STATE CONSUMER DISPUTES REDRESSAL COMMISSION UTTARAKHAND, DEHRADUN

Date of Admission : 16.12.2020
Date of Final Hearing : 14.08.2026
Date of Pronouncement : 24.08.2026

SC/5/A/396/2019

Sh. Rajeev Dhar S/o Sh. Omkar Nath Dhar
R/o B/19, Transport Nagar, District Dehradun (U.K.)
(Through: Sh. Amit Sharma alongwith
Ms. Parul Nishad, Advocates)
…..Appellant

VERSUS

Sh. Prithvipal Singh Rawat S/o Late Sh. G.S. Rawat
R/o Swastik Vihar, Badripur, Jogiwala, Dehradun (U.K.)
(Through: Sh. Pritam Singh Aswal alongwith
Sh. Akash Bisht, Advocates)
…..Respondent

Coram:
Ms. Kumkum Rani, President
Mr. C.M. Singh, Member

ORDER

(Per: Ms. Kumkum Rani, President):

This appeal has been directed against judgment and order dated 07.06.2019 passed by the learned District Consumer Disputes Redressal Forum, Dehradun (hereinafter to be referred as the District Commission) in consumer complaint No. 193 of 2015 styled as Dr. Prithvipal Singh Rawat Vs. Sh. Rajeev Dhar, wherein and whereby the complaint was allowed directing the opposite party to pay Rs. 25,000/- towards claim amount

alongwith Rs. 5,000/- for mental agony and litigation charges to the complainant within 30 days, failing which the complainant shall be entitled to get simple interest @ 9% p.a. on the aforesaid amount from the opposite party from the date of filing of consumer complaint till actual payment.

2. The facts giving rise to the present appeal, in brief, are as such that the complainant started construction of his house on dated 14.01.2014 and contacted the opposite party for purchasing building material. The complainant purchased blocks of Rs. Two Lacs and 30 bags of bond amounting to Rs. 35,000/- for its fixation and also purchased wood for Almirah, doors, etc. After expiry of 16 months from the date of fixation of blocks, the cracks appeared in these blocks purchased from the opposite party. The complainant contacted the opposite party, who assured to send an engineer to do the same work. In the month of May 2015, the engineer send by the opposite party has come and filed the blocks by pasting of the bond, for which the complainant has to bear the expenses in its repair. After such repair work, the defects again appeared and the complainant could not celebrate his 'Grah Pravesh'. In such circumstances, the opposite party had sold the blocks of very inferior quality. These acts of the opposite party amounts to deficiency in service and the complainant is therefore entitled to claim damages along with compensation for mental agony and financial loss to the extent of Rs. Ten Lacs alongwith litigation charges, for which he file a complaint before the District Commission.

3. The opposite party has filed his written statement alleging that the answering opposite party is the proprietor of R.D. Group and is a sales agent of Billtech Building Elements Ltd. It is further pleaded that the complainant has purchased ACC Blocks for construction of first floor of his house and placed his order. The complainant has also purchased the bags of bond and at that time, the complainant was apprised that it is necessary to have the

ACC blocks fixed under the supervision of expert Mason (Rajmistri). However, the complainant requested that the ACC blocks be fixed through his own Mason stating that the Mason was competent to carry out such work. It was also apprised to the complainant that there will be no responsibility of the company in case of any defects occurred during the fixing of ACC blocks, but the complainant did not follow this advice. The opposite party further stated that the complainant has not paid the arrears of Rs. 1,10,000/- which is due from him. The opposite party also submitted that, in order to avoid payment of the aforesaid amount, the complainant has filed the present compliant on false and baseless grounds with a view to harass the answering opposite party. Hence, the compliant case is liable to be dismissed.

4. The District Commission after hearing both the parties and after taking into consideration the facts and evidence on record, has passed the impugned judgment and order dated 07.06.2019 wherein and whereby the complaint was allowed in the above manner.

5. Aggrieved by the judgment and order dated 07.06.2019 passed by the District Commission, the appellant has preferred the present appeal. It is contended that the impugned order was passed ex parte as neither the appellant nor his counsel appeared before the District Commission. The appellant, being a layman, had relied upon his counsel and remained under the impression that the complaint was being properly contested. He came to know about the ex parte judgment only upon receiving notice in Execution Case No. 39 of 2019 in 2nd week of October 2019. Thereafter, he obtained the certified copies and engaged a new counsel, who advised him to file the present appeal. It is further contended that the District Commission decided the complaint without properly appreciating the facts

and evidence and without the respondent establishing any deficiency in service on the part of the appellant. The principles of natural justice were also allegedly violated. Accordingly, the appellant has prayed that the impugned judgment and order be set aside and the complaint be restored to its original number for decision on merits.

6. Learned counsel for the appellant has stated that the respondent has not filed any expert report regarding deficiency in service on the part of the appellant regarding material purchased from the appellant by the respondent, which is mandatory under Section 13(c) of the Consumer Protection Act, 1986.

7. In reply, the learned counsel for respondent has stated that by watching photographs submitted by respondent in the file of the District Commission, the Commission below came to the conclusion that the quality of goods' was below the standard, therefore, the District Commission has awarded the compensation to the respondent.

8. We have perused Section 13(c) of Consumer Protection Act, 1986, which is follow as under:-

13. (c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether

> such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

9. As per above provision of Section 13(c) of Consumer Protection Act, 1986, where the complainant shows defect in the goods purchased by the respondent from the appellant and such defect cannot be determined without proper analysis or test, then the District Commission shall obtain a sample of goods from the respondent and seal it and refer the sample to the appropriate laboratory alongwith direction to make analysis and test for its authentication for the purpose to find out whether the goods suffered from any defect as alleged in the complaint or from any other defect. The above procedure was not followed by the Commission below.

10. The record of the District Commission does not clearly show whether the blocks were defective or whether the problem occurred due to improper fixing by the labourers while constructing the first floor. The District Commission could have obtained an expert opinion to determine the actual cause of the defect, but no such procedure was followed.

11. It is also true that ACC blocks and tiles should be fixed by an expert mason. If they are fixed by an unskilled or local mason, any defect arising due to improper fixation cannot be attributed to the appellant. In the present case, the appellant had specifically advised the respondent to get the ACC blocks fixed through the company's expert person and had stated that the company would not be responsible for any defect arising from fixation by a local mason. Therefore, unless an expert report establishes that the ACC

blocks themselves were of inferior quality, the appellant cannot be held liable for defects arising due to improper fixation. Further, the impugned judgment was passed ex parte. In the interest of justice, the matter should be remanded to the District Commission to enable both parties to lead their evidence and to decide the complaint afresh on merits. Accordingly, the appeal is liable to be allowed, subject to payment of costs of Rs. 25,000/- by the appellant to the respondent through demand draft. Upon deposit of the said cost, the complaint shall be restored to its original number and decided afresh on merits.

12. Accordingly, the appeal is hereby allowed. Impugned judgment and order dated 07.06.2019 is hereby set aside subject to costs of Rs. 25,000/- (Rs. Twenty Five Thousand only). No order as to costs of the appeal. The matter is remanded to the District Commission, Dehradun directing the District Commission to hear the matter afresh after giving proper opportunity to the parties. The District Commission is also directed to give proper opportunity to both the parties to adduce their evidence in support of their pleadings. The Commission below is also directed to decide the matter within six months. Both the party shall appear before the District Commission concerned on 21.09.2026.

13. Statutory amount, if deposited by the appellant, be returned to the appellant.

14. 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. The copy of this judgment be sent to the concerned District Commission for necessary information and action, so that the old case may be decided expeditiously.

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

(Ms. Kumkum Rani)
President

(Mr. C.M. Singh)
Member

Pronounced on: 24.08.2026