

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

Agro Consolidated (Pvt) Ltd.,
No. 16,
Thaladuwa Road,
Negombo
Petitioner

CASE NO: CA/WRIT/22/2017

Vs.

Consumer Affairs Authority,
1st and 2nd Floor,
CWE Secretarial Building,
P.O. Box 1581,
No. 27,
Vauxhall Street,
Colombo 2.

1st Respondent

And its Members

2nd-12th Respondents

L.C. Ekanayake,
7th Mile Post,
Bangalawatte,
Batalanda North,
Kottegoda.

13th Respondent-Consumer

Before: Mahinda Samayawardhena, J.

Counsel: Shammil Perera, P.C., with Chamath Fernando
and Duthika Perera for the Petitioner.
Manohara Jayasinghe, S.S.C. for the 1st
Respondent.

Decided on: 05.08.2019

Mahinda Samayawardhena, J.

The Petitioner (Agro Consolidated Private Limited) filed this application on 23.01.2017 against the Consumer Affairs Authority and the 13th Respondent Consumer (L.C. Ekanayake) seeking to set aside the decision of the Consumer Affairs Authority reflected in P8 and P9 whereby the Petitioner was directed to pay a sum of Rs. 4,850,000/=, which is the purchase price of the Paddy Harvesting Machine, to the consumer.

According to page 2 of P7, which contains the statement made by the consumer at the inquiry before the Consumer Affairs Authority, the date of purchase of the machine is 02.03.2008.

It is the position of the consumer that the machine did not function properly from the very inception.

There are four similar cases filed by the Petitioner where facts are different. The date of purchase of the machine, the reliefs granted by the Consumer Affairs Authority after the inquiry, the date of filing the action etc. are all different. They are CA/WRIT/446/2015 filed on 12.11.2015, CA/WRIT/236/2016 filed on 25.07.2016, CA/WRIT/55/2017 filed on 21.02.2017 and

CA/WRIT/442/2016 filed on 27.12.2016. Hence Judgment will be delivered in each case separately having made use of the material tendered particularly in CA/WRIT/446/2015 and in CA/WRIT/236/2016.

The State has filed objections on behalf of the Consumer Affairs Authority only in CA/WRIT/446/2015. Insofar as the five consumers in the said cases including this one are concerned, objections have been filed only by the consumer in CA/WRIT/236/2016.

Written submission on behalf of the Petitioner has been filed only in CA/WRIT/446/2015 covering all five cases. Out of the consumers, only the consumer in CA/WRIT/236/2016 has filed written submission. It is significant to note that no written submission has been filed on behalf of the Consumer Affairs Authority.

The learned President's Counsel for the Petitioner has taken up several positions to convince this Court that the decision of the Consumer Affairs Authority is unsustainable.

The pivotal argument of the learned President's Counsel is that the complaint of the consumer was prescribed when he complained to the Consumer Affairs Authority.

Section 13(1) of the Consumer Affairs Authority Act, No. 9 of 2003, reads as follows:

The Authority may inquire into complaints regarding

- a) the production, manufacture, supply, storage, transportation or sale of any goods and to the supply of any services which does not conform to the*

standards and specifications determined under section 12; and

b) the manufacture or sale of any goods which does not conform to the warranty or guarantee given by implication or otherwise, by the manufacturer or trader.

Section 13(2) is the one which is directly relevant to the issue at hand. It reads as follows:

A complaint under subsection (1) which relates to the sale of any goods or to the provision of any service shall be made to the Authority in writing within three months of the sale of such goods or the provisions of such service, as the case may be.

There is no dispute that there was a warranty period of six months given to the machine from the date of purchase. Hence as held in *Acua Technologies (Pvt) Ltd v. Consumer Affairs Authority [2012] 1 Sri LR 358* the consumer could, without offending section 13(2) of the Act, complain to the Consumer Affairs Authority during the warranty period notwithstanding it exceeds more than three months. It was held in that case that the time limit of three months stipulated in section 13(2) of the said Act will not apply to a complaint made under section 13(1)(b).

Accordingly, the general rule is that the consumer shall complain to the Consumer Affairs Authority within three months from the date of purchase of the good or service provided. Nevertheless, if there is a warranty or guarantee to the good sold or service provided, the consumer can complain to the

Consumer Affairs Authority during the course of the warranty or guarantee, despite such period extends more than three months.

The argument of the learned President's Counsel is that the consumer in this case complained to the Consumer Affairs Authority several years after the date of the purchase of the machine and several years after the expiration of the warranty period.

In terms of section 13(2) of the Act, the complaint shall be in writing. The crucial document is P6, which is the written complaint of the consumer to the Consumer Affairs Authority. The impugned decision of the Consumer Affairs Authority was taken on this complaint. According to the date stamp of the Consumer Affairs Authority, the Authority has received it on 25.06.2012. However, P6 is dated 29.09.2008.

If the written complaint was in fact received by the Consumer Affairs Authority on 25.06.2012, there is no dispute that the complaint is clearly prescribed.

If it has been received on 29.09.2008, still the complaint is prescribed as the complaint has been made beyond the warranty period of six months from the date of purchase (in that the date of purchase, according to the consumer as stated at page 2 of P7 is 02.03.2008).

Hence it is clear that the complaint is prescribed and there is no jurisdiction for the Consumer Affairs Authority to entertain such a complaint as it is obnoxious to section 13(2) of the Act.

In this view of the matter, there is no necessity to deal with the other arguments taken up by the learned President's Counsel for the Petitioner.

The decision of the Consumer Affairs Authority contained in P8 and P9 is quashed by way of writ of certiorari.

Application is allowed. No costs.

Judge of the Court of Appeal