

BEFORE THE CONSUMER DISPUTES REDRESSAL
COMMISSION GANDHINAGAR.

Complaint No. 1262 OF 2019.

1. Sona Krishnachandra Sagar,
Plot No : 150,
Sector - 8,
Gandhinagar.

Complainant

VERSUS

1. Harsolia Brothers,
Sector -28,
GIDC,
Gandhinagar - 382028.

Opponent

Coram: Hon'ble Mr. D. T. Soni, President
Mr. Jigar P. Joshi, Member

Appearance: Complainant-in-person

Mr. Anup Mukeshbhai Gajjar, Service Manager
for the opponent

Per: Hon'ble Mr. D. T. Soni, President

1. The complainant has filed this complaint under Section 12 of the Consumer Protection Act, 1986, seeking compensation of her car bearing no. GJ 18 AH 2926 in proper condition given for repairing,

however, up till now it is stated that no repairing charge has been paid by the complainant.

2. Factual matrix:

The complainant had given her car for reparation on 07/06/2018 to the opponent and the opponent had written on the job card that only Rs. 1,600/- expense will have to be borne but, at the time of taking delivery, spares parts were not found (description of spare parts is not given) and A.C., Music system, etc. were damaged. The bill of Rs. 9,900/- is not paid up till now by the complainant. It is the say of the complainant that she agreed to pay up all repairing charges but, the car is not given back to her whereas, the opponent has stated that in spite of sending numbers of E-mails to take up the car and pay up the charges, the complainant has not responded to the opponent. The bone of contention has arisen from the fact that the respondent did not allow delivery of the vehicle of the complainant because the dispute has been pending before this Forum, therefore, this complaint.

3. The opponent, Harsolia Brothers has appeared through his authorized Officer Mr. Anup Mukeshbhai Gajjar and has filed written statement with the list of the documents wherein, the copy of 58 E-mails sent to complainant for approval of job & taking the delivery of the vehicle, and a notice sent to complainant by RPAD for taking delivery. In the written statement it is stated that on

07/06/2018, the complainant came with her car in question in total non working condition by towing and after checking it, job card was made. The car was defective and not working, and there was no fuel in the tank, meter and light were not working. Rs. 900/- was also made estimate and only after physically checking the car, estimate, charge, repairing, etc. Rs. 600/- towards the tax was to be paid to which the complainant agreed. It stated that opponent has not meted out any deficiency in service or unfair trade practice but, the complainant has not come out with clean hands and complainant herself is at fault and has not paid up the labour charge of Rs. 9,900/- estimate which was given on 15/06/2018. In spite of reminding the complainant by opponent to take up the delivery, and the copy of various E-mails have been produced requesting the complainant to take up the delivery, but complainant has heedlessly not paid up any amount nor prefer to take up the delivery and the complainant has flatly denied to give the expenses before the repairing. A test drive was also offered with a female employee to the complainant of her car but, she did not agree with it and after placing the vehicle at the entrance of the opponent, the complainant went away with the ignition key with her since then the vehicle is lying ideally in the premises of the opponent. It is stated that complainant is not entitled to any ancillary compensation has stated in her complaint as she is at sheer fault. In para 9 of the reply, opponent has clearly declared that if the repairing charges are given by the complainant to the opponent,

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they are ready to delivery as well as trial and today, they are also ready but, the complainant has not budged an inch in acceding to the request by the various E-mails to take up her car and firstly pay up the charges.

In support of this claim, the opponent has produced following document vide list dated 23/10/2019.

Sr. No.	Particulars	Page No.
1.	Copy of 58 mails – sent to complainant for approval of job & taking delivery of the vehicle.	1 to 51
2.	Copy of mail sent from TATA Motors Ltd. for paying the charges & taking of delivery.	52 to 67
3.	Mail sent by the complainant on dates 07/09/2019 with copy of High Court for complain.	68 to 70
4.	Notice sent to the Complainant by RPAD for taking delivery & remarks.	71 to 74

4. The complainant has filed rejoinder affidavit reiterating the facts stated in the complaint.

5. In the Corona pandemic situation, we cannot compel the physical presence of a lawyer under the scare of any covid-19 infection, however, the complainant Sona Krishnachandra Sagar, who is also a practicing lawyer and opponent Harsolia Brothers for whom Mr. Anup Mukeshbhai Gajjar has appeared have cooperated on video conference and when our links were sent the complainant

and opponent both have cooperated and proceeded with the matter on video conference, therefore, the complainant was heard on video conference and Mr. Anup Mukeshbhai Gajjar has remained present and requested this Court that the written statement of the opponent may be treated as the legal submission of opponent.

6. The complainant who is a practicing lawyer has appeared in-person and has adhered to earlier stand taken in the petition as well as further stated that it was the duty of the respondent to return the car in perfect condition without removing any accessories of the complainant. It is also stated that she has visited six times to the respondent but no response was given, therefore, she has requested to hand over the possession of her car no. GJ 18 AH 2926 in proper condition with A.C. working and all accessories in order to the complainant but, up till now to our surprise even no amount has been paid up by the complainant. It hardly needs to say that whatever may be the charges being stated by the complainant, it is the duty of the consumer to deposit or pay up to the opponent but, in the present case, the complainant who herself is a lawyer has not responded to the opponent and even not agreed to pay. On the video conference, it was also stated by the complainant that her car was old of the costs Rs. 2,40,000/-, being TATA NANO bearing no. GJ 18 AH 2926 and she has confined her main claim for direction to the opponent to give the possession of the car in full working condition, though, she has not paid anything to the

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opponent. It is also stated that for about six times, she was called to take up her car but, possession was not given. The complainant has also submitted that she was not given the delivery and also the break was found unworkable and A.C., speaker, gear etc. were not working. It is also submitted that the demand mails were also communicated to the opponent by E-mails but, the car has not been given back which is the main grievance and while hearing on the video conference, she has also reminded that this Court may pass an interim order to give up the car in working condition. It is made clear that the car was not purchased from the opponent. The complainant has further submitted that by not giving the car back after repairing it, in spite of the demand of the complainant, it is the bounden duty of the opponent to give the possession of the car in working condition after repairing in full but, the complainant has kept meek silence on any payment to opponent.

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7. We have also heard Mr. Anup Mukeshbhai Gajjar and has requested that complainant being an Advocate has not paid up anything, though, the bill of Rs. 9,900/- was given and the job card dated 15/06/2018 is relied upon in the reply. It was pointed out that on 07/06/2018 by towing the vehicle was placed in the premises of the opponent by the complainant and it was well checked by the opponent and job card was prepared. There was no fuel in the tank and light was not in working condition, therefore, approximately Rs. 900/- was estimated for checking the car and then after, car

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was to be repaired. It is submitted that only Rs. 1,600/- was estimated costs but, only after fitting the spare parts, the rest of the charge were to be conveyed to the complainant. It is submitted that the opponent can never be presumed to have stolen any spare parts or accessories and a false and bald statement is made by this complainant lawyer recklessly against the opponent, and it is stated that on one hand, complainant wants her car fully repaired and possession, and on other hand, she does not pay anything and a new fuel pump was also placed and up till now such charge of fuel pump is not given. The complainant on video stated that though she has agreed to pay the consideration but, since two years she has endlessly not given the payment, hence, in absence of "nil consideration", she does not fall within the definition of "consumer". However, it was submitted by Mr. Anup Mukeshbhai Gajjar that since complainant has agreed but, has not paid anything till today and the car is lying for more than two years, therefore, parking and other charges with the spare parts being damaged by way of lying it, complainant is bound to pay up entire amount and then after, they will give the possession. It is also stated that since the complainant has agreed but, has not paid anything, though, she is a lawyer, it is her legal duty to response to the opponent so far as, consideration is concerned but, she has refused to pay up in spite of sending 58 E-mails, the copy of which are produced at page no. 1 to 51 of the list appended by the opponent along with the its reply. It is also stated that the parking charge is of Rs. 100/-

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per day and vehicle is disturbing the routine work and earlier the key was taken by the opponent, therefore, they were not able to move the vehicle to that effect at page no. 26, the E-mail was sent to this complainant Madam but, the complainant has not responded intractably in any manner.

8. It is also submitted that vehicle was received with break down condition, therefore, previous condition was not known to the opponent. It is also submitted that complainant has flatly refused to have a test drive with a female employee of the opponent so that it can be tested so far as further repairing is concerned. The complainant has not heeded to the request of the opponent. Mr. Anup Mukeshbhai Gajjar has also pointed out to us that no payment of the fuel pump is also given and if the car is placed for more than two years, therefore, fuel pump will not even work further and requires to be replaced. In a nut shell, it is stated that complainant has not paid up anything, though agreed, much less even partly payment, therefore, complainant cannot be said to have come out with clean hands and up till now no charge including the parking etc. has been given. It is also stated that complainant has complained to TATA Motors and Police also. If the fuel pump is lying idly in the car, then it will further worsen, therefore, Co. cannot be made liable. It is also stated that opponent has meted out no deficiency in service or unfair trade practice. The opponent has also pointed out that this is eminently a fit case wherein, the

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complainant being a practicing lady Advocate has tried to influence by way of not paying even a pai or pittance and has compelled the opponent to repair it without any money which cannot be endured by the opponent. It is also submitted that this Court may direct to pay up all expenses for repairing or replacing the spare parts including labour and other charges as may be charged by opponent and then after, opponent will be ready and willing to give the possession. It is submitted that since there is no substance at all in the complaint, it may be dismissed with exemplary and heavy costs in order to set an example that no such lawyer can play such type of trick on the opponent by way of seeking the relief as prayed for in the present case.

9. Having heard complainant on video conference who is a practicing lawyer and Mr. Anup Mukeshbhai Gajjar, Service Manager for the opponent in person and perusing the pleadings and documents, at the threshold, it appears that bone of contention has arisen from the fact that complainant being a practicing lady lawyer has cried for justice seeking possession of her car without paying any thing after placing for repairing with the opponent on 07/06/2018 and asking for good condition of car, though, she has not paid even a rupee which ought to have been firstly paid. On one hand, the complainant says that opponent has not given her car after repairing in working condition of her car and on other hand, the opponent says that after placing the car in total non-working

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condition, the complainant has not paid nor shown any readiness to pay up such repairing charges since 07/06/2018 being consideration and has unnecessarily harassed the opponent by way of putting her car in non-working condition and the opponent has to bear the parking charges for two years also since the space is occupied by the car at the behest of complainant without paying a pittance nor responding anything to the opponent which we have noted at the threshold. It is worthy to note that the complainant has up till now not paid anything and has expected the car to be repaired and possession to her as if she is a consumer though agreed but not paid. It is right that both parties have entered into a series of correspondence with each other. The opponent, by 58 E-mails has stated in tabular form of the list of the documents that the complainant has not responded in any manner nor heeded to the demand of the opponent. A point is also orally raised by the opponent that the complainant may not be treated as the consumer because the complainant has neither paid anything nor showed readiness to pay up the amount since two years, the car is uselessly lying in the garage of the opponent and the opponent has demanded Rs. 100/- per day which also requires to be paid by the complainant. The conduct and the stance manifested by the complainant is also required to be taken care of. The labour charge of Rs. 9,900/- estimate which was given on 15/06/2018 up till now not paid even a rupee heedlessly. It is reminded that the person who takes the service of the opponent and agreed to pay but, for

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sine die period deliberately avoids to pay till today does not pay anything, therefore, we also doubt that the complainant does not fall within the preview of consumer under the Act, however, the manner in which the reckless and bald allegations are made by the complainant and the evidence produced by the parties, we have thought it fit to decide this matter on merits without rejecting on the ground that complainant is not a consumer. It was the duty of the complainant who is a practicing lawyer to firstly deposit the amount towards labour charge, repairing charges, changing of the spare parts, etc. but, we are pained to record that since more than two years, she has obstinately not acceded to the request of the opponent and flatly refused to pay the requisite charges. Since the vehicle is lingering in the workshop since more than two years, even judicial notice can be taken that the car and its spare parts are worsening day by day, in spite of reminding by the opponent, compliant has not taken care of her own car.

10. After scanning the evidence, the causal conduct of the complainant being not proper to the opponent and on the last hearing on video conference on 11/12/2020, she requested this Court to grant interim order which can never be granted but, and in the interest of the justice, entire matter is heard on merits which requires to be dismissed. In the evidence, we have fully found that she has not come out with clean hands and unnecessarily made reckless and wild allegations against the opponent even in her

saying that some damages is done and some spare parts have been stolen away as alleged in unwarranted manner against the opponent. At the time of hearing, Mr. Anup Mukeshbhai Gajjar who is an authorized service Manager has remained present and has also shown readiness that after the two years of the car lying in the garage, whatever may be the huge expenses with prevailing parking charges and other ancillary expenses will have to be borne by the complainant herself, without any manner of doubt. It is also stated that a new fuel pump was also placed in the car but, up till now the complainant has not taken any care to take up her car after reparation by full payment of what is stated by the opponent towards such expenses. We have constantly seen that complainant being an Advocate (party-in-person) does not deserve any sympathy while sheltering the process of this Fora and she has not paid up any consideration to the opponent which is a 'sine qua non' for becoming the 'consumer' for such legal battle. However, we have proceeded on the merits and fully heard the parties.

 11. We are at pains, to note that a total non-chalant stand is taken by the complainant right from the beginning towards the opponent. It is amazing to note that in spite of reminding to pay charges for repairing / replacing the spare parts, labour charges, etc., the complainant has not even taken care to get her car repaired by way of firstly paying all charges to the opponent. In the result, no equity can be granted to the complainant.

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of firstly paying all charges to the opponent. In the result, no equity can be granted to the complainant.

12. In the present case, we are tempted to observe that though complainant has cried for justice but, the opponent has also cried for counter justice against the complainant because after the car being placed in total unworkable condition which was brought by towing to the garage of the complainant on 07/06/2018, more than two years have lapsed the opponent Harsolia Brothers is placed in high and dry situation compelling the opponent to plunge into this litigation. In fact, the car is idly lying in an unworkable and worsening condition by lapse of time by more than two years, the opponent Harsolia Brothers, has in fact, shown good faith and kindness but, it has been misfortune of the opponent. Therefore, in absence of wherewithal by complainant, opponent cannot be faulted with in the slightest manner and the opponent is made to wait for the result of this litigious lis, who has not got any amount of charges from the complainant.

13. In the aforesaid conspectus, we are compelled to dismiss this complaint on merits with costs as well also hold that the complainant is not "consumer" within the ambit of the Act. Hence, final order is passed.

ORDER

- (i) This complaint stands dismissed with costs quantified Rs. 3,500/- (Rupees Three Thousand Five Hundred Only).
- (ii) The complainant is liable to pay up the parking charges at the prevailing rate of Rs. 100/- (Rupees Hundred Only) per day as stated in the reply of opponent from the date of 07/06/2018 till the actual removal of the car in the present unworkable condition from the garage without delay.
- (iii) Costs to be deposited by the complainant within 10 days from today and after being deposited, it shall be disbursed in the name of the opponent by A/C payee cheque by this Office.
- (iv) Copy of the judgment be given to the parties free of charge.

Pronounced in the open Court on this 7th January, 2021.

✓ 07-01-2021
(Jigar P. Joshi)
Member

07/11/2021
(D. T. Soni)
President
CDRC,
Gandhinagar.