shri. Sagar Malkarnekar present for Respondent.

DATE: 20/02/2024

JUDGMENT

[per Adv. Mrs. Varsha R. Bale, Officiating President]

1. This Appeal is directed against the Judgment and Order dated 29/03/2023 passed by District Commission, North Goa. (The 'District Commission' for short) in Consumer Complaint No. 23/2022. The Appellant was the Opposite Party (OP for short) and the Respondent was the Complainant in the said complaint. Parties shall hereinafter be referred to as per their status in the said complaint.
2. The Complainant had filed the said complaint praying therein to direct the Opposite Party to refund the amount of Rs.20,000/- towards the cost of the damaged garments, to pay compensation of an amount of Rs.1,00,000/- to the Complainant for the mental torture and harassment caused to the Complainant.
3. Case of the Complainant in short, is as follows:
 - a) That the Complainant had given 5 Coats and 1 Coaty to the Opposite Party for dry cleaning and an amount of Rs.2,350/- was payable towards the services provided by the Opposite Party. When the Complainant went to collect the dry cleaned garment, he was shocked and surprised to see that the expensive coats were completely damaged during the dry cleaning process, and on asking the Opposite Party about the damage, the Opposite Party told him that the coats were already damaged at the time when

they were received for dry cleaning and that they are not liable for the damage.

- b) The Complainant stated that the Opposite Party acted very rudely and arrogantly with him and when he called the proprietor of the Opposite Party, he denied damaging the said coats and spoke very roughly with him and his father.
 - c) The Complainant further stated that one of the coats damaged by the Opposite Party was purchased in the UK by him for about Rs.9,000/- and 2nd damaged coat was recently stitched by the Complainant for Rs.11,000/-. The said coats were worn by him for his wedding which took place on 08/01/2022 and therefore he has great sentimental value for the same.
 - d) The Complainant also stated that he is greatly disappointed with the Opposite Party for denying any responsibility for damaged caused to his wedding clothes and as the Opposite Party failed and neglected to address his grievance, he filed the complaint.
4. The Complainant has relied upon Invoice dated 13/01/2022, photographs with 65 B Certificate, Tax Invoice dated 17/12/2021, Power of Attorney dated 27/01/2022.
5. The Opposite Party filed their Written Version, resisting the complaint and denying the allegations made against them. Case of the Opposite Party, in short is as under:

- a) The Opposite Party stated that they are not a proprietary firm of Mr. Venkatesh Atchut Naik Dalal but it is a duly registered partnership firm in which Mr. Venkatesh Atchut Naik Dalal is one of the partner and therefore the complaint filed against the Opposite Party is bad in law and needs to be dismissed, since filed against wrong person. The Opposite Party further stated that the Complainant is not the resident of the place shown in the cause title but in fact a resident of Portugal and citizen of Portugal.
- b) The Opposite Party further stated that in the Bill No. 19162 dated 13/01/2022 one person by name 'Avel' has delivered for laundry services 5 coats and 1 black coaty. The said coats and coaty after the laundry services were collected by the concerned person on 27/01/2022. Also that, there are no remarks by the Complainant on the said bill or by way of complaint about the damage during the laundry services. The Opposite Party also stated that the garments were taken back by the person who had given them for laundry service after inspecting the said garments without any complaints and even paid the bill after receiving the said garments.
- c) The Opposite Party stated that the Tax Invoice dated 17/12/2021 of 'SENOR NX' is mentioned that Abel Joao and not 'Avel' got a three piece suit along with a shirt and tie were purchased under Bill No. 331 for the cost of Rs.11,000/- was not cost of one coat, but it is the cost of three piece suit i.e. coat, coaty and pant as well as of the shirt and tie.

6. The Opposite Party has relied upon the certificate of Registration of the partnership firm of Lakaki Dry Cleaners and Art Dyers issued by the Registrar of Firms, Margao.
7. The Complainant filed his Affidavit-in-Evidence. The Opposite Party filed the Affidavit-in-Evidence. Both the parties filed Written Arguments before the District Commission.
8. Vide the Impugned Judgment, the District Commission observed that the deficiency in service on the part of the Opposite Party along with their negligent act stands proved and confirmed from the nature of the documentary evidence brought on record by the Complainant. Since the Complainant in this case has succeeded in proving and establishing his case the complaint is partly allowed and the Opposite Party has been directed to pay Rs.10,000/- to the Complainant towards the cost of damaged garments. The Opposite Party has been further directed to pay compensation of Rs.25,000/- to the Complainant for mental stress and agony caused by the Complainant. The said amount of Rs.25,000/- and Rs.10,000/- has been ordered to be paid within Appeal period and if are not paid after Appeal period shall carry interest @5% p.a. till the final payment, the Opposite Party is aggrieved by the Judgment and Order .
9. Records and proceedings of CC No. 23/2022 were called. Both the parties have filed Written Argument. Also heard Oral Arguments. Adv. M. Angle argued on behalf of Appellant. Adv. Shri S. Malkarnekar argued

on behalf of Respondent. We have gone through the entire material on record.

10. The Opposite Party has prayed in this Appeal to quash and set aside the Impugned Judgment and Order. The Opposite Party stated that the District Commission failed to appreciate the settled position of law that a P.O.A cannot depose for the acts done by the principal. The District Commission haphazardly passed the Impugned Order by misinterpreting the evidence on record, in an arbitrary fashion and the same is perverse and erratic in nature, and further has conveniently granted the reliefs for the mere asking of them without applying its judicious mind.
11. That it is the Complainant's statement that he was shocked and surprised to see his coats were completely damaged when he went to collect the dry cleaned garments. But at the same time he paid the bill and collected the garments without any complaint. If he was not satisfied with the said garments then what made him to pay for the entire bill? He should have neither accepted the said garments nor should he have paid the said amount. But the Complainant failed to do so. Nor did the Complainant make any remark on the said bill, when he collected the said garments and this shows that the Complainant is at fault.
12. Assuming that the name of the Complainant is 'Avel' instead of 'Abel' is a mistake as per the observation of District Commission, North. But it does not prove that the 2 coats are damaged by the Opposite Party. The assumption made by the District Commission is

illogical and how it came to the conclusion that 'it was the writing mistake in the name of the Complainant and the defense taken by the Opposite Party to this mistake in writing the word of the Complainant cannot make him get away from his liability for the damages caused to the 2 coats of the Complainant'.

13. That the District Commission also failed to appreciate in their observation that 'even though the 2 coats of the Complainant were damaged by the Opposite Party during the laundry dry cleaning process the Complainant has no choice but to pay the bill after collecting his 2 coats.' We observed that it is not the case of the Complainant that the Opposite Party forced the Complainant to take back the garments and pay the entire amount of bill. The Complainant noticed the said alleged damaged garments while collecting them and he should have refused instantaneously to collect the same. We are also not in agreement of the observation of the District Commission that 'according to us also making any remarks on the bills would not have served any purpose as the Complainant has placed on record 2 photographs of his 2 damaged coats which clearly shows that the damages caused to both the said suits by the Opposite Party'. This goes on to show that without any hesitation the District Commission has made up their mind that the Opposite Party is at fault and the evidence produced by the Complainant in the form of photographs, which is correct. It is to be noted that the Complainant has only produced the photographs of damaged clothes. He has not produced any recent photographs of the clothes to show that before giving the said cloths for dry cleaning the cloths were in good condition. No date

appears on photo. Just looking at the photographs the District Commission has come to the firm conclusion that the clothes are damaged by the Opposite Party. We are not able to understand whether the same garments were given for dry cleaning. The District Commission has hastily come to such a conclusion, That the Complainant also failed to produce any document to the effect that the coat is purchased in the U.K. for Rs.9,000/-. The Complainant also cannot claim for the 2nd coat that he stitched for Rs.11,000/- as it includes costing of 3 items. But the said price is towards all the 3 items and not only for one coat. Therefore the Complainant cannot demand the full amount towards only the coat.

14. Although the Complainant has authorized his father to represent him in this case, by giving Power of Attorney to him, the District Commission failed to appreciate that even if he can appear on behalf of the Complainant, he cannot depose on behalf of the principal in his personal capacity, as the law is settled and was not privy to any of the complaint. The reliance placed by the Adv. for Opposite Party in Nagesh Trivikram Naik v/s Kalindi Parsekar wherein the Hon'ble High Court of Bombay, Goa Bench held that 'the P.O.A holder cannot depose or give evidence in place of the principal for the acts done or transactions undertaken by the principal, as the principal alone would have personal knowledge of such acts.' It is further held that 'Even in/of the only exception recognized to the aforesaid rule, it has been held that a family member as P.O.A holder, may depose about the facts only if such family member/P.O.A holder is exclusively managing the

affairs of the principal or old and infirm parent'. This reliance is applicable to the facts of the present case.

In another reliance placed by the Adv. for Opposite Party, Janki Vashdeo Bhojwani & Anr. v/s IndusInd Bank Ltd & Anr. wherein the Hon'ble State Commission held that P.O.A cannot be allowed to appear and depose as a witness in his personal capacity regarding the acts done by him on behalf of principal.

Adv. for Opposite Party also drew our attention in case of Dr. Pradeep Mohanbay v/s Minguel Carlos Dias, wherein the Goa Bench of Bombay High Court held that a Power of Attorney can file a complaint under sec. 138, but cannot depose on behalf of the Complainant. He can only appear as a witness. The District Commission has completely ignored the citations placed by the Adv. for OP on this point.

It is seen that after the entire incident the P.O.A is given in favour of the father to file complaint before District Commission. General P.O.A had to be given prior in time, then the father could have deposed. But here, the son did everything in personal capacity and the third party deposed in evidence. The District Commission erred grossly by accepting the evidence of the POA of the Complainant, when such testimony of the Holder cannot be read in evidence in the backdrop of the settled law. Also the POA i.e. Mr. Jose Leocadio Joao has filed the Affidavit-in-Evidence titled 'Affidavit-in-Evidence of Complainant' when he is the POA and not the Complainant. The District Commission has

ignored to check the POA filed by Mr. Jose Leocadio Joao.

15. As regards to issue of partnership firm, the Adv. for Opposite Party filed an application for production of document before this Commission to place on record Certificate of Registration of Partnership, issued by Registrar of firms at Margao-Goa which was allowed by this Commission on 04/10/2023 and the said document was taken on record.
16. It has been observed by this Commission that the Complainant has filed the complaint when he has clearly admitted in his complaint in cause title, that he is a Portuguese National and to substantiate that, no Passport, OCI Card has been placed on record, and no whisper whatsoever has been made to this effect.
17. We have gone through the POA placed in the file and have observed that General POA is executed in Goa, India.
18. Any NRI can execute the POA through the Indian Embassy/Consulate. The stamp duty is to be paid when the deed is presented in India. NRI can execute the POA from abroad. They can sign the document in the presence of Notary Public or an Indian Embassy Official. And this has clearly been ignored by the Complainant and his Advocate who have neglected to adhere to the procedures laid down by law. And the District Commission also has completely failed to observe this.

19. In our considered opinion the Complainant has failed to establish that there is any deficiency in service on their part and also no evidence has been produced to show that the Opposite Party is at fault.
20. The Impugned Judgment and Order is not in accordance with the evidence on record and deserves to be quashed and set aside.
21. In the circumstances above, we pass the following:

ORDER

- a) The Appeal is allowed.
- b) The Impugned Judgment and Order dated 29/03/2023 is quashed and set aside.
- c) Records and Proceedings in CC/23/2022 of District Commission, North to be sent back within 15 days.
- d) Pronounced on Open Court.
- e) Proceedings in the matter stands closed.

[Adv. Mrs. Varsha R. Bale]
Officiating President

[Adv. Ms. Rachna Anna Maria Gonsalves]
Member

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