

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(Civil) No(s).10364/2006

RAVINDER RAJ

Petitioner(s)

VERSUS

M/S. COMPETENT MOTORS CO. PVT. LTD.&ANR.

Respondent(s)

WITH SLP(C) NO. 9739-9740 of 2009

O R D E R

Two Special Leave Petitions, being SLP(C)

Nos. 10364 of 2006 and 9739-9740 of 2009, have

been filed against the judgment and order dated

19th July, 2005, passed by the National Consumer

Disputes Redressal Commission at New Delhi in

Revision Petition No.1485 of 2005 and the order

dated 7th August, 2008 passed by the said

Commission in Revision Petition No.2974 of 2005

filed by the respondent No.1, Maruti Udyog

Limited and also M.A.No.599 of 2006 in Revision

Petition 1533 of 2005 filed by the respondent

No.2, namely, Competent Motors Co.Pvt.Ltd., the

dealer.

2. The petitioner, Mr. Ravinder Raj, who is

appearing in person, applied to Maruti Udyog

Ltd.in 1985-1986 for booking a Maruti Car-800 and

2

deposited a sum of Rs.10,000/- as initial/advance

booking payment. On 15th July, 1988, the

respondent No.2 informed the petitioner by letter

of even date that his Maruti Car Allotment

No.0802-N-04051 had matured for delivery and

requested the petitioner to make payment of the

full amount of the price of the car for delivery

of the vehicle after completing the necessary formalities.

Pursuant to the above letter, the petitioner on 16th February, 1989, paid a total

amount of Rs.78,351.05 which covered the price of the vehicle, insurance charges and other minor charges, including registration charges.

There

is no denial that the petitioner had opted for a cream colour vehicle.

3. On 1st March, 1989, there was an increase in the excise duty payable, causing a price hike

of about Rs.6710.61. On 18th March, 1989, the petitioner received a letter from the respondent

No.2 to deposit the excess amount payable as excise duty, and, accordingly, the petitioner did so under protest on 16th February, 1989.

4. The official billing in respect of the car was done on 5th April, 1989.

5. The petitioner has contended that the delay in delivery of the vehicle to him by the

3

respondents was not occasioned by any failure or negligence on his part and

the liability to pay

the increased amount on account of increase in excise duty, was not that of the petitioner, but

of the respondents concerned.

The petitioner,

therefore, applied to the District Consumer Forum

for a direction upon the respondents to bear the

increase in excise duty resulting in increase in

the price. Such a prayer was rejected by the

District Consumer Forum. The petitioner then

went to the State Forum which allowed the

petitioner's claim. Against the said order,

the respondents went before the National

Commission, which reversed the order passed by

the State Forum.

It is against the said order

that the petitioner has come to this Court by way of this Special Leave Petition.

6. As indicated hereinabove, the main ground urged by the petitioner is that since he was not responsible for the delay in the delivery of the vehicle, he should not be made to bear the increase in the price, particularly, when from the documents, as indicated by him, the vehicle of the colour chosen by him was available with the respondents. He, therefore, submitted that the order of the National Forum was erroneous and

4

was liable to be set aside.

7. Appearing for the dealer, M/s.Competent Motors Co.Pvt.Ltd., Ms. Sapna Sinha, learned advocate pointed out that even from the receipt of the amount paid by the petitioner on 16th February, 1989, it will be clear that the amount paid was subject to the price prevailing on the date of the invoice. According to learned counsel, since the bill was dated 5th of April, 1989, it was the petitioner who was required to bear the increase in price on account of the increase in excise duty. Furthermore, she reiterated that the colour which the petitioner had wanted was not available at that point of time, although, from the documents it would appear that the same was available. According to her, the said documents only indicated that these were the colours in which the cars were being manufactured and did not really indicate the fact that such a colour was available on a particular date.

8. According to her, there was no negligence on the part of the dealer since having received

intimation about the readiness of the vehicle,
the respondent No.2 had immediately informed the
petitioner, but unfortunately, in the meantime,

5

the price had risen. According to the learned
counsel, the respondent No.2 could not,
therefore, be made liable for the increase in the
price.

9. Mr. Dayal, appearing for the the Maruti
Udyog Limited, while adopting the submissions
made by Ms. Sinha, also added that having regard
to Section 64A of the Sale of Goods Act, 1930,
the burden of any increase in the price by way of
additional taxes would have to be borne by the
customer and not by the manufacturer.

He also

reiterated that since there was no negligence on
the part of the manufacturer in making the
vehicle available to the petitioner and since no
mala fide intention had been proved, the
petitioner would have to bear the increase in the
prices.

10. Having considered the submissions made, we
may refer to the letter of 15th July, 1988, which
had been written on behalf of the respondent No.2
to the petitioner indicating that the
petitioner's allotment No. had matured for
delivery. In the second paragraph of the letter,
the respondent No.2 requested the petitioner to
complete the modalities for effecting delivery of
the car against the allotment number. It was

6

categorically indicated that on receiving
payment, delivery would be effected in the
sequence of priority. Coupled with the above is
the proforma invoice dated 15th July, 1988, where
it was further indicated that the price

prevailing at the time of billing would be applicable, despite the fact that the details of the price of the vehicle were set out in the said invoice.

11. As indicated hereinabove, even in the receipt given to the petitioner for payment of the amount in the proforma invoice, it had been indicated that the prices prevailing on the date of billing would apply.

12. In this case, the billing was done on 5th of April, 1989. In the absence of any evidence of any deliberate intention on the part of the respondents to delay delivery of the vehicle, we are unable to agree with the petitioner that the increase in price has to be borne by the respondents. The petitioner had relied on two decisions of this Court in the case of Omprakash Vs. Assistant Engineer, Haryana Agro Industries Corpn. Ltd., 1994(3)SCC 504 and Mohinder Pratap Dass Vs Modern Automobiles and Anr. 1995(3)SCC 581, on the same issue. The said two decisions

7

in our view are not applicable to the facts of this case, on account of the fact that in the said two matters patent deficiency in the service had been found by the Court and it was also pointed out that there was no satisfactory explanation for the delay in delivery of the goods to the consumers, which is not the case as far as this particular matter is concerned.

13. Furthermore, having regard to the provisions of Section 64A(1)(a) of the Sale of Goods Act, 1930, it is the liability of the petitioner to pay the extra price when the excise duty had been enhanced prior to the delivery of

For Petitioner(s)

Petitioner-In-Person.

For Respondent(s)

Mr. Nikunj Dayal, Adv.
Mr. Pramod Dayal, Adv.

Ms. Sapna Sinha, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

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Dr. V.P. Appan, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Special Leave Petitions are dismissed
in terms of the signed order.

There will, however, be no orders as to
costs in both the matters.

10

(Sheetal Dhingra)
Court Master

(Juginder Kaur)
Court Master

[Signed reportable order is placed on the file]