

**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/442/2016

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

A.W. Karunasena,

D 39,

Binkama,

Angunukolapelessa.

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 27.12.2016 against the Consumer Affairs Authority and the 13th Respondent Consumer (A.W. Karunasena) 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. 2,400,000/=, a part of the purchase price of the Paddy Harvesting Machine, to the consumer.

According to P8, the consumer has bought the machine from the Petitioner for a sum of Rs. 4,800,000/=, a very significant amount to any consumer. The consumer says that the machine did not function properly from the very inception.

According to P7, the date of purchase of the machine is not clear. The consumer says that it was in August 2008, but on behalf of the Petitioner, as seen from pages 3 and 4 of P7, it has been suggested that the machine has been purchased in September 2007. The Consumer Affairs Authority in the decision marked P9 has not made a finding on this vital matter.

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/22/2017 filed on 23.01.2017. 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 are concerned, objections have been filed only the consumer in CA/WRIT/236/2016.

Written submission on behalf of the Petitioner has been filed 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 exceeded 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. This is a joint complaint by the five consumers. 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, and if the machine has been purchased in August 2018, the complaint is not prescribed. But if it has been purchased in September 2007, the complaint is prescribed because it is beyond the warranty period. Hence the failure to make a finding on the date of purchase of the machine in the impugned decision is fatal to reach a correct conclusion by the

Authority. I will for the time being assume that the consumer purchased the machine in August 2008.

The position of the consumer is that the said complaint was handed over to the Regional Office of the Consumer Affairs Authority at Hambantota on or around 29.09.2008, but no action was taken.

It appears from 10R2 tendered with the statement of objections of the consumer in CA/WRIT/236/2016 that the consumers handed over a written complaint dated 11.05.2012 to the Consumer Affairs Authority on this matter, and in that written complaint, it has been mentioned about a previous complaint made to the Regional Office of the Consumer Affairs Authority at Hambantota on the same subject, which, according to the consumers, was under investigation. Therefore, by 10R2, the Consumer Affairs Authority has informed the Regional Office at Hambantota to update the Consumer Affairs Authority without delay the action taken in regard to the former complaint on the same matter.

I must pause for a while to state that neither the consumer nor the Consumer Affairs Authority tendered a copy of the said complaint dated 11.05.2012 mentioned in 10R2 and/or the written reply received by the Consumer Affairs Authority from the Regional Office in response to 10R2.

It appears from 10R3 tendered by the consumer in CA/WRIT/236/2016 with his statement of objections—a letter sent by the Consumer Affairs Authority to the consumer asking him to attend for a meeting on 15.08.2012—and P3—a letter sent by the Consumer Affairs Authority to the Petitioner asking the

same thing—that the File relevant to this complaint has been sent by the Regional Office at Hambantota to the Consumer Affairs Authority.

It appears that P6 complaint was in that File. This is only an assumption.

According to paragraph 2 from the bottom of page 2 of the order of the Consumer Affairs Authority marked P9, the Consumer Affairs Authority has received the complaint from the Regional Office on 28.05.2012.

If it was received on 28.05.2012, it is unclear why the Consumer Affairs Authority placed the date stamps of 25.06.2012 and 26.06.2012 on the complaint P6. Then the date stamp should have been placed on 28.05.2012.

If the complaint was received by the Consumer Affairs Authority on 28.05.2012, the Consumer Affairs Authority and its Members in paragraph 19 of its statement of objections filed in CA/WRIT/446/2015 and the Chairman of it in paragraph 21 of the corresponding affidavit stated a falsehood that the Consumer Affairs Authority received the documents from the Regional Office on 25.06.2012 and transferred them to the Consumer Complaints Unit on 26.06.2012 for necessary action.

It appears that the Consumer Affairs Authority has not performed their statutory duties responsibly on this complaint.

As seen from inquiry notes marked P10(a), P10(d), P10(e), pages 7-8 of P7(a), this vital matter—when the written complaint was made to the Consumer Affairs Authority—has been specifically raised on behalf of the Petitioner at the inquiry but no evidence

has been produced to convince that P6 complaint was handed over to the Regional Office of the Consumer Affairs Authority at Hambantota on or around 29.09.2008.

In reply, the Consumer Affairs Authority in its statement of objections filed in CA/WRIT/446/2015, in paragraph 17, and its Chairman in paragraph 19 of the corresponding affidavit state that, *“There was no necessity for the 1st Respondent (Consumer Affairs Authority) to initiate any inquiry to ascertain the actual date of the complaint as it is already printed on the complaint itself.”* That I must say is a very irresponsible statement—a statement which cannot sustain in the eyes of law even for a moment. What matters is not the date which appears on the written complaint, but the date on which the written complaint was lodged with the Consumer Affairs Authority.

The learned counsel for the consumer in CA/WRIT/236/2016, with the permission of Court, filed a copy of a letter dated 07.06.2011 marked 10R7(a), written by the consumer in CA/WRIT/446/2015 to the Regional Office of the Consumer Affairs Authority at Hambantota. In that letter the consumer has stated the fact of handing over the complaint dated 29.09.2008 to the Regional Office of the Consumer Affairs Authority at Hambantota. It may be recalled that P8 complaint is dated 29.09.2008. Nevertheless, in 10R7(a) it is not stated when that complaint dated 29.09.2008 was handed over to the Regional Office. The original registered Postal Article Receipt has also been tendered marked 10R7(b) to prove the posting of that letter on 07.06.2011. Hence, upon this letter, this Court cannot come to the conclusion that P8 complaint was received

by the Regional Office of the Consumer Affairs Authority at Hambantota on 29.09.2008.

If that complaint marked P6 was received by the Regional Office of the Consumer Affairs Authority at Hambantota on or around 29.09.2008 that could have been easily established by producing some document or affidavit under the hand of an officer in the Consumer Affairs Authority of the Hambantota Regional Office. This has not been done. It is not clear whether the Consumer Affairs Authority did not do so deliberately as it was unfavourable to the consumer or the Consumer Affairs Authority acted irresponsibly.

Although this Court is quite sensible to the fact that the consumer is a weaker party and has no control over the affairs of the Consumer Affairs Authority, Court cannot help the consumer upon assumed facts. Court has to decide the matter on the material presented before it.

Hence on the available evidence I am compelled to conclude that the complaint of the consumer was prescribed when it was made to the Consumer Affairs Authority. There is no evidence to the satisfaction of the Authority or Court that the consumer lodged the written complaint within three months from the date of the purchase of the machine or during the course of its warranty, which extended up to six months from the date of the purchase.

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(a), P8 and P9 is quashed by way of writ of certiorari.

Application is allowed. No costs.

Judge of the Court of Appeal