

Court No. - 32

Case :- WRIT - C No. - 37216 of 2023

Petitioner :- Vinayak Auto Sales And Another

Respondent :- The National Consumer And 3 Others

Counsel for Petitioner :- Ranjeet Kumar Pandey, Sushil Kumar Mishra

Hon'ble Salil Kumar Rai, J.

Hon'ble Surendra Singh-I, J.

Heard the counsel for the petitioners.

The present petition has been filed challenging the order dated 31.12.2021 passed by the District Consumer Disputes Redressal Commission, Jaunpur in Case No. 61 of 2020, order dated 24.2.2022 passed by the State Consumer Disputes Redressal Commission, U.P at Lucknow in Appeal No.77 of 2022 filed against the order dated 31.12.2021 and also against the order dated 15.9.2023 passed by the National Consumer Disputes Redressal Commission, New Delhi in Revision No.1178 of 2022.

The fact of the case are that the respondent no.4 instituted Case No.61 of 2020 before the District Consumer Disputes Redressal Commission claiming a refund of Rs.5,75,000/- from the petitioners which was stated to be part of the cost price of a harvester agreed to be sold to the respondent no.4 by the petitioners and also a compensation of Rs.5 lacs for the physical, mental and financial hardship cost to the respondent no.4 due to the failure of the petitioners in delivering the harvester. The case of the respondent no. 4 was that the petitioners had agreed to sell a harvester to respondent no.4 for Rs.7,25,000/- out of which Rs.5,75,000/- was paid by respondent no.4 to the petitioners but despite the willingness of respondent no. 4 to pay the balance of cost price, the petitioners refused to supply the harvester to the respondent. Hence, Case No.61 of 2020 with the relief as stated above was instituted by respondent no.4.

The petitioners initially contested Case No.61 of 2020 instituted by respondent no.4 by filing their objections/written statement. In their written statement, the petitioners admitted payment of Rs.5,75,000/- as part of the cost price of harvester but denied the other avements made by respondent no.4. In short, the case of the petitioners was

that the respondent no.4 did not pay the balance amount of Rs.1,50,000/- to the petitioners and therefore, the harvester could not be delivered to respondent no.4.

The petitioners denied their liability to refund the amount paid and also denied their liability to pay any compensation for any alleged hardship caused to respondent no.4 on the ground that the harvester was fabricated according to the tractor of the petitioners and therefore, could not be sold to any other person. The case of the petitioners was that the petitioners had already paid the entire amount to the manufacturers and the harvester could not be delivered to the respondent no.4 due to the fault of respondent no.4 and therefore, the petitioners were not liable to refund the amount claimed by the respondents.

It is to be noted that that despite repeated opportunities, the respondents did not file any affidavit in support of the facts stated in their written statement/objection. The District Consumer Disputes Redressal Commission after considering the evidence on record held that the respondent no.4 was entitled to refund of Rs.5,75,000/- as paid by him to the petitioners but was not entitled to Rs.5 lacs claimed as compensation for the physical and mental hardship allegedly caused to respondent no.4.

On the aforesaid opinion, the District Consumer Disputes Redressal Commission allowed Case No.61 of 2020 and directed the petitioners to refund Rs.5,75,000/- paid by respondent no. 4 to the petitioners along with 6% simple interest from the date of filing the claim petition till the date of payment of the entire amount.

Against the order dated 31.12.2021 passed by the District Consumer Disputes Redressal Commission, the petitioners filed Appeal No.77 of 2022 which was rejected by the State Consumer Disputes Redressal Commission vide its order dated 24.2.2022. Consequently, the petitioners filed Revision No.1178 of 2022 which was filed beyond time by 110 days. The delay in filing the revision, according to the petitioners, was caused because the petitioners were looking for a lawyer to file the revision and time was spent in obtaining the records as well as in preparing the revision. The explanation has been rejected by the National Consumer Disputes Redressal Commission and the revision has been dismissed on ground of delay vide order dated 15.9.2023. .

It was argued by the counsel for the petitioners that the orders passed by the District Consumer Disputes Redressal Commission as well as the State Consumer Disputes Redressal Commission are contrary to evidence on record and the said orders have been passed without considering the fact that there is no deficiency in service on the part of the petitioners nor there was any defect in the goods supplied by the petitioners. It was further argued that the National Commission has also erred in law in dismissing the revision petition filed by the petitioners on ground of delay. It was argued that for the aforesaid reasons, the orders passed by the Courts below are liable to be set aside and the petition is to be allowed.

We have considered the submissions of the counsel for the petitioners.

A perusal of the orders passed by the District Consumer Disputes Redressal Commission shows that the petitioners had not filed any affidavit to support the plea taken by them in their written statement to the effect that the harvester could not be supplied to respondent no.4 because of the fault of respondent no.4. As there is no evidence on record to prove that the harvester was not supplied to the respondent because the respondent did not pay the balance amount or because of any other act of the respondent no.4, the respondent no.4 was entitled to refund of the amount already paid by him as part of the cost price of the harvester. The facts averred by respondent no.4 are supported by his affidavit and it is also admitted by the petitioners that the respondent no.4 had paid Rs.5,75,000/- as part of the cost price of the harvester.

In the circumstances, we do not find any error in the order of the District Consumer Disputes Redressal Commission for interference by this Court in its equitable jurisdiction under Article 226 of the Constitution of India.

We also do not find any error in the order of the National Consumer Disputes Redressal Commission disbelieving the plea of the petitioners that the delay in filing revision was because the petitioners were looking for a lawyer and some time was spent in collecting the records and preparing the revision.

The findings recorded by the Courts below are findings of

facts which are not amenable to interference by this Court under Article 226 of the Constitution of India.

Further, as noted earlier, the plea of the petitioners was not supported by any affidavit filed before the District Consumer Disputes Redressal Commission.

For all the aforesaid reasons it is not a case for interference by this Court in its equitable jurisdiction under Article 226 of the Constitution of India.

The petition is **dismissed**.

Order Date :- 30.10.2023

IB