

STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND
DEHRADUN

Date of Admission: 15.03.2024
Date of Final Hearing: 30.05.2025
Date of Pronouncement: 10.06.2025

SC/5/A/5/2024

Escorts Kubota Ltd. (Formerly Escorts Ltd.)
having Registered Office at:
15/5, Mathura Road, Faridabad – 121003, Haryana
(Through: Sh. Parveen Kumar, Advocate)
..... Appellant

Versus

1. Sh. Jawahar Singh Parihar S/o Sh. Gopal Singh Parihar
R/o Durga Colony, Chhoti Mukhani
Haldwani, District Nainital
(Through: Sh. Vaibhav Kinger, Advocate)
2. Channel Motors
Authorised Dealer, Escort Construction Equipment
through its Representative / Owner
Office at Opposite Dainik Jagran, Rampur Road
Haldwani, Nainital
(Through: None)
..... Respondents

Coram:
Ms. Kumkum Rani, **President**
Mr. B.S. Manral, **Member**

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal under Section 41 of the Consumer Protection Act, 2019 has been directed against the impugned judgment and order dated 16.12.2023 passed by learned District Consumer Disputes Redressal Commission, Nainital (hereinafter to be referred as “The District Commission”) in consumer complaint No. 110 of 2022, styled as

Sh. Jawahar Singh Parihar Vs. Channel Motors and another, wherein and whereby the consumer complaint was allowed ex-parte, jointly or severally, against the appellant and respondent No. 2 (opposite parties to the consumer complaint), directing them to supply breaker and piping kit in question to respondent No. 1 / complainant within a period of 45 days'; besides to pay Rs. 2,00,000/- to respondent No. 1 / complainant for deficiency in service in not supplying breaker and piping kit and supplying the defective machine; Rs. 50,000/- towards mental agony and Rs. 20,000/- towards litigation expenses. It was also directed that in case the appellant and respondent No. 2 fail to supply the breaker and piping kit to respondent No. 1 / complainant within the stipulated period and fail to make the machine in working condition by sending their mechanic / technician / engineer on the post on their own expenditure, they would be liable to refund the entire cost of the machine amounting to Rs. 33,61,774.41/- to respondent No. 1 / complainant together with interest @8% p.a. from 09.08.2021, i.e., the date of payment of price of the machine till actual payment. It was further directed that upon receipt of entire amount, the appellant and respondent No. 2 would be entitled to take back the machine from respondent No. 1 / complainant.

2. The facts of the case, in brief, as stated in the consumer complaint, are that on requirement of respondent No. 1 / complainant, the respondent No. 2 / opposite party No. 1 offered a machine (Model No. Digmax II with HD tyres) along with a breaker and piping kit to the complainant, to be installed in mines at District Bageshwar. The total sale consideration amount was agreed as Rs. 33,61,778.41/-, pursuant to which, the complainant had paid Rs. 1,00,000/- to respondent No. 2 for booking the said machine with breaker and piping

kit on 30.07.2021 as advance. On 09.08.2021, the complainant made further payment of Rs. 32,61,778.41/- through demand draft No. 551935. The respondent No. 2 assured to deliver breaker and piping kit within 15 days' from the said date, but the same was not delivered. Upon complaint made by the complainant with respondent No. 2, false promises were made by its representative to deliver the breaker and piping kit as soon as possible and further assured that proper functioning of the delivered machine is the responsibility of respondent No. 2. Thereafter, the respondent No. 2 sent an authorised technician to check the defect in the machine at the expense of the complainant, but nothing was done. However, the said technician suggested that some parts of the machine have manufacturing defect, which need to be changed for proper functioning of the machine. Through letter dated 03.06.2022, the complainant asked the respondent No. 2 to cure the defect and deliver the articles to the complainant at the earliest. The respondent No. 2 has already taken an amount of Rs. 28,04,712/- from the complainant. The respondent No. 2 has already taken sum of Rs. 5,57,066.41/- for the breaker in advance, but has failed to deliver the same to the complainant till date, causing huge losses to the complainant. Thereafter, a legal notice dated 20.07.2022 was sent by the complainant through his counsel to respondent No. 2, but the needful was not done. Therefore, the consumer complaint was filed by the complainant before the District Commission.

3. The District Commission issued notice to the appellant and respondent No. 2, who were opposite parties to the consumer complaint. The perusal of the impugned judgment and order reveals that the registered notice sent to the appellant was received back by the District Commission with the "left" remark and thereafter it was

ordered by the District Commission that the service of notice upon the appellant be got effected through e-mail and WhatsApp, which was done by the complainant. The registered notice sent to respondent No. 2 was also received back by the District Commission with the remark “inspite of repeated visit, office found close” and the service of notice upon respondent No. 2 was also got ordered to be got effected through e-mail and WhatsApp. However, the appellant and respondent No. 2 (opposite parties) did not turn up before the District Commission and consequently, the District Commission vide order dated 24.04.2023 proceeded the consumer complaint ex-parte against them and allowed the consumer complaint vide impugned judgment and order dated 16.12.2023 in the above terms. Feeling aggrieved by the impugned judgment and order, the appellant has preferred the instant appeal.

4. We have heard arguments advanced by learned counsel for the appellant as well as learned counsel for respondent No. 1 and also perused the record. We have also perused the written arguments filed on behalf of respondent No. 1. Vide order dated 07.05.2025, it was directed that the appeal shall proceed ex-parte against respondent No. 2.

5. Learned counsel for the appellant submitted that the impugned judgment and order was passed ex-parte by the District Commission and the appellant did not get opportunity to file the written statement before the District Commission in order to rebut the averments made in the consumer complaint. Learned counsel also submitted that the appellant was never served with the notice of the consumer complaint, as the appellant had closed the business at the given address since January, 2016. His further submission is that the appeal should be

allowed and the matter should be remanded back to the District Commission for decision afresh on merit, after providing proper opportunity of hearing to the parties. Learned counsel further submitted that the principle of natural justice envisages that every party has a right to be heard.

6. We find substance in the arguments advanced by learned counsel for the appellant. We find from record that impugned judgment and order has been passed by the District Commission ex-parte against the appellant. The appellant did not get opportunity to file written statement before the District Commission against the consumer complaint filed by respondent No. 1 / complainant. It is settled principle of law that all the parties involved in the matter in question should get proper opportunity of being heard. It is further settled principle of law that substantial justice should prevail over technical one. It would not be out of place to mention here that during the course of arguments, learned counsel for respondent No. 1 agreed for remand of the case to the District Commission for decision on merit.

7. We have noticed that the appellant could not file written statement before the District Commission and the appellant did not get opportunity for adducing evidence on affidavit. Thus, the appellant was deprived from getting opportunity of hearing. In the case of **Topline Shoes Ltd. Vs. Corporation Bank** reported in **II (2002) CPJ 7 (SC)**, Hon'ble Apex Court has observed that "it is for the Forum or the Commission to consider all facts and circumstances along with the provisions of the Act providing time frame to file reply, as a guideline, and then to exercise its discretion as best it may serve the ends of justice

and achieve the object of speedy disposal of such cases keeping in mind the principle of natural justice as well.”

8. Thus, we are of the view that the consumer complaint should be decided on its merit, after providing opportunity of hearing to the parties. Therefore, we set aside the impugned judgment and order dated 16.12.2023 passed by the District Commission. The appellant shall file the written statement before the District Commission on or before the date fixed for appearance of the parties before the District Commission and thereafter the District Commission shall afford a reasonable opportunity to the parties to adduce evidence in support of their case. It is worth mentioning here that respondent No. 2 / opposite party No. 1 neither appeared before the District Commission, nor challenged the impugned judgment and order by filing appeal against the same and has also turned up in the present appeal filed by the appellant.

9. For the reasons aforesaid, this appeal succeeds and is hereby allowed. Impugned judgment and order dated 16.12.2023 passed by the District Commission is set aside. The matter is remanded back to the District Commission for deciding the consumer complaint on its merit. The parties are directed to appear before the District Commission on 07.07.2025, by which date, the appellant shall positively file the written statement before the District Commission. The District Commission shall provide proper opportunity of hearing to the parties and proceed to decide the consumer complaint expeditiously according to law. The amount deposited by the appellant with this Commission, be released in its favour. No order as to costs.

10. A copy of this Order be provided to all the parties free of cost as mandated by the Consumer Protection Act, 1986 / 2019. The Order be uploaded forthwith on the website of the Commission for the perusal of the parties. A copy of this Order be sent to the concerned District Commission for record and necessary information.

11. File be consigned to record room along with a copy of this Order.

(Ms. Kumkum Rani)
President

(Mr. B.S. Manral)
Member

Pronounced on: 10.06.2025