

**ADDITIONAL BENCH**

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
PUNJAB, CHANDIGARH.**

**First Appeal No.696 of 2022**

**Date of institution : 18.08.2022  
Reserved on : 08.12.2023  
Date of decision : 15.12.2023**

Ravinder Singh aged about 64 years son of Sh. Tarlochan Singh resident of V.P.O. Gobindpura, Tehsil Budhlada, District Mansa.

Appellant/Complainant

**Versus**

1. Raja Hyundai Raja Motors, Mansa Road, Bathinda.
2. Hyundai Motor India Ltd., At plot C-11, City Centre, Sector 29, Gurugram, Haryana-122001

.....Respondents/Opposite parties

**First Appeal Under Section 41 of the  
Consumer Protection Act, 2019 against the  
order dated 01.07.2022 passed by District  
Consumer Disputes Redressal Commission,  
Bathinda**

**Quorum:-**

**Mr. H.P.S. Mahal, Presiding Judicial Member  
Mrs. Kiran Sibal, Member**

**Argued by:-**

For the appellant : Sh. Charanpuneet Singh, Advocate  
For respondent No.1 : Sh. Kashish Garg, Advocate  
For respondent No.2 : Sh. A.P.S. Kahlon, Advocate

**KIRAN SIBAL, MEMBER**

The instant appeal has been filed by the appellant/complainant against the impugned order dated 01.07.2022 passed by the District Consumer Disputes Redressal Commission, Ludhiana (in short "District Commission"), whereby the complaint filed by the complainant against opposite parties (in short 'OPs'), under the

Consumer Protection Act, was dismissed in limine being not maintainable.

2. It would be apposite to mention that hereinafter the parties will be referred, as have been arrayed before the District Commission.

3. Brief facts of the case for disposal of the appeal are that on 20.09.2015, the complainant approached OP No.1 for purchase of a New Car. The complainant was offered an exchange bonus of Rs.50,000/- by OP No.1, whereby the old car of the complainant was to be given to it. Pursuant to the exchange bonus as offered by OP No.1, the complainant gave his old car i.e. 'Santro' bearing Registration No.PB-10-AH-3377, which was valued at Rs.33,000/- and the additional exchange bonus was given for Rs.50,000/-. The complainant was assured by OP No.1, that the old car would be sold within few days and all the documents regarding sale and transfer of ownership would be handed over to him. Thereafter, the complainant visited OP No.1 many times and requested to hand over the said documents, but it only gave him an affidavit on 20.11.2015 of one ' Sh.Mewa Singh', who purchased the said vehicle. OP No.1 told the complainant that the said affidavit was sufficient and nothing else was required. However, on 25.05.2018 he was shocked to know that one person had died in an accident that had occurred with the said vehicle, which was exchanged by him and sold by OP No.1 to 'Mewa Singh'. He further received a summon from Motor Accident Claim Tribunal, Bathinda on 05.03.2019 as he was still shown as owner of the said vehicle. The complainant alleged that OP No.1 failed to transfer the ownership of the vehicle. Alleging deficiency in

service and negligence on the part of the OPs, the complainant filed consumer complaint before the District Commission and sought directions against the OPs as prayed for in the complaint filed before it.

4. The District Commission, after hearing learned counsel for the complainant at preliminary stage, dismissed the complaint in limine, being not maintainable as the complainant failed to establish that he was the 'Consumer' of opposite parties qua his grievances mentioned in the complaint. Aggrieved with the impugned order passed by the District Commission, as above, the present appeal has been filed by the appellant/complainant for setting aside the same.

5. We have heard the learned counsel for the parties and have also carefully gone through the record on the file and written submission filed by the parties.

6. The learned counsel for the appellant/complainant has vehemently contended that the District Commission has failed to provide an opportunity to the appellant/complainant to present his case. The District Commission has further failed to appreciate the fact that the appellant/complainant is a 'Consumer' of the respondents/OPs as he has availed their services by purchasing a new car as well as by exchanging his old car, which was further sold by them, to one Mewa Singh. The learned counsel further contended that the District Commission has failed to appreciate the documentary evidence placed on record by the appellant/complainant and erroneously held that he has not placed on record any documents in support his case. The learned counsel further argued on the similar lines as stated in the complaint and

prayed for acceptance of the present appeal by setting aside the impugned order.

7. On the other hand, the learned counsel for respondent No.1/OP No.1 has argued that it sold a Verna Car to the appellant/complainant on 20.09.2015 but did not take in exchange his old car as the car was 1999 model and more than 15 years old. Further OP No.1, was offering lesser value for which the complainant was not satisfied. However, merely to retain the customer, they allowed exchange with the help of third party dealer i.e. complainant was allowed to sell the vehicle in open market on his own. The exchange was between the complainant and third party dealer only and there was no role played by OP No.1 except that the exchange was agreed between them, OP No.1 granted the benefit of exchange bonus to the complainant. The learned counsel further argued that once OP No.1 did not get the exchange affected or did not take the car in exchange or no consideration was passed qua the exchange, there was no service provided by it. The District Commission has rightly dismissed the complaint being not maintainable as he is not a Consumer qua the OPs. As per Section 50 of the Motor Vehicle Act, it is the duty of the transferor(seller) to report the fact with regard to the transfer to the registering authority within a period of 14 days if it is sold within the state and within a period of 45 days in case the vehicle is sold outside the State. The learned counsel further argued that the complaint is barred by limitation and prayed for dismissal of the present appeal.

8. The learned counsel for respondent No.2 has argued that the present matter is related to the sale and purchase of old vehicle, which is between the appellant and respondent No.1 and thus respondent No.2 has no role to play. Further argued that no allegation has been made against respondent No.2 in the complaint as well as in the appeal, thus no cause of action arose to the appellant to make it as party to the proceedings. Moreover, there was no privity of contract between the appellant and respondent No.2 and no money towards sale consideration or for any other services was paid to it. Alleging no deficiency in service or negligence on its part, the learned counsel prayed for dismissal of the present appeal qua it.

9. We have given thoughtful consideration to the contentions raised by the parties and have perused the record on the file.

10. The factual matrix of the case as submitted by the appellant are that the appellant, purchased a new Car i.e. 'Verna' from respondent No.1 and also availed the exchange offer of Rs.50,000/- from it, for his old car. The appellant alleged that he gave his old car to respondent No.1 for availing the exchange offer and it sold the said car to one 'Mewa Singh', but it did not hand over the documents regarding the transfer of ownership of the old vehicle except for an affidavit of purchaser 'Mewa Singh'. The appellant further alleged that because of the negligence and deficiency in service on the part of respondent No.1, the ownership of the old car was not transferred in the name of purchaser, due to which he has been dragged into an unwanted litigation before Motor Accident Claim Tribunal, Bathinda. The appellant

filed a consumer complaint against the OPs before the District Commission, which has been dismissed vide impugned order as above. Aggrieved with the same the present appeal has been filed by the appellant/complainant.

11. The main grievance of the appellant/complainant in the present appeal is that the District Commission, while dismissing the complaint in limine, has failed to appreciate the fact that complainant has placed on record sufficient evidence to establish that he is a 'Consumer' of the respondents/OPs. The only point for consideration before us is whether the appellant/complainant falls under the definition of 'Consumer' under the Consumer Protection Act or not? To determine the said point, we have perused the pleadings and evidence placed on record by the appellant/complainant before the District Commission. The appellant/complainant in his complaint before the District Commission had pleaded that he purchased a new car from respondent No.1/OP No.1 and pursuant to the exchange bonus as offered by respondent No.1/OP No.1, he gave his old car i.e. 'Santro' bearing Registration No.PB-10-AH-3377, which was valued at Rs.33,000/- and the additional exchange bonus of Rs.50,000/- was given to him. He further pleaded that he availed services of the respondents/OPs with regard to purchase of new car and sale of his old car and thus falls under the definition of 'Consumer' under the Consumer Protection Act. To deal with the said plea, it is relevant to mention Section 2(7) of the Act, which is reproduced as under:-

*“2. Definition- In this Act, unless the context otherwise requires,-*

*(7) “consumer” means any person who-*

*(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system or deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or*

*(ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.*

*Explanation – For the purpose of this clause,-*

*(a) the expression “commercial purpose” does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;*

*(b) the expressions “buys any goods” and “hires or avails any services” includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.”*

The appellant/complainant in support of his pleadings had placed on record certain documents before the District Commission i.e. affidavit of Sh. Mewa Singh, complaint filed by appellant against respondent No.1 before S.S.P. Bathinda, inquiry conducted by the police authorities and inquiry report, which according to the appellant have not been duly considered. He had duly submitted an affidavit of Sh. Mewa Singh, which was sufficient to fulfill the obligation of law and it is duly proved that he purchased an old car in question from appellant/complainant. By relying

on the said affidavit of 'Mewa Singh' the District Commission has come to the conclusion that it is not established that the complainant is the 'Consumer' of the respondents/OPs as he neither produced any document regarding purchase of new car or handing over old car to respondent No.1/OP No.1. No doubt that the appellant/complainant has not placed on record any document before the District Commission, in the shape of any invoice, receipt etc., regarding purchase of new car and exchange of his old car. However, it is specifically submitted by the appellant in his appeal that the original bill, tax invoice etc. of any new car was submitted to the Regional Transport Office (R.T.O.) for registration of the new vehicle, as such those documents could not be produced with the complaint at that stage. Moreover, a close perusal of statement suffered by one Amit Kumar s/o Bhagwan Dass, Sales Manager, Raja Hyundai, in the inquiry conducted by the police authorities reveals that the said Sales Manager of respondent No.1-company has categorically stated that on 20.09.2015 one old car i.e. 'Santro' bearing Registration No.PB-10-AH-3377, in the name of Ravinder Singh son of Tarlochan Singh, was purchased by the respondent No.1-company under exchange offer, for the sale of a new Verna Car. He further stated that after some time, the said Santro Car had been sold by the company to one 'Mewa Singh' son of Jeet Singh, r/o Mattar, District Sirsa, Haryana and the record of the sale and purchase of the said car was in their possession. Furthermore, the DSP, EO and Cyber Crime, Bathinda, in his final inquiry report has also mentioned that the appellant/complainant had given his old Santro Car bearing No.PB-10, AH,3377 to Raja Hyundai Company i.e. respondent No.1, under exchange offer and later



on respondent No.1 had sold the said old car to one Mewa Singh son of Jeet Singh. In the light of the said documentary evidence placed on record by the appellant/complainant, it has been duly established that appellant/complainant purchased a new Verna car from respondent No.1/OP No.1 and pursuant to the exchange bonus as offered by respondent No.1/OP No.1, he gave his old car i.e. 'Santro' bearing Registration No.PB-10-AH-3377, which was further sold by the company to one Mewa Singh. It is commonly seen that in order to procure business and to boost their sales, the seller company generally undertake the sale of old car from the customers in lieu of the new car, which is sold to them and to give efficient service of disposing off the old vehicles of the customers. Accordingly, purchasing/selling of an old car under the exchange offer to sell a new car is a service rendered by respondent No.1. Hence, the appellant/complainant duly falls under the definition of 'Consumer' as defined under the Consumer Protection Act. The District Commission has overlooked the said aspect and has dismissed the complaint in limine in a hasty manner, without giving the opportunity to the appellant/complainant to lead any further evidence to support of his case. Therefore, we are of the considered view that the impugned order passed by the District Commission is not justifiable and liable to be set aside. Since the complaint has been dismissed in limine and both the respondents have not been accorded any opportunity to defend their case by filing written reply and leading evidence etc., the complaint is required to be remanded back for deciding the same afresh on merits after giving due opportunity to the parties to proceed their case.

12. In view of our above discussion, without touching the merits of the case, we set aside the impugned order passed by the District Commission. Accordingly, the appeal is allowed and the case is remanded back to the District Commission, Bathinda with a direction to give due opportunity to the parties to proceed their case and to decide the complaint afresh, after considering complaint, written replies and the evidence led by the parties, on merits in accordance with law.

13. The parties, through counsel, are directed to appear before the District Commission on 25.01.2024.

14. The appeal could not be decided within the stipulated period due to heavy pendency of Court cases.

**(H.P.S. MAHAL)**  
**PRESIDING JUDICIAL MEMBER**

**(KIRAN SIBAL)**  
**MEMBER**

**December 15, 2023.**  
*(Dv)*