

ITEM NO.14

COURT NO.5

SECTION XVII

S U P R E M E            C O U R T   O F   I N D I A  
R E C O R D   O F   P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil)...../2012  
CC 10127/2012

(From the judgement and order dated 04/11/2011 in RP No.2833/2011,  
of The NATIONAL CONSUMERS DISPUTES REDRESSAL COMMISSION, NEW DELHI)

B.SRINIVASA RAO

Petitioner(s)

VERSUS

M.D. TAFE ACCESS LTD.&amp; ANR

Respondent(s)

(With appln(s) for c/delay in filing SLP,c/delay in refiling SLP and  
office report)

Date: 05/07/2012      This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s)

Mr. Kashi Vishweshwar, Adv.

Ms. A. Sumathi,Adv.(Not present)

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E R

Delay condoned.

The petitioner, who purchased a luxury car i.e. Skoda  
Laura      from respondent No.1 in January, 2007 and indulged  
in      frivolous      luxury      litigation,      which      has      consumed  
substantial time of the three Consumer Forums and after  
hearing the learned counsel and perusing the record, we are  
convinced that this petition filed against the order passed

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by the National Consumer Disputes Redressal Commission (for  
short, 'the National Commission') deserves to be dismissed  
at the threshold with cost.

The complaint filed by the petitioner under Section 12 of  
the Consumer Protection Act, 1986 with the allegation that  
the air conditioner of the car supplied by respondent No.1

was defective from the very beginning and as such he was entitled to full cost of the car as compensation along with costs was dismissed by IV Additional District Consumer Disputes Redressal Forum, Bangalore by a detailed and well-reasoned order, the relevant portion of which is extracted below:

"The complainant except by saying that the AC fitted to his car was having manufacturing defect has not produced any expert opinion or evidence to prove the said allegation. The complainant it appears on the basis of the fact of cleaning the filter, replacement of the compressor and with the allegation that the AC starts functioning after the car had run 06 to 10 Kms claimed to have proved the defect in the AC and to draw inference on the basis of such allegations and for replacement of car. First of all, we find fun in the claim of the complainant in asking for replacement of the car itself for the defect if any in the AC. Because AC fitted in the car is not an inseparable part of the engine which either affects the smooth running of the engine or running of the car. AC is an additional fitting is a separate component. It grieved to the complainant can only ask for replacement of the AC but not the car itself. Therefore, the prayer for the replacement of the car is redundant. Then coming to the allegations of the complainant about defect in the AC is concerned as rightly pointed out by the first OP the complainant has not proved having had complained to the Ops about at any defect in the AC when the gave the car for free services, that itself speaks to falsehood of the complainant that the AC from the day one is mal-functioning. As per

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the document produced by the complainant for the first time on 19/05/2007 the AC blower was cleaned and we should also bear in mind here by that time warranty period had expired and such cleaning and other services were chargeable. So cleaning of AC blower is not for any manufacturing defect but for servicing it of its use for considerable time. Therefore, when car had run 16,191 kms then the blower had been cleaned on that day which is nothing but a usual service and not any defect. Similarly on 04.08.2007 Air Filter was replaced which was costing Rs.400/- that replacement was because of wear and tear. Then on 19.01.2008 AC pollen filter was cleaned and cleaning is nothing but periodical service and when the AC was used till the vehicle had run 39,627 kms it is quite natural, such periodical cleaning of the AC also is a part of that servicing. Then on 19.08.2008 AC fan was replaced probably due to some defect in the fan if there was that defect in the fan earlier the complainant could have asked for replacement. Therefore, when the car had run for 57,777 kms we can think of the life of the AC also requiring replacement and that too it has been done by the Ops free of cost. It is not the

complainant's case, after that replacement the AC continued to mal-function. The complainant thereafter did not make any complaint to defect in the AC. Then on 02.06.2009 AC compressor was replaced that too has been done by the Op free of cost and the car was used for running 66,763 kms, then the last job sheet is of 24.06.2007 by that time, the car had run 67,725 kms and if there were to be any problem in the AC it can not be said that it was due to manufacturing defect. By this time more than 2/1/2 years had lapsed and car was used for running more than 67,000 kms. The complainant himself has admitted that the wanted luxurious facilities therefore purchased this luxury car that means to say he was using this Air Conditioner in the car, at all time and if it was used till the car and run more than 67,000kms. It is quite natural that some mal-functioning and even replacement of certain parts is inevitable and that can not be said as manufacturing defect. The complainant with the knowledge of these facts and maximum use now has come with the complaint of manufacturing defect in the AC which is not bonafide one. Therefore, the complainant in our view has failed to prove any manufacturing defect in the AC fitted to the car and therefore, complaint is bereft of facts

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and is liable to be dismissed."

The appeal preferred by the petitioner against the order of the District Forum was dismissed by the Karnataka State Consumer Disputes Redressal Commission on 29.7.2010 and again on 17.2.2011 for non-prosecution. The application filed by the petitioner for restoration of the appeal was also dismissed for non-prosecution. Another application filed by the petitioner with the prayer for recall of the earlier orders was dismissed by the State Commission because his counsel could not put forward any convincing argument to justify the non-appearance of his Advocate on earlier occasions.

The revision filed by the petitioner was dismissed by the National Commission on the ground that the miscellaneous applications filed before the State Commission were not maintainable. On merits, the National Commission agreed with the District Forum that the car did not suffer from any manufacturing defect and there was no deficiency in service.

In our view, the reasons assigned by the District Forum

for holding that there was no deficiency in service are legally correct and the National Commission did not commit any error by dismissing the revision on merits.

It is

beyond the comprehension of any person of ordinary prudence as to how the appellant could use the car for thousands of kms. with a defective air conditioner and yet he did not

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make a complaint for almost three years. Therefore, we do not find any reason to interfere with the discretion exercised by the three Consumer Forums not to entertain the petitioner's complaint.

With the above observations, the special leave petition is dismissed. The petitioner is saddled with costs of rupees twenty five thousand which shall be deposited by him with the Supreme Court Legal Services Committee within a period of one month from today.

(Parveen Kr.Chawla)  
Court Master

(Phoolan Wati Arora)  
Court Master