



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

115

CWP-20849-2024 (O&M)

Date of decision: 28.08.2024

Shri Krishan Cold Storage

...Petitioner

VERSUS

National Consumer Disputes Redressal Commission and ors ...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Ms. Ishita Negi, Advocate for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order dated 21.11.2023 passed by the National Consumer Disputes Redressal Commission, New Delhi dismissing the revision petition filed by the petitioner against the order dated 12.05.2017 passed by the State Consumer Disputes Redressal Commission, Punjab in an appeal upholding the award dated 02.12.2016 passed by District Consumer Disputes Redressal Forum, Hoshiarpur partly allowing the complaint filed by the respondent-consumer.

2. Briefly summarized facts of the present case are that respondent No.4-complainant/consumer had filed a consumer complaint No. 51 of 2016 before the District Consumer Disputes Redressal Forum, Hoshiarpur averring that he has stored 1087 bags of potatoes in the month of May-2015 with the petitioner-Firm against various receipts issued to him. In the month of November-2015 when the complainant-consumer approached the petitioner-Firm to get back his potato bags, they were spoiled and not even a single bag was in good condition. Compensation was thus asked for by the complainant-consumer from the petitioner but he was threatened. Aggrieved



thereof, the consumer complaint was filed by the District Consumer Disputes Redressal Forum, Hoshiarpur which partly accepted the complaint and vide award dated 02.12.2016 the petitioner-Firm was directed to return the price of 441 bags of potatoes i.e. Rs.2,64,600/- and further cost towards harassment and litigation expenses was also granted. The operative part of the award passed by the District Consumer Disputes Redressal Forum, Hoshiarpur read thus:

***“7. After considering the overall circumstances and factum as narrated by both the parties in their respective pleadings, it has become clear that the complainant-Deep Singh alleged that in the month of May 2015, he got stored 1087 bags of potatoes with the opposite party and also paid Rs. 20,000/- as part payment of the total rent to be charged by the opposite party, but in the month of November, 2015 when the said potatoes were received back the same were spoiled and not even a single bag was in good condition and accordingly, the complainant asked the opposite party to compensate the complainant, but the opposite party flatly refused and further submitted that the market value of one bag of the potatoes is Rs. 600/- only at that time and as such, due to negligence on the part of the opposite party the complainant is entitled to get recovered the price of 1087 potato bags which comes to Rs. 6,52,200/- along with costs of Rs. 30,000/- and litigation expenses of Rs. 15,000/-.*”**



8. *No-doubt, the factum of deposit of some potato bags was admitted by the opposite party, but the opposite party alleged that the complainant has already received 285 bags out of the total potato bags i.e. 649 and even now the opposite party is yet to recover Rs. 40,430/- from the complainant as storage rent and as such, the complainant is not entitled to recover the price of any potato bag, because the complainant himself has to pay the rent of Rs. 40,430/- and even there is no deficiency on the part of the opposite party because after 15th October of every year there is no responsibility on the part of the opposite party and as such, the complaint is without merits.*

9. *As the complainant alleged that he stored 1087 bags of potatoes, whereas the opposite party alleged that the complainant has deposited only 649 bags out of which he received back 285 bags of potatoes, but as per evidence of the complainant he deposited 193 bags vide receipt Mark C4, 224 bags vide receipt Mark C5, 132 bags vide receipt Mark C6 and 100 bags vide receipt Mark C7 and total bags deposited by the complainant comes to 649 bags as per receipts produced on the file by the complainant himself and if we go through the said four receipts, then it further becomes clear that some figures of potato bags have been deleted by way of putting a line thereon which is as per receipt No. 324, 112 bags + 41 bags and as per receipt No. 319, 55 bags. It means 208 bags*



were received back by the complainant and then the same were deleted on the receipts and as such, we came to the conclusion that there remains only 441 bags of potatoes of the complainant towards the opposite party, which were spoiled due to not proper care and caution on the part of the opposite party which itself is a deficiency in service on the part of the opposite party and, therefore, the complainant is entitled to recover the price of the aforesaid 441 bags of potatoes and so far the concern of rate of the potatoes per bag of Rs. 600/- is related, the same is not denied by the opposite party in his written statement. So, it means that the price of the potatoes is admitted and even the condition of the Cold Store of the opposite party is self-explained from the letter of the Deputy Director, Horticulture Department, the same is Mark C2 which itself shows that a huge quantity of potatoes was lying in the Cold Store of the opposite party in a spoiled condition. So accordingly, we find that the complainant is entitled for recovery of the price of remaining potato bags of 441 @ Rs.600/- per bag which comes to Rs. 2,64,600/-.

10. In view of the above detailed discussion, the complaint of the complainant is partly accepted and the opposite party is directed to return the price of 441 bags of potatoes i.e. Rs. 2,64,600/- and further the opposite party is directed to pay a compensation for harassment to the tune of Rs. 5,000/- and



litigation expenses of Rs. 3,000/- within one month from the receipt of copy of the order, failing which the complainant will be entitled to get interest on the whole amount @ 9% per annum from the date of filing of the complaint till realization. Complaint could not be decided within stipulated time frame due to rush of work. Copies of the order be supplied to the parties free of cost, as per Rules. File be indexed and consigned to the record room.”

3. Aggrieved thereof an appeal No.981 of 2016 was preferred by the petitioner-Firm before the State Consumer Disputes Redressal Commission, Punjab which was dismissed vide order dated 12.05.2017 after dealing with all the contentions raised by the petitioner. The operative part of the order reads thus:

“6. From critical analysis of evidence on the record and going through the evidence of the parties, as put fourth on the record, we find that report of Deputy Director Horticulture concerned Ex.C-2 lends corroboration to the case of the complainant. This report has proved that potatoes were damaged in the cold store of OP. This report is submitted by a public servant, who has no motive to depose falsely. He gave report as per the direction of the Deputy Commissioner concerned. Even, if the cold storage was closed after 15th October of every year, even then it was the duty of the cold store’s owner to issue notice to complainant in that regard.



Such a perishable food item has been spoiled on account of negligence of OP in this case. OP took no step to intimate the complainant to receive back the delivery. There is nothing on the record produced by the OP, other than a mere affidavit of its partner. We attach no significance to the uncorroborated statement of Yarun Khera Kashyap OP's partner contained in his affidavit on the record. On the other hand, there is overwhelming evidence on the file to prove negligence on the part of OP in causing spoilage of stored potatoes at a large scale, even, if rent charges were not paid in time. We affirm the findings of the District Forum holding OP deficient in service. The District Forum correctly passed the order of awarding of compensation to the complainant in this case. No illegality or perversity has been found by us in the order of the District Forum under challenge in this appeal.

7. As a result of our above discussions, we, thus, affirm the order of the District Forum and dismiss the appeal of the appellant."

4. Still not satisfied, a Revision Petition was filed by the petitioner before the National Consumer Disputes Redressal Commission, which was also dismissed vide order dated 21.11.2023 and the orders under challenge were upheld.

5. Hence the present writ petition.

6. Learned counsel for the petitioner contends that the Consumer



Courts have failed to take into consideration that notices were issued by the petitioner clearly stating that 15.10.2015 was the cut-off date upto which the respondent-consumer is to lift his stock failing which the petitioner shall not be liable to make good any loss that may so occur to the stock. It is emphatically agreed that the damage occurred due to non-lifting of the stock and not due to any deficiency on the part of the petitioner.

7. Learned counsel for the petitioner has been confronted with the part of the order where there is a reference to any evidence led by the petitioner to establish the proof of dispatch of any such communication to consumer. He has failed to refer to any evidence placed on record to establish sending of notice to the consumer about lifting of the stock by 15.10.2015. Additionally there is also no evidence on record to show that no damage had been caused to the stock upto the above date and it deteriorated. Assuming that any date is mentioned on the receipt, it is for the cold storage-petitioner to show whether the said date was in reference to the date till which charges had been paid or the same was in the context of date by which stock could be stored and if not lifted, would deteriorate thereafter. The petitioner cannot just take a shelter under a projected date without establishing the significance and impact of the date and establishing the completed communication. Merely taking a plea or an objection in a proceeding is not sufficient to accept a plea of defence if not proved. An obligation is cast upon the party raising a defence, to establish the same. Concededly, no evidence has been led by the petitioner to establish the above plea of defence raised by it. There can be no presumption of



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communication about removal of the stock upto 15.10.2015 and to extend an indemnity for any loss that may be caused thereafter. The burden lay upon the petitioner and the same has not been discharged. The only evidence in the form of an affidavit of Yarun Khara Kashyap has been led and there is no reference to any document which has been exhibited in evidence to establish the plea.

8. This Court does not sit as a Court of Appeal while exercising the power of judicial review and re-appreciate the merits all over again once the submission and evidence had already been examined by not only the District Consumer Disputes Redressal Forum but also in the Appeal by State Consumer Disputes Redressal Commission as well as in subsequent Revision Petition by National Consumer Disputes Redressal Commission. High Court would not substitute its opinion for the findings recorded concurrently by the Consumer Fora unless it is brought on record that the conclusions suffer from any illegality, impropriety or suffer from mis-appreciation of the law or evidence on record.

9. On going through the orders as well as the arguments advanced by the learned counsel for the petitioner, I do not find that the conclusions drawn by the Fora can be held as illegal, improper or suffering mis-appreciation of the law or evidence.

10. In view of the above, the present writ petition is **dismissed in limine.**

(VINOD S. BHARDWAJ)
JUDGE

28.08.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No