

**IN THE CONSUMER DISPUTES REDRESSAL COMMISSION,
THRISSUR**

Present : Sri. C.T. Sabu, President
Smt. Sreeja. S., Member
Sri. Ram Mohan R., Member

26th day of September 2023
CC 634/19 filed on 14/11/2019

- Complainant : Abbas M., S/o. Muhammed Ismail, Matharath House,
East Street, P. O., Koduvayur, Palakkad – 678 501.
(By Adv. Agu. S. Padath, Thrissur)
- Opposite Party : 1. Manger/Authorised Person, Doc & Mark, SBU03,
Woodlands Avenue, Room No: 25,789,
M. G. Road, Naikkanal, Thrissur, Kerala 680001.
2. Managing Director, M/s Mark and Orion Ventures
(P) Ltd, (Doc And Mark), J. P. Nagar,
Bangaluru – 560078.

FINAL ORDER

By Sri.Ram Mohan R, Member :

1) Complaint in brief, as averred :

The complaint is filed under Section 12(1) of the consumer Protection Act, 1986. The complainant on 15/04/2018, statedly purchased a pair of shoes from the first opposite party shop at Thrissur which is a dealer of Doc and Mark Shoes, paying a sum of Rs. 3,995/- (Rupees Three thousand nine hundred and ninety five only), vide their invoice No. SBU03-T118-89. The second opposite party is statedly the Managing Director of the Doc and Mark Company. The complaint states to have used the shoes only once after its purchase and claims to have not used it thereafter, but securely kept in the almirah owing to rain in the month of May 2018. Allegedly, while the same was taken for use after the period of rain, the shoes were seen torn at the top. The shoes in question were thereafter couriered to the first opposite party for replacement, as per their instructions. Upon approaching the opposite party thereafter, the complainant

was allegedly informed by the first opposite party that the shoes were seen damaged by animal attack and hence could not be replaced. The complainant affirms that the shoes in question were not subjected to any such attack, but alleges the sale of a product with inferior quality to him by the opposite parties. The complainant alleges deficiency in service and unfair trade practice on the part of the opposite parties and hence the complaint. The complainant prays for an order directing the opposite parties to replace or refund the cost of the product, apart from other reliefs of compensation and costs.

2) NOTICE :

The commission issued notice to both the opposite parties and the opposite parties jointly filed their written version before the commission.

Version Of The Opposite Parties

The opposite parties do not dispute the complainant's purchase of the shoes in question and also its return by him to them by courier. They admitted to have received the shoes back through courier on 21/07/2018. But they aver that the shoes under question were damaged owing to animal attack. The opposite parties also argue that there was no rain in Kerala in May 2018, and therefore terms the complainant's claim of idling of the shoes after its purchase, false. It is also their stance that the complainant consciously declined to take the shoes back from the custody of the opposite parties, despite their having required him to do so. The opposite parties further admit to have destroyed the shoes in question, at the instance of their audit team.

3) Evidence :

The complainant produced documental evidence that had been marked Exhibit A1 and A2, apart from affidavit and notes of argument. The opposite

parties filed their written version, but had not adduced any evidence on record nor sworn any affidavit with respect to their version.

4) Deliberation of facts and evidence of the case

The commission had very carefully examined the facts and evidence of the case. Exhibit A1 is the invoice no. SBU03-TI18-89 dated 15/04/2018 issued by the first opposite party in favour of the complainant. Exhibit A2 is courier tax invoice no. PGT717102 dated 20/07/2018 issued by M/s. The Professional Couriers, in the consignee address of the first opposite party.

The opposite parties hardly produced any evidence on their part.

5) Points to be deliberated:

- (i) Whether there is any deficiency in service on the part of the opposite parties or whether the act of the opposite parties is tantamount to unfair trade practice? Also whether the complainant is entitled to receive refund of the purchase price that he paid?
- (ii) Whether the complainant is entitled to receive any compensation from the opposite parties? If so its quantum?
- (iii) Costs?

6) Point No.(i)

Admittedly, the complainant on 15/04/2018 purchased the shoes in question from the first opposite party on paying a sum of Rs. 3,995/- (Rupees three thousand nine hundred and ninety five only) vide Exhibit A1 invoice. The complainant's return of the product to them through courier for certain alleged defects is also admitted by the opposite parties. But they contend that the shoes in question turned defective owing to attack of animals. They also attempt to refute the complainant's claim of having kept the product idle after its purchase for the stated reason of rain. They aver that there was no rain in Kerala in May

2018. But this contention of the opposite parties cannot be taken to its face value, as rains can naturally be wide -spread or isolated or even limited locally. Many a time rains are seen geographically limited, as well. Moreover the reason for keeping the shoes in question idle, seems immaterial in the instant case. The crux of the complaint is whether the shoes sold to the complainant were of inferior quality or not, which can be lawfully decided on a proper examination of the same by a competent expert. But in the case at hand the opposite parties admit to, have destroyed the material object, at the instance of their audit team. The opposite parties' knowledge of a possible litigation is evident from the complainant's return of the product in question and also from his admitted reluctance to collect it back from them, in spite of their demand for the same. In the instant case, the material object is the most crucial piece of evidence required to prove or disprove the complaint. The opposite parties' duty to preserve the evidence began even before litigation, when they came to have the knowledge of an anticipated litigation. Upon anticipating a litigation, the opposite parties ought to have exercised the due diligence and bounden duty expected of them to institute a "litigation hold" ensuring the potential preservation of the material object in question. The opposite parties' act of having destroyed the very material piece of evidence in the case at hand, can only be viewed as spoliation of evidence, whereby they eliminated the most probative evidence and effectively deprived the complainant of his ability or an opportunity to prove the alleged defects of the shoes. Under these circumstances, we find that the opposite parties destroyed the material object in bad faith and we are constrained to draw adverse inference against the opposite parties. It is therefore our considered view that there is deficiency in service on the part of the opposite parties which at the same time constitutes an unfair trade practice, as well, on their part. Therefore, the complainant is duly entitled to receive refund of the purchase price that he paid. Point No. 1 is thus proved in favour of the complainant.

7) Point No.(ii) and (iii)

The opposite parties admit to have received the shoes in question back from the complainant, on 21/07/2018 which in turn reveals that the product that the complainant purchased from the first opposite party paying them a price of Rs. 3,995/- (Rupees three thousand nine hundred and ninety five only) remained under his custody hardly for a period of 3 months only. It is axiomatic that the 1st and the 2nd opposite parties are one and the same, so far as any claim made in respect of the quality or features of the products manufactured by one of them and sold by the other, is concerned. A consumer usually buys a certain brand of shoes, relying on its goodwill and reputation and believing that due and proper service would be given by the manufacturer and the vendor, concerned, which the opposite parties failed to provide, in the instant case. Obviously, the complainant might certainly have been dissatisfied with the purchase he made and also had undergone agony and hardship owing to the misdeeds on the part of the opposite parties. Needless to mention, the complainant might also have to expend extra money for the purchase of a new set of shoes instead of the one in question, which in turn will inflict on him further financial loss, as well. The opposite parties have necessarily to compensate the complainant. We are of the view that the complainant is entitled to receive from the opposite parties a sum of Rs. 20,000/- (Rupees twenty thousand only) towards compensation for the agony and hardship he underwent and a sum of Rs. 2,000/- (Rupees Two thousand only) towards costs.

In the result, the complaint is allowed and the opposite parties are jointly and severally directed to pay the Complainant

- a) a sum of Rs. 3,995/- (Rupees three thousand nine hundred and ninety only) towards refund of the purchase price of the shoes in question,

- b) a sum of Rs. 20,000/- (Rupees twenty thousand only) towards compensation for the agony and hardship he underwent, and
- c) a sum of Rs. 2,000/- (Rupees Two thousand only) towards costs, all with 9% interest per annum from the date of filing of the complaint till the date of realisation. The opposite party shall comply with the above directions within 30 days of receipt of a copy of this order.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the open Commission this the 26th day of September 2023.

Sd/-
Sreeja S.
Member

Sd/-
Ram Mohan R
Member

Sd/-
C. T. Sabu
President

Appendix

Complainant's Exhibits :

Ext. A1: is the invoice no. SBU03-TI18-89 dated 15/04/2018 issued by the first opposite party in favour of the complainant

Ext. A2: is courier tax invoice no. PGT717102 dated 20/07/2018 issued by M/s. The Professional Couriers, in the consignee address of the first opposite party.

Id/-
Member

//True copy//

Assistant Registrar

