

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: OWP No. 873/2009
IA No. 1135/2009

Maruti Suzuki India Ltd.

..... Petitioner/Appellant(s)

Through :- Ms. Aruna Thakur, Advocate

Vs

Ramesh Chander Sharma and anr.

.....Respondent(s)

Through :- None

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

ORDER
09.02.2024

1. This petition under Article 226 of the Constitution of India filed by M/s Maruti Udyog Limited is directed against the order of State Consumer Commission dated 03.03.2009 passed in appeal No. 2562/2003 titled Maruti Udyog Ltd. Vs. Ramesh Chander Sharma and anr.
2. Briefly stated, the facts leading to filing of the instant petition are that, the respondent No. 1 filed a consumer complaint before the Divisional Consumer Forum at Jammu (for short "the Forum") alleging inter-alia that he purchased Maruti 800 CC Car from M/s Pathankot Vehicleades Pvt. Limited, Pathankot for an amount of Rs. 1,94,195.60 which suffered from a technical snag in the very beginning. The defect in the car was brought to the notice of respondent No. 2 but the matter was delayed by respondent No. 2 on one excuse or the other. Ultimately, it was found that the engine of the vehicle had a manufacturing defect and

the respondent No. 2 insisted for repair of the engine after taking down of the car. This was resisted by respondent No. 1 who claimed the replacement of the defective vehicle by a new one. This was not acceded to by the respondent No. 2 and, accordingly, a complaint was filed by respondent No. 1 before the Forum.

3. On being put to notice, the petitioner herein and respondent No. 2 contested the complaint and filed their objections. The plea of the petitioner herein and respondent No. 2 was that the engine had a minor defect which could have been removed by a repair. The petitioner herein as also respondent No. 2, however, denied that the car had a manufacturing defect. The Forum considered the matter in its entirety in the light of the evidence on record and came to a conclusion that since the vehicle purchased by the respondent No. 1 was suffering from manufacturing defect from the very beginning and, therefore, it was a case of replacement of vehicle and not of repair as was sought to be projected by respondent No. 2. The Forum allowed the complaint and directed the petitioner herein and respondent No. 2 to either replace the vehicle by a new one or in alternative, refund an amount of Rs. 1,94,195/- along with interest @ 9 % per annum. The respondent No. 1 was also held entitled to Rs. 1000/- as cost of litigation.
4. The order passed by the Divisional Forum was assailed by the petitioner herein before the State Commission. The appeal was filed beyond the period of limitation and was not accompanied by a mandatory pre-

deposit of 1/4th of the awarded amount. The Commissioner, therefore, dismissed the appeal of the petitioner herein on these grounds vide order impugned dated 03.03.2009.

5. Having heard learned counsel for the petitioner and perused the material on record, we are of the considered opinion that the order impugned passed by the Commissioner does not suffer from any legal infirmity or illegality which may call for interference by this Court under Article 226 of the Constitution of India. The pre-deposit within stipulated period along with appeal is *sine qua non* for entertaining an appeal by the Commissioner. Otherwise also, if the appeal is belated, the same is required to be accompanied by an application for condonation of delay wherein sufficient cause for not filing the appeal within time is required to be shown.
6. From the reading of the order impugned, it clearly transpires that neither application for condonation of delay was filed nor the delay in making the pre-deposit was explained. Otherwise also, we have gone through the order of the Divisional Forum. We do not find the same also suffering from any legal infirmity or illegality. Indisputably, the vehicle i.e. Maruti Car 800 CC purchased by respondent No. 1 was suffering from a manufacturing defect from the very beginning and, therefore, as is rightly held by the Forum, it was a case of replacement of the vehicle by a new vehicle and not a case of repair. Repairs may be called for if the vehicles purchased during the course of its use suffers from a

technical defect and not where the vehicle has manufacturing defect. The Forum has, therefore, taken a correct view of the matter and directed the petitioner along with respondent No. 2 to either replace the vehicle by new one or in alternative refund the amount of Rs. 1,94,195/- along with interest @ 9 % per annum.

7. Viewed from any angle, we do not find any merit in this petition and the same is, accordingly, dismissed.

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

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