

**H. P. STATE CONSUMER DISPUTES REDRESSAL
COMMISSION SHIMLA.**

**First Appeal No. SC/2/A/227/2024
Date of Presentation : 04.10.2024
Order Reserved on : 15.12.2025
Date of Order : 05.01.2026**

**Nishant Sharma,
S/o Sh. Yash Pal Sharma, R/o Old Butel Building,
Middle Bazar, Shimla, H.P.**

.....Appellant/ Complainant

Versus

- 1. Kiran Stationary Mart,
Lower Bazar, Shimla-02, H.P.
Through its Manager.**
- 2. Samsung, Registered Office Address: 6thFloor,
DFL Centre, Sansad Marg, New Dehli-110001,
CIN:U31900DL1995PTC071387,
Through its authorized person.**
- 3. HIMTECH Electronics Address:
New Aggarwal Building, Shimla-171006,
Through its Authorized proprietor.**

...Respondents/Opposite Parties

Coram

**Hon'ble Justice Inder Singh Mehta, President
Hon'ble Ms. Yogita Dutta, Member**

Whether approved for reporting?¹ Yes

For the Appellant : Mr. Amandeep Singh, Advocate.

For the Respondents No.1&3: None.

**For the Respondent No.2: Ms. Prachi Panwar, Advocate vice
Mr. Dhiraj Kanwar, Advocate.**

¹Whether reporters of the local papers may be allowed to see the order?

Per Ms. Yogita Dutta, Member

ORDER

Instant appeal is arising out of the order dated 06.08.2024, passed by Learned District Consumer Commission, Shimla, in Consumer Complaint No.25/2023 titled Nishant Sharma Versus Kiran Stationary Mart and Ors., whereby the complaint was dismissed.

Brief Facts of the Case :-

2. Brief facts giving rise to the present complaint are that complainant purchased Samsung Z Flip 3 from OP No. 1 in the month of September 2021, for a sum of Rs. 83,990/-, manufactured by OP No.2 on full warranty. The complainant returned said phone to OP No.1 due to reason that there was some defect in the LCD of phone and after some time opposite party No.1 handed over same to complainant. Again after sometime same defect occurred and the complainant requested OP No.1 to repair phone because phone is under warranty. Opposite party No.1 gave the said phone to opposite party No. 3 for repair as opposite party No.3 is service centre of the opposite party No.2/manufacturer but opposite party No.3 did not repair said phone and issued proforma estimate of Rs.29,769/- for repair

and till date opposite party No. 3 has not returned the phone of complainant. The aforesaid acts on the part of the OPs amount to deficiency in service and unfair trade practice and prayed that the complaint be allowed.

3. After admission of complaint, notices were issued to the OPs. The OPs No.1&3 were duly served, but OPs No.1&3 failed to appear and were proceeded against ex-parte vide order dated 25.04.2023.

4. The complaint has been opposed by the OP No.2 by filing reply taking preliminary objections regarding maintainability, estoppel, cause of action, locus-standi, non-joinder of parties etc. The unit of the complainant has been found damaged on two occasions and as per the ADLD plan provided by Service Lee Technologies Pvt. Ltd. who has provided the Accidental and liquid damage protection plan to the complainant, the unit is covered for one time screen replacement in the said plan. In fact, the said plan has been offered by Servify (Service Lee Technology Pvt. Ltd.) and the replying company and Servify are separate legal entity and operates and run their business in India on principal to principal basis and for any act or conduct of Servify, the replying OP is not to be held responsible in any manner. The OP No.1 is

not an authorized dealer or agent of Samsung India. The unit of complainant had been got damaged and same has been repaired under the plan of Service Lee Technologies Pvt. Ltd. Samsung Care + ACCIDENTAL & LIQUID DAMAGE PROTECTION PLAN ACCIDENTAL & LIQUID DAMAGE PROTECTION PLAN i.e. ADLD pack. On 30.10.2021, the unit of the complainant was presented before the Service Center of answering company i.e. Himtech Electronics (OP No.3) vide call no. 4335461439 and the unit was reported for damage of Display as the unit was covered under the ADLD plan, the screen of the unit got replaced under the said ADLD Plan, the same was delivered on 01.11.2021 to the complainant up to the satisfaction and in full working condition. The said ADLD pack i.e. the Samsung Care + ACCIDENTAL & LIQUID DAMAGE PROTECTION PLAN is provided for repair of the unit caused due to damage within one year for only once. On 19.08.2022 vide call no.4353941278 i.e. after using the unit for approximate 10 months from earlier repair and this time again reported damage of display to opposite party No.3 Himtech Electronics. The service center told complainant that the unit has been earlier repaired once under ADLD Plan and for further damage of screen, the unit is now not covered under plan and as per warranty policy, shall be on chargeable basis and an estimate

of repair was provided, but the payment of repair was not approved. After that, no one came forward to get the unit repaired and the service center many times contacted and requested to either get the unit repaired as per warranty or to collect the same. The company provides one year warranty on the unit and warranty means in case of any problem with the unit, the unit will be repaired or its parts will be replaced as per company policy and the warranty of the unit (warranty means only repair not replacement). The warranty of the unit becomes void in the conditions such as Liquid Logged/water logging, Physically Damage, Serial no. Missing, Tampering, Mishandling/Burnt etc. The reliefs sought by the complainant are beyond the agreed terms & conditions of warranty. There is neither any deficiency in service nor unfair trade practice on the part of the replying OP and prayed that the complaint be dismissed.

5. The parties adduced evidence in support of their contentions.

6. After hearing the learned counsel for the parties, Ld. District Commission dismissed the complaint.

7. Feeling aggrieved by the order of learned District Commission, the appellant/complainant has preferred the instant appeal before this Commission.

8. We have heard learned counsels for the parties and have also gone through the entire record carefully.

9. Learned counsel for the appellant/complainant has submitted that on 18.09.2021, complainant purchased a Samsung mobile phone from the respondent No.1. He further submitted that during the warranty period due to some defect in the LCD of phone, complainant handed over the mobile phone to respondent No.1 and till date respondent No.3 has not returned the same to the complainant. He further submitted that the impugned order is bad in law and prays that appeal of the appellant be allowed.

10. On the other hand, learned counsel for the respondent No.2 has submitted that the mobile phone was repaired twice during the warranty period. She further submitted that complainant purchased the ADLD plan, vide which phone was covered for only one time screen replacement. She further submitted that mobile phone was out of warranty period and the impugned order does not require any interference and prays that appeal of the appellant be dismissed.

FINDINGS:-

11. Factum of purchase of mobile and its first repair under accidental and Liquid Damage Protection Plan i.e ADLD

Pack is not denied. Now the issue before us is that whether act on the part of respondent No.1 and 3 who have denied free of cost repair of phone in question and issued estimate of Rs. 29,769/- for repair amounts to deficiency in service and unfair trade practice.

12. Perusal of record reveals that the appellant/complainant has not denied the version of respondent No.1/opposite party No.1 pertaining to, “delivery of mobile on 01.11.2021 upto the satisfaction and full working condition” by filing rejoinder/rebuttal. Perusal of Annexure C-3 dated 30.10.2021 reveals that mobile is under **Full Warranty** and LCD is damaged, It appears that appellant/complainant has withheld the information/documents regarding free repair done by respondents/opposite parties. The quotation dated 07.09.2022 for Rs. 29,769/- was given by the respondents/opposite parties on the second visit by the appellant/complainant for the repair of phone.

13. Learned counsel for appellant/complainant has nowhere refuted the contention and evidence of respondent No.2/opposite party No.2. We have perused the evidence by way of affidavit filed by complainant. He nowhere deposed that his mobile was not manhandled by him and nowhere denied the photographs annexure R-5 & R-6.

14. Learned counsel for the respondent No.2/opposite party No.2 has drawn our attention towards Annexure R-4 dated 19.08.2022 as per which repair was completed on 24.08.2022. Annexure R-5 & R-6 photographs reveal black spot and white line on LCD which is due to external pressure or force and mishandling of mobile. Learned counsel for respondent No.2/opposite party No.2 further argued that in October, 2021 phone in question was to be repaired free of cost under ADLD Plan only once for plan terms of one year. The display of mobile phone got damaged again after using it for 10 months from earlier repair and now same is not covered under plan and as per warranty policy repair is chargeable. Warranty of unit becomes void in conditions such as Liquid Logged/Water Logging, physically damage mishandling/ burnt version is further substantiated by affidavit of Er. Mohan Sharma.

15. Evidence led by appellant does not establish any deficiency in service or unfair trade practice on the part of respondents/opposite parties. There is no opinion of expert on record to justify the allegations. There is no specific evidence led by appellant/ complainant to reveal any deficiency in service or unfair trade practice on the part of respondents/opposite parties. The appellant/complainant has concealed the first free repair of

mobile. Annexure C-2 quotation dated 07.09.2022 for Rs. 29,769/- was given by the respondent No.3/opposite party No.3 on his second visit for repair of mobile. The appellant/complainant used the mobile for ten months after its first free repair.

16. Consequently, appeal filed by the appellant/complainant is dismissed and impugned order passed by learned District Commission remains upheld.

17. Parties are left to bear their own costs.

18. Certified copy of order be sent to the parties and their counsel(s) strictly as per rules. File of District Commission alongwith certified copy of order be sent back and file of State Commission be consigned to record room after due completion. Appeal is disposed of. Pending application(s), if any, also disposed of.

Justice Inder Singh Mehta
President

Yogita Dutta
Member