

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION
ERNAKULAM**

Dated this the 17th day of January, 2024.

Filed on: 21/03/2019

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member

Smt.Sreevidhia.T.N

Member

C.C. NO.131/2019

COMPLAINANT

Prof. Sarah Thomas, W/o. Thomas Nicholas, Neerakkal House, 4, Vani Gardens, Changanassery. Kottayam (Dist), Pin-686 106.

(Rep. by Adv. George Cherian Karippaparambil, Karippaparambil Associates, HB 48, Panampilly Nagar, Kochi 36)

VS

OPPOSITE PARTY

M/s Kalyan Silks Trichur Pvt Ltd, Subsidiary of Kalyan Group Holding Company, Hospital Road, Near Maharaja's College Ground. Ernakulam, Kochi - 682 011. Rep by its Chairman and Managing Director Sri. T.S. Pattabhi Raman

F I N A L O R D E R

D.B. Binu, President.

A brief statement of facts of this complaint is as stated below:

The complaint was filed under Section 12 (1) of the Consumer Protection Act, 1986. This complaint involves a retired Professor (the complainant) and a textile retailer, a subsidiary of the Kalyan Group. The retailer, which claims to have been established in 1909, advertises itself as having the world's largest silk saree showroom network in Kerala, Karnataka, Tamil Nadu, the United Arab Emirates, and Oman. They also claim to have a thousand looms, 2000 weavers, and design and production units across India, specializing in lightweight bridal sarees.

The complainant, influenced by these advertisements, purchased two bridal sarees for her daughter from the retailer's Ernakulam showroom on January 12, 2018, for Rs. 30,040. The sarees were regularly aired for preservation, but due to the daughter's canceled marriage, they were never worn. On January 23, 2019, the complainant noticed black shades on one of the sarees. Upon returning it to

the retailer, they initially promised a replacement but later returned the defective saree without replacing it.

The complainant asserts that the saree's damage is due to material and manufacturing defects and accuses the retailer of unfair and deceptive trade practices, along with service deficiencies. This has allegedly caused the complainant severe mental agony, loss, and hardship, leading to a claim for damages amounting to Rs. 50,000. The complaint, filed in Ernakulam where the purchase was made, requests a refund of the saree's price (Rs. 30,040), compensation of Rs. 50,000 with interest and Rs. 25,000 for legal costs.

2). Notice

The Commission issued notice to the opposite party. The opposite party received the notice and submitted their version.

3)THE VERSION OF THE OPPOSITE PARTY

The retailer acknowledges the sale of a saree for Rs. 30,040 on January 12, 2018, but clarifies that it was purchased by the complainant's daughter, not the complainant herself. They argue that since the complainant's daughter, the actual purchaser, is not a party to the complaint, the case should be dismissed on this basis alone.

The retailer also notes that the saree was packed in a velvet box at the time of purchase and that the complainant's daughter was warned that keeping the saree in such a box could cause damage. The complaint mentioned that the saree was aired regularly as advised, but the retailer contends that any damage was likely due to it being stored in an airtight box for an extended period.

The retailer asserts that the saree is free from manufacturing defects, noting its construction from Silk thread and Kasavu, making a defect in only one part of the saree unlikely. They also mention that no evidence of a manufacturing defect has been presented to the commission.

Regarding the remedial action, the retailer states that they agreed to repolish the saree, which was done at LB Kanchipuram, the saree's manufacturer. The saree, after repolishing, was returned to the complainant on February 20, 2019. The

retailer states that any damage to the saree, if present, was likely due to its storage method, and denies any failure or omission in serving the complainant.

Finally, the retailer requests that the commission dismiss the complaint, stating that the complainant is not entitled to compensation and cost of the proceedings under the described circumstances.

4) Evidence

A proof affidavit was filed by the complainant along with 2 documents which were marked as Exhibits A-1 to A-2.

Exhibit A:1. The photograph with the bill of the saree.

Exhibit A:2. The card statement evidencing payment of Rs. 51,590/- to the opposite party.

5) The main points to be analysed in this case are as follows:

- i) Whether the complaint is maintainable or not?
- ii) Whether there is any deficiency in service or unfair trade practice from the side of the opposite parties to the complainant.
- iii) If so, whether the complainant is entitled to get any relief from the side of the opposite parties?
- iv) Costs of the proceedings if any?

6) The issues mentioned above are considered together and are answered as follows:

In this case filed under Section 12 (1) of the Consumer Protection Act, 1986, the complainant, a consumer, purchased a saree from the textile retailer, alleging that it was damaged due to material and manufacturing defects and that the retailer engaged in unfair trade practices. The complainant seeks compensation for the damage to the saree, mental agony, and hardship, totaling Rs. 50,000, as well as a refund of Rs. 30,040 for the saree's cost and Rs. 25,000 for legal costs.

Sri. George Cherian Karippaparambil, the learned Counsel for the complainant, presents the case regarding a saree purchase. The facts confirm that the saree in question was sold by the opposite-party firm on January 12, 2018, for Rs. 30,040. However, it was the complainant's daughter, not the complainant, who made the purchase. The opposite party argues that since the complainant has no direct

relation to the transaction and the actual purchaser (the daughter) is not part of the complaint, the case should be dismissed.

The complaint stated that the saree was not used due to the complainant's daughter's cancelled marriage. The saree was sold in a velvet box, with the warning that prolonged storage in the box could cause damage. The opposite party contends that any damage is due to the saree being kept in this airtight box, rather than any manufacturing defect.

The saree, made of silk thread and kasam, is claimed to be free from manufacturing defects. The opposite party points out that no evidence has been provided to prove a defect. They had agreed to repolish the saree, which was done at LB Kanchipuram and returned to the complainant on February 20, 2019.

The opposite party argues that they have not failed to serve the complainant, suggesting that any damage might be due to improper storage. They assert that the complainant is not entitled to compensation and costs, and request that the commission dismiss the complaint.

In the case of Mrs. Sabita Kanjilal vs. Mrs. Gayatri Bera (I (1998) CPJ 200), decided on 24th September 1997 by the Honorable West Bengal State Consumer Disputes Redressal Commission held that:

“The Consumer Protection Act, 1986 has brought a new concept to the seller-buyer relationship. The old idea of 'caveat emptor' has yielded to the purchaser's right to get a defect-free article for which due consideration has been paid. Even if there was any delay in taking the goods to the seller, it does not take away the buyer's right of obtaining any goods free from defect. If the damage to the goods was not done by the purchaser, who would be responsible for the damage? Certainly, it would be the responsibility of the seller who has no right to sell any defective goods to a buyer.”

The Honorable State Commission emphasized the significant change brought about by the Consumer Protection Act of 1986 in the seller-buyer relationship. This ruling represented a shift from the age-old 'caveat emptor' (buyer beware) principle, instead favoring the protection of buyer rights. The Commission stated that purchasers have the right to defect-free products

regardless of any delays in reporting issues to the seller. It was determined that sellers bear the responsibility for damages to goods unless it is proven that the purchaser caused the damage. This landmark decision underlined that selling defective goods is not a right of sellers, and they must ensure the quality of their products. In the context of a defective saree case, the Honourable State Commission upheld the District Commission's decision, reinforcing this paradigm shift.

The movement from "buyer beware" to "seller beware" under the Consumer Protection Act marks a crucial evolution in consumer rights, advocating for transparency and holding sellers and endorsers accountable for the integrity of their products. This shift from the traditional principle of 'caveat emptor' to 'caveat venditor' indicates a significant advancement in consumer protection laws, aligning with contemporary needs and ethical business practices.

In the matter of the complaint filed under Section 12 (1) of the Consumer Protection Act, 1986, we have carefully considered the arguments, evidence, and legal principles involved. The main issues to be determined in this case are as follows:

i) Maintainability of the Complaint: *As per Section 2 (1) (d) of the Consumer Protection Act, 1986, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment when such use is made with the approval of such person. The complainant has produced the photograph with the bill of the saree (**Exhibit A-1**), which establishes that she is a consumer as defined under the Consumer Protection Act, 1986. According to the Act of 1986, a beneficiary or user of a product or service is also considered a consumer, and they have rights and protection under the Act. More over Therefore, the complaint is maintainable, and **point number (i)** goes against the opposite party.*

ii) Deficiency in Service or Unfair Trade Practice: *The complainant alleges that there was a deficiency in service and unfair trade practices by the opposite party. She claims that the saree purchased was damaged due to material and manufacturing defects and that the opposite party initially promised a replacement but later returned the defective saree without replacing it.*

The opposite party argues that the damage was likely due to the saree being stored in an airtight box, which was advised against at the time of purchase. They contend that the saree is free from manufacturing defects and that no evidence of such defects has been presented to the commission.

The case revolves around a damaged saree, originally packed in a velvet box at purchase. The retailer claimed that the complainant's daughter was warned about potential damage and proposed that improper storage in an airtight box might have caused the damage. Contrarily, the complainant asserted that the saree was regularly aired as advised.

The case underscores the significance of consumer rights, specifically the right to be informed about various aspects of goods and services, crucial for protecting against unfair trade practices. However, the issue arose from the retailer's lack of clear instructions on how to properly preserve the saree. The absence of such guidance makes it unjust to hold the consumer responsible for any supposed non-compliance.

In conclusion, the retailer's failure to provide explicit care instructions led to supporting the consumer's complaint. This situation highlights the need for clear communication between retailers and consumers to prevent misunderstandings and ensure the protection of consumer rights.

In the case of Mrs. Sabita Kanjilal vs. Mrs. Gayatri Bera (I (1998) CPJ 200), the Honorable West Bengal State Consumer Disputes Redressal Commission held that sellers are responsible for selling defect-free goods to buyers. The Commission emphasized the shift from the "buyer beware" principle to the "seller beware" principle under the Consumer Protection Act of 1986. Sellers must ensure the quality of their products, and the burden of proving that the purchaser caused the damage lies with the seller.

In this case, the complainant's assertion that the saree was damaged due to material and manufacturing defects raises a reasonable concern. The opposite party's argument that the damage was likely due to improper storage in an airtight box does not absolve them of their responsibility to provide a defect-free product. No evidence has been presented by the opposite party to conclusively prove that the damage was solely the result of the complainant's actions.

iii) Entitlement to Relief: Given the evidence and legal precedent cited above, it is evident that the complainant is entitled to relief. The opposite party's failure to provide a defect-free product and their initial promise of a replacement but subsequent failure to fulfill that promise constitute a deficiency in service and unfair trade practices.

Therefore, the complainant is entitled to compensation for the damage caused to the saree due to material and manufacturing defects, as well as for the mental agony, loss, and hardship she has endured as a result of the opposite party's actions.

iv) Costs of the Proceedings: In light of the above findings, the opposite party's contention that the complainant is not entitled to compensation and costs is

rejected. The complainant has successfully demonstrated the opposite party's liability for the damage to the saree and the resulting mental distress.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite party is liable to compensate the complainant.

We find the issue Nos. (i) to (iv) are found in favour of the complainant for the serious deficiency in service and unfair trade practices that happened on the side of the opposite party. Naturally, the complainant had suffered a lot of inconvenience, mental agony, hardships, financial loss... etc. due to the negligence on the part of the opposite party.

- I. The opposite party, the textile retailer, is directed to pay the complainant a total compensation of ₹25,000 (Twenty-five Thousand Rupees) for the damage to the saree, mental agony, and hardship.
- II. The opposite party shall also reimburse the complainant ₹30,040 (Thirty Thousand and Forty Rupees), the cost of the saree.
- III. The opposite party shall pay the complainant ₹20,000 (Twenty Thousand Rupees) towards the cost of the proceedings.

The Opposite Party shall be liable to comply with the above-mentioned directions within 30 days from the date of receipt of a copy of this order. Should they fail to comply, the amounts specified in points (i) and (ii) will accrue interest at the rate of 9% per annum. This interest will be calculated from the date of the complaint (21.03.2019) until the date of realization.

The Opposite Party shall have the liberty to take back the saree in question from the complainant within 30 days of complying with the above directions.

Pronounced in the open Commission on this 17th day of January, 2024.

D.B.Binu, President

V.Ramachandran, Member

Sreevidhya, T.N., Member

Appendix**Complainant's evidence**

ExhibitA:1. The photograph with the bill of the saree.

ExhibitA:2. The card statement evidencing payment of Rs. 51,590/- to the opposite party.

Opposite party's evidence

Nil

kp/

Despatch date:

By hand:

by post:

C.C. No. 131/2019

Order date: 17/01/2024