

PRESENT
SRI A.K. NATH
PRESIDENT
DISTRICT CONSUMER REDRESSAL FORUM
NORTH TRIPURA, KAILASHAHAR
AND
SRI KISHORE KUMAR GHOSH, MEMBER
CASE NO. CC 17/02
FINAL ORDER DATED: 5TH JANUARY, 2018

Today is fixed for order.

Complainant Sri Abdul Mallik is present. Learned counsel of the OP is also present.

On the last date this Forum heard the complainant and the learned counsel of the OP regarding the maintainability of the case.

While the complainant submitted that his case is maintainable in this Forum, learned counsel of the OP Mr. R. Chakraborty strongly argued the instant case is not maintainable in this Forum since the complainant is not a consumer. In support of his argument learned counsel Mr. Chakraborty submitted a copy of citation passed by *National Consumer Disputes Redressal Commission in First Appeal No. 66 of 1990*. Mr. Chakraborty submitted that the instant case is similar in nature with the case referred to and as such, he submitted that the instant case may be dismissed being devoid of merit on the ground of maintainability.

The case of the complainant is that for the purpose of buying one car of brand Tata Motors having model No. 709 he made advance payment of Rs. 10,000/- to the OP, but thereafter due to some genuine problem and difficulty he could not make payment of the full amount and asked for return of Rs. 10,000/- from the OP. But the OP has not been paying him back the amount. From the year 2010 on many occasions he proceeded to Agartala from Kailashahar and approached the OP to get back the amount, but the OP denied to pay him back the amount. Ultimately on 02.12 2014 he submitted written prayer to the OP, but to no good and under that situation the complainant was compelled to file the instant case against the OP to get back the amount of advance along with adequate compensation.

On receipt of the notice the OP appeared before this Forum and filed written objection, stating that the complaint filed by the complainant is not maintainable as the complainant is not a consumer within the meaning of Consumer Protection Act, 1986. It is further stated with the written objection there is no cause of action for institution of the present suit, more so complaint is barred by limitation. It is further contended in the written objection that the claim

hired file

of the complainant is baseless and he is not entitled to get any sort of compensation and hence, the complaint petition filed by the complainant should be dismissed on the ground of maintainability.

We have perused the record.

Section 2 (1)(d) defines the expression "Consumer" thus:-

"(d) consumer means a person who, buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for re sale or for any commercial purpose; or


(ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised or partly paid and partly promised or under any system of deferred payment, when such services are availed of with the approval of first mentioned person.

In order to satisfy the requirements of clause (i), there must have been a transaction of buying of goods for consideration. The definition contemplates that pre-existence of a completed transaction of sale and purchase and the person who has merely entered into an agreement of purchase of goods will not fall within the scope of the said definition.

Here, in the instant case the complainant has only paid an amount as advance and he has not completed the transaction and thereby he has not bought goods from the OP and as such, he cannot be termed as consumer.

Moreover, the complainant has filed the instant complaint on 17.02.17. The cause of action of this complaint arose on 02.12.2014 when the complainant last made a written prayer to the OP and the OP denied to pay him the money back. As per section 24A of the Consumer Protection Act a complaint has to be filed within 2 years from the cause of action. In the case in hand, as the complainant has filed the complaint after two years since the date of cause of action, the complaint petition is also barred by limitation.

In the light of the foregoing discussion, we hold that the complainant is not a 'consumer' as defined in the Act and that the complaint petition filed by him is not maintainable in law and also


Dated: 17.02.2017
[Signature]

being barred by limitation.

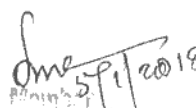
Hence, the instant case is dismissed being not maintainable and barred by limitation.

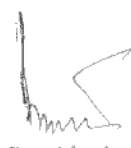
The case is accordingly disposed of on contest.

Furnish copy of this order to both the parties free of cost.

Make necessary entry in the TR.

ANNOUNCED


5/1/18
President
DISTRICT FORUM
Unakoti, Tripura, India


5/1/18
President
DISTRICT FORUM
Unakoti, Tripura, India