

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 315 OF 2017

(Against the Order dated 07/07/2016 in Appeal No. 589/2015 of the State Commission
Maharashtra)

1. M/S. EMTEX MACHINERY PVT. LTD.

THROUGH ITS AUTHORISED REPRESENTATIVE, SH.
BHUVNESH CHANDRA SORAL, OFFICE 184, DDA
OFFICE COMPLEX JHANDEWALAN EXT. 1, CYCLE
MARKET

NEW DELHI-110055

.....Petitioner(s)

Versus

1. M/S. M.I.C ENGINEERS PVT. LTD.

PLOT NO. H-1, 1-Q, M.I.D.C. KUPWARD TAJ MIRAJ
DISTRICT-SANGLI

MAHARASHTRA

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER :

FOR THE PETITIONER : MR. SHUBHAM SAGAR, PROXY
COUNSEL

FOR THE RESPONDENT :

FOR RESPONDENT : NONE APPEARED

Dated : 11 June 2024

ORDER

1. This Revision Petition is filed under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against order dated 07.07.2016, passed by the State Consumer Disputes Redressal Commission, Maharashtra (State Commission) in FA No. 589/2015 wherein, the Appeal by the Petitioner allowed in part and reduced the compensation from Rs.2,00,000 to Rs.1,00,000 and affirmed the rest of Order dated 23.01.2015 passed by the District Consumer Disputes Redressal Forum, Sangli ("District Forum") in CC No. 84 of 2014 wherein the complaint was allowed.

2. For convenience, the parties are referred to as placed in the original Complaint filed before the District Forum. The Complainant-Jafar Mohammad Isak Khan is a Prop. Of "M/s. M.I.C. Engineer Pvt. Ltd. through its Proprietor is referred to as the Complainant. Meanwhile Emtex Machinery Pvt. Ltd. through its Authorized Representative is referred to as the Opposite Party (OP for short).

3. Brief facts of the case, as per the Complainant, are that he purchased a radial drill machine, Model No. 2, 3050 x 16/1, from the OP on 29.11.2011 for Rs.8,00,000/- for his professional use. The machine was installed in November 2011, but it allegedly did not

function properly from the outset. In September 2012, the Complainant contacted the OP on phone and had written letters, requesting that they inspect and repair the machine. However, OP failed to repair it. The OP sent a technician to the Complainant's company, but the technician did not fix the machine and identified an issue with the electrical fitting, suggesting that an electrician should repair it. Despite this, the OP neither sent an electrician nor repaired the machine, resulting his work coming to halt and substantial financial loss. During the initial test, oil was leaking from the defective machine, and an electrical fault was identified by the OP's technician. He also pointed out a crack in the main shaft, which the technician agreed to replace. On multiple occasions, he sent photographs and informed over phone about the unrepaired machine, but OP still did not fix it. He alleged deficiency in service by OP and filed Consumer Complaint No. 84 of 2014 before the District Forum, seeking taking back of the radial drilling machine and to pay the machine's cost of Rs.8,00,000/- with interest and Rs.7,50,000/- as compensation along with interest 15% per annum. Top of Form

4. In reply, the Opposite Party (OP) denied the Complainant's claims and contended that he purchased the machine for business purposes and therefore cannot be considered a consumer under the Act. He was aware of the firm which manufactured the machine but did not make them party, rendering the complaint liable for dismissal for 'Non-Joinder of Necessary Parties.' OP denied any deficiency in service, stating that it never received his letter dated 17.10.2012. OP requested him to send detailed information and multiple photos of the alleged crack in the machine. However, he sent only one photo, making it difficult to assess. On 24.01.2013, OP asked for 3-4 photos from different angles, but response was not prompt. On 01.07.2013, he sent three photos and threatened legal action. Despite this, the OP informed the manufacturer about the issue on 11.07.2013. The OP asserted machine is not defective and it was used from December 2011 to September 2012. Thus, his claim of a daily loss of Rs. 5,000/- from 12.03.2013 is false.

5. The learned District Forum vide Order dated 23.01.2015 partly accepted /allowed the complaint as follows:

"ORDER:

(1) The complaint application of the complainant is partly allowed.

(2) The respondent shall take back the radial drilling machine model no. 2,3050 x 16/1, from the complainant and shall pay entire cost of the machine Rs.8,00,000/- (Rupees Eight Lakhs).

(3) Interest at 9% per annum shall be paid on above amount from the date of application till realization.

(4) As the machine is unused from many days respondent shall pay Rs. 2,00,000/- (Rupees Two Lakhs) to the complainant towards compensation. And also to pay interest at 9% per annum on said amount from date of application till realization.

(5) The respondent shall pay Rs. 25,000/- to the complainant towards cost, physical and mental harassment.

(6) This order shall be complied within 45 days.

(7) If the order is not complied within 45 days the complainant can file recovery proceeding against the respondent u/s.25 & 27 of the Consumer Protection Act. (8) True copies of this order shall be provided to both the parties. (Extracted from True Translated Copy)

6. Being aggrieved by the District Forum Order, the OP/ Appellant filed Appeal No. 589/2015 and the State Commission vide Order dated 07.07.2016, partly allowed the Appeal of the OP and modified Clause 4 of the operative part of the impugned order, reducing the awarded quantum of compensation from Rs. 2 Lakhs to Rs. 1 Lakh. The rest of the order was affirmed. The relevant portion of the Order is reproduced as follows:-

“.... Particularly, the opponent failed to show that the complainant has any other alternative occupation for his livelihood to substantiate contentions in their written version. So also, when a complainant spent Rs.8 lacs for purchase of machine, it was pertinent on the part of the consumer to insist that machine shall be maintained periodically by after-sale service. It was not done. Impugned order directing the refund of price along with interest cannot be considered as faulty or unreasonable. However, compensation of Rs.2 lacs awarded by the District Forum appears bit excessive. It can be reduced to reasonable amount of Rs.1 lac. Rest of the order is confirmed. The impugned order needs to be modified to that extent. Hence, the order.

ORDER

1) Appeal is partly allowed.

2) Clause 4 of the operative part is modified as below:

"Appellant/original opponent shall pay Rs.1 lac to the respondent/original complainant instead of Rs.2 lac along with interest @9% from the date of impugned order i.e. 23/01/2015 till its realization towards compensation as the machine remained unused for a considerable time."

3) Rest of the order is confirmed as it.

4) One set of appeal compilation be retained. Rest be returned to the appellant forthwith...."

7. As against the Impugned Order dated 07.07.2016 of the State Commission, the Petitioner/OP filed this Revision Petition.

8. Upon notice, the Respondent/ Complainant did not file reply and failed to appear on several dates. Vide order dated 22.11.2023 it was notified that, in the event of non-appearance on the next date of hearing, he would be placed ex-parte. As he still did not appear, vide order dated 20.02.2024, the Respondent was placed ex-parte.

9. Heard the Learned Counsel for the Petitioner. Perused the entire material on record *inter-alia* Orders of both the fora.

10. It is undisputed that the Complainant purchased a Radial Drilling Machine Model “Z 3050 x 16/1” from the OP for Rs.8 Lakhs. It was installed in November 2011 and allegedly, it did not function properly from the outset. In Sept 2012, he informed the OP about the faulty machine, especially a crack in the main shaft. The technician sent by the OP did not repair it, citing electrical fault. However, as OP did not send an electrician, his work got halted. He took pictures of the machine from different angles and sent them to the OP. Despite notifying about defective machine, the OP neither repaired nor reimbursed the cost. While the manufacturing defect is alleged, the Complainant did not make the firm which manufactured the machine as a party. The OP received a letter on 17.10.2012 for more inputs and photos of crack. On 24.12.2012, OP asked him to provide 3-4 photos from different angles. He sent 3 photos only on 01.07.2013. The OP notified the manufacturer on 11.07.2013. The OP asserted that it did not supply a defective machine and it was used from December 2011 to September 2012. Also, there is nothing on record to indicate there was any contract of warranty or maintenance contract between the parties.

11. As regards addressing the core issue of manufacturing defect, the question is whether the Complainant should approach any recognized Govt. authority for inspection in accordance with Section 13 of the Act? An excerpt from Section 13 pertaining to manufacturing defects is reproduced below:-

13. (1) Procedure on admission of complaint (1) The District Forum shall, [on admission of a complaint] if it relates to any goods –

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

12. Examination of the material on record reveals that no expert opinion from an authorized laboratory or recognized Govt authority was procured or presented by Respondent/Complainant to substantiate the claim of a ‘manufacturing defect’ in the machine. It stands uncontested that the drill machine was used by him from Dec 2011 to Sept 2012. There lacks substantial and definitive evidence supporting the claim that the machine was inadequately repaired by OP or that defects persisted within the warranty terms and conditions.

13. In the instant case, the learned District Forum and the learned State Commission proceeded to return a finding of inherent manufacturing defect without proceeding under section 13(1)(c) of the Act and without specifying that the machine in question suffered from the defects specified in the complaint are whether any of the allegation in the complaint where being a manufacturing defect was proved as required. The fora have proceeded to award relief in respect of deficiency in service without the procedure under section 13(1)(c) of the Act being satisfied. Therefore, the conclusion that the Complainant is entitled to get relief to the cost of the machine on the ground that there was deficiency in service and adoption of unfair trade practice cannot be accepted.

14. Considering this, no service deficiency is established under Section 13(1)(c) of the Act or in the repairs undertaken by the OP, rendering them accountable. The burden to prove such a defect rested with the Complainant. Without an expert opinion, these conclusions remain speculative and reliant on assumptions. In any case, the manufacturer of the machine is not party to the case and the OP is merely a seller, to be held liable for manufacturing defect. Thus, the orders of the learned State Commission and learned District Forum are unsustainable in law and, therefore, liable to set aside.

15. In view of the foregoing discussions, the Revision Petition is allowed. The order of the learned State Commission is set aside and the Complaint before the District Forum is dismissed.

16. If any amount is deposited by the Petitioner before this Commission or the State Commission, the same may be released along with accrued interest, if any, to the Petitioner.

17. There shall be no order as to costs.

18. All other pending Applications, if any, stand disposed of.

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AVM J. RAJENDRA, AVSM VSM (Retd.)

PRESIDING MEMBER