

(2014) 11 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

Anupam Bhattacharjee

APPELLANT

Vs

Sibsankar Bandhopadhyay

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Citation : 2015 1 CPJ 3

Hon'ble Judges : D.K.JAIN J.

Final Decision : Disposed off

Judgement

1. THIS application under Section 22B of the Consumer Protection Act, 1986 (for short "the Act") has been filed by the Complainant, seeking transfer of Complaint No. CC -66/2011, filed by him against the Respondent before the State Consumer Disputes Redressal Commission, West Bengal, in terms of the leave granted by this Commission vide order dated 20.5.2011 in RP No. 1406 of 2007. The case has a little chequered history and, therefore, in order to appreciate the prayer for transfer, a brief background in which the complaint came to be filed at Kolkata would be useful. According to the Applicant he had contacted the Respondent, a practising Advocate, over the telephone, asking him to file a complaint on his behalf against Calcutta Medical Research Institute (for short "CMRI") and some other persons, in the State Commission, at Kolkata, for deficiency in service on their part. He claims to have sent some documents to the Respondent on 15.5.2011 along with a sum of Rs. 30,000 towards his fees. As the Respondent did not take any action in this regard, because of having been influenced by CMRI, he had to file a complaint against CMRI in the District Forum at Agartala. The complaint was, however, dismissed as not maintainable. Thereafter, his inquiries revealed that a complaint on his behalf was in fact filed by the Respondent but was dismissed by the State Commission for non - prosecution. Alleging deficiency on the part of the Respondent in not pursuing the complaint, sometime in the year 2003, the Applicant filed a complaint against him at Agartala, claiming compensation of Rs. 19,30,000. The complaint was allowed by the District Forum vide order dated 30.3.2006, with a direction to the Respondent to pay to the Complainant a sum of Rs. 50,000 as compensation.

The order was challenged by the Respondent in the State Commission, Tripura. The Appeal was allowed and it was held by the State Commission that no part of cause of action had arisen at Agartala and therefore, District Forum at Agartala (West Tripura) did not have territorial jurisdiction to entertain the complaint. The order of the State Commission was affirmed by this Commission vide order dated 20.5.2011. The Commission came to the conclusion that merely because the Applicant had contacted the Respondent, based at Kolkata, over the phone from Agartala, it would not confer territorial jurisdiction on the District Forum, Agartala as no contract had been entered into between the parties at that place. However, liberty was granted to the Applicant to file a fresh complaint before a Forum having territorial jurisdiction. Accordingly, the Applicant filed a complaint at Kolkata, which is now sought to be transferred to Agartala.

2. WE have heard the Applicant, who appears in person, and Mr. Sukumar Pattjoshi, learned Senior Counsel on behalf of the Respondent. The ground on which the complaint is sought to be transferred to Agartala is that: (i) the Applicant is now a permanent resident of Agartala; (ii) because of an iron nail implanted in his left femur bone he is unable to move freely from one place to another, and (iii) he cannot afford to travel by air from Agartala to Kolkata, to pursue the complaint.

3. THE application is vehemently opposed on behalf of the Respondent on the ground that this is yet another attempt by the Applicant to harass the Respondent, who has been dragged into unnecessary litigation to settle personal scores. It was also pointed that the Applicant has been actively pursuing a complaint against CMRI at Kolkata.

4. SECTION 22B of the Act confers on the Commission the power to transfer any complaint pending before the District Forum of one State to a District Forum of another State or before one State Commission to another State Commission. The power can be exercised by the Commission in the interest of justice, on an application by the Complainant or suo motu at any stage of the proceedings. Though the power of transfer is very wide, it cannot be exercised in routine. The paramount consideration is to meet the ends of justice. Convenience of the parties is undoubtedly one of the factors which may be taken into consideration in deciding whether or not a complaint needs to be transferred from one Forum to another. Having due regard to the aforesaid factual scenario, we are of the view that the Applicant has failed to make out a case for transfer of his complaint from Kolkata to Agartala. We find that despite the stated handicap, the Applicant has been effectively pursuing his complaints not only at Agartala and Kolkata, but he has had rounds of litigation before this Commission as well. He has been pursuing cases outside Agartala for over a decade now. We are convinced that the present application is not bona fide in as much as it has been filed to harass the Respondent, which cannot be permitted.

5. CONSEQUENT LY , the Transfer Application is dismissed. Since the dispute between the parties has been hanging fire for over ten years, we would request

the concerned District Forum at Kolkata to try to conduct proceedings on a day to day basis to minimize Applicant's visits to Kolkata from Agartala and take a final decision therein as expeditiously as practicable. The transfer application stands disposed of with no order as to costs.