

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution: 09.03.2020

Date of Hearing: 25.09.2024

Date of Decision: 06.11.2024

FIRST APPEAL NO.- 74/2020

IN THE MATTER OF

SAURAJ SINGH,

S/o LATE SH. JAI BHAGWAN,

R/o H.No. G-35, MAIN 30 FT. ROAD,

PHASE-III, SHIV VIHAR, KARAWAL NAGAR,

DELHI-110094.

(Through: Mr. Rahul Sharma, Advocate)

Appellant

VERSUS

M/s VOLTAS LTD.,

B-1/J-2, MOHAN CO-OPERATIVE

INDUSTRIAL ESTATE,

MATHURA ROAD, NEW DELHI-110044.

...Respondent

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Mr. Swaraj Singh, the Appellant in Person

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are as under:

“Concise facts of the complaint sufficient for deciding the case on merit are briefly recapitulated as that the complainant had purchased a VOLTAS Split Air Conditioner (AC) manufactured from M/s. Sharma Enterprises Delhi on 07.06.2014 and got the same installed at his residence by mechanic of OP2. The subject AC had guarantee / warranty of one year on the unit. However, the AC stopped functioning on 15.06.2016 and accordingly complainant lodged a telephonic complaint with OP2 which then sent its technician through OP1 its Authorized Service Centre (ASC) at complainant's house who did repairing and welding of the unit of the indoor machine of the AC and charged Rs. 3,400/- for the same paid by the complainant vide Receipt no. 733 dated 15.06.2016. The warranty was also extended by OP2 for one year. But the subject AC started giving cooling

problem within the extended warranty period on 08.05.2017 when on the complaint by complainant with OP2, its technician on 08.05.2017 and filled gas and charged Rs. 1,000/- which was paid by complainant vide receipt no. 25 and again on technician visit on 10.05.2017 who did gas charging, the complainant paid Rs. 1,100/- vide Receipt no. 37. However, the AC worked for barely a month and again became defected on 13.06.2017 for which a complaint lodged with OP2 whose technician came on 13.06.2017 and repaired the AC. But on 08.08.2017, the AC again started giving problem and on complaint made on 11.08.2017, a technician of OP2 came on 12.08.2017 but could not detect the defect in the said unit. Therefore on another complaint lodged, a technician on 14.08.2017 and refilled the gas on charges of Rs. 400/- paid by complainant on Receipt no. 76 but the subject AC never gave any cooling from 22.08.2017 and nobody came from OP2 or OP1 to repair / rectify the defect therein. The complainant got issued a legal notice to OPs on 15.09.2017 on receipt of which OP2 sent its technician in early November 2017 but he did not cure the defect. The complainant again sent a legal notice dated 04.01.2018 to OPs after which an employee of OP1 called the

complainant asking for job sheet and payment receipt but despite complainant having sent all these necessary documents, no one came from OPs side to replace / change the defective AC despite assurances for which reason complainant had to face inconvenience and discomfort in hot and humid weather. Therefore, the complainant was compelled to file the present complaint against the OPs alleging deficiency of service and prayed for issuance of direction against OPs to replace the defective with a new one along with compensation of Rs. 50,000/-."

2. The District Commission after taking into consideration the material available on record passed the order dated **09.01.2020**, whereby it held as under:

"We have heard the arguments addressed by the complainant. OP2 did not appear to address oral argument despite having been accorded two opportunities in October 2018 and January 2020. However, in view of the settled law, its pleadings shall be considered for the purpose of passing of order. Undisputedly, the subject AC purchased in June 2014 worked uninterruptedly and without any complaint for two years till mid June 2016 as the first complaint admitted by both sides pertaining to malfunctioning of the said unit was

lodged on 15.06.2016. It is also not disputed that the subject AC had a warranty /guarantee of one year which ended on 06.06.2015 and was extended by OP2 for one year from 15.06.2016 to 14.06.2017. The dispute arose due to the subject AC's repeated malfunctioning in terms of no cooling between June 2016 till last repair / service in June 2018 during validity of extended warranty and after expiry of the same for more than 5-6 times when the complainant had lodged repeated complaints and several repair work, welding and gas filling was done by OP1 technicians as ASC of OP2. Out of the complainants made after extended warranty, two were within the warranty period work on the subject AC was undertaking. The allegations of OP2 made in statement before this Forum on hearing held on 02.07.2018 pertaining to the subject AC being located near a drain / nullah due to emission fume from which, the subject AC is repeatedly malfunctioning due to coil burn find no mention in the written statement filed by OP2 subsequently. Further, there is a contradiction in para 3 of preliminary objection and para 4 reply on merits in as much as on one hand OP submits that the warranty of the subject AC expired in June 2015 and on the other hand submitted it had extended the warranty from June 2016 to

*June 2017. The LC report is also silent on the AC installed in near proximity to the alleged drain and states that the outdoor of the AC is installed on the roof top towards western side of the property of complainant and about 400 ft away from the property towards north west is there a 30 feet road with side nullah and further mentions that the service engineer Sanjay Kumar from OP1 of OP2 had taken photographs of the nearby location of the nullah. However, no such photographs have been placed on record by OP2 to substantiate its defence of AC having been malfunctioning due to its bad location / installation leading to repeated copper coil burn. However notwithstanding the same, the subject AC was used by the complainant uninterruptedly for two years which rules out any possibility of a manufacturing defect in the said unit and the warranty on the same had also expired a year ago before the first defect arose in the said AC. But the OP2 extended warranty on the same from June 2016 to June 2017 after which period, the OP2 was well with its right to charge for any repair as is also the settled law passed in catena of judgement, viz **Dinanath Vs Micronas Telecom Nokia Authorised Service Centre III (2017) CPJ 61 (NC)** passed by Hon'ble National Commission on 15.05.2017 which held that*

after warranty period, if the complainant wants to get his appliance repaired, he is supposed to make payment for the same immaterial of the cost to be incurred and OP is not supposed to repair free of cost after expiry of warranty period.

*Hon'ble National Commission in **Godrej GE Appliances Ld. Vs Satinder Singh Sobti 2000 (1) CPR 86 (NC)** held that manufacturer cannot be directed to provide free service after warranty period and complainant cannot claim the same. However, notwithstanding, the settled law, it cannot be ignored that the subject AC malfunction in repeated succession between May 2017 to June 2017 during the extended warranty period through prior to it, it continued working fine between June 2016 i.e. first repair till May 2017 for almost a year as can be ascertained from the pleading of the complainant and also that all complaints between June 2016 till June 2017 were duly attended to by technician OP2. After due application of material placed on record, we are of the consider view that the deficiency of service on the part of technician OPs is only limited to the lame defence taken by it of defect in AC due to close proximity to a drain which it failed to establish and also having failed to repair the AC properly during the extended warranty period, the mitigating*

circumstance only being the fact the AC had already been used without complaint for two year from June 2014 to June 2016 and therefore does not merit replacement. We therefore direct OP1 and OP2 jointly and severally to pay a compensation of Rs. 2,000/- to the complainant towards mental harassment inclusive of litigation charges for having failed to repair the subject AC successfully within extended warranty period and taking lame defence of drain uncorroborated only to misguide this Forum. Let the order be complied by both parties within 30 days from the date of receipt of copy of this order. Let a copy of this order be sent to each party free of cost as per regulation 21 of the Consumer protection Regulations, 2005. File be consigned to record room. Announced on 09.01.2020.”

3. The Appellant/Complainant, aggrieved by the order of the District Commission, has filed the present appeal, for enhancement of the Award stating that the Respondent's actions resulted in both mental and physical harassment, particularly during the hot summer months. The Appellant further claims that the Respondent failed to either repair or replace the defective air conditioning unit. Additionally, the Appellant challenges the Respondent's defense, which attributes the malfunction to the coils being damaged by fumes from a nearby drain—an explanation the Appellant disputes, asserting that no such drain existed in proximity to the unit. Moreover, the Appellant asserts that the AC unit became defective due to

mishandling by unqualified technicians. Based on these arguments, the Appellant seeks the reversal of the District Commission's order.

4. The Respondent, on the other hand, has not appeared on 02.08.2022, 13.02.2023, 18.09.2023, 09.11.2023, 02.05.2024 and 04.07.2024 and has failed to file reply and short written submissions. Therefore, the right of the respondent to file reply and short submissions was closed vide order dated 04.07.2024.
5. We have perused the material available on record and heard the counsel for the Appellant.
6. On perusal of record, we find that in the year 2014, the Appellant purchased an AC from the Respondent seller of the unit. The Appellant submitted that the AC became consistently defective after two years in 2016 and that the Respondent failed to repair the defects for a long-term leading to many requirements of servicing of the AC. The Appellant contends that the Respondent charged the Appellant costs for refilling of gas and welding works. The Appellant submitted that the Respondent was often not responsive in attending to the requirements of the servicing of the AC and that the AC became defective due to the manhandling of unqualified technicians. The Appellant seeks monetary compensation of Rs. 50,000/- for physical and mental harassment caused to the Appellant by the Respondent.
7. Furthermore, the submissions of Appellant have been rejected by the Respondent on the ground that it was the negligence of the Appellant had not gotten the AC serviced for two years, which was the reason for the defect in the unit. Moreover, on the concept of reimbursement, it was ruled by the District Forum that the AC does not warrant replacement as it was functional for two years after the purchase of the AC.
8. Additionally, the Appellant must pay for any cost of repair after the period of warranty has expired. The gas leaks were repaired and the pipes were

welded by the Respondent and a defective coil was repaired by the Respondent and the Respondent must receive payment for the same.

9. It is observed that the Respondent has corroborated false evidence and incorrect details about a nearby drain being the reason for the regular defect in the AC. The case *Godrej GE Appliances Ltd. Vs Satinder Singh Sobti 2000 (1) CPR (NC)* cannot be applied here as the AC was malfunctioning consistently during May 2017 to June 2017, well within the period of extended warranty.
10. The Respondent submitted that the fumes from a nearby drain was the ostensible cause of the repeated malfunction but there was no drain nearby. However, the AC was functional after the first reported defect by the Appellant in June 2016, two years after the purchase of the AC, furthering that the technicians repaired the AC according to the defect and that the technicians were not unskilled, proving that the AC did not malfunction due to the manhandling of the AC by the technicians.
11. Therefore, we have no hesitation in observing that the deficiency in service from the Respondent which is limited to the failure of servicing and repairing the AC during the extended warranty period.
12. However, since the repairs were made in the period of extended warranty, the expenses for the repairs made by the Respondent would not be borne by the Appellant.
13. In light of the facts of this case, we modify the judgment dated 09.01.2020 to the extent that the Respondent is hereby directed to pay compensation of Rs. 10,000/- to the Appellant for the mental agony and physical distress caused during the hot weather. Additionally, the Respondent shall reimburse the Appellant for the cost of repairs carried out on the air conditioning unit during the period of the extended warranty, upon submission and review of the original service receipts.

14. The Respondent is directed to comply with the directions passed in Para 14 of this judgment within 1 month from the date of this judgment, failing which, the Respondent has to pay interest @ 9% per annum on Rs. 10,000/- from 05.12.2024 till actual realization of the amount.
15. Additionally, we modify the order dated **09.01.2020** passed by the ***District Consumer Disputes Redressal Forum (North-East), Nand Nagri, Delhi-110093. Resultantly, the present Appeal stands allowed.***
16. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
17. The Judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
18. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
06.11.2024