
(2015) 05 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

Case No : 509 of 2014, 510 of 2014, 511 of 2014

Ashta Vinayak Flat Owners Co -Operative Housing Society
Limited

APPELLANT

Vs

NISHIKANT

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Citation : (2015) 05 NCDRC CK 0021

Hon'ble Judges : V.B.GUPTA , SURESH CHANDRA J.

Advocate : Miscellaneous Application dismissed.

Judgement

1. HEARD .

2. ABOVE noted applications have been filed on behalf of the petitioners for restoration of the petitions which were dismissed in default on 3.11.2014, due to non -appearance of the petitioner as well his counsel. In order to appreciate the manner in which the petitioners/opposite parties have been contesting this litigation, it would be fruitful to refer the brief facts of the case.

3. RESPONDENTS /complainants have filed consumer complaint against the petitioners/OPs in the year 2004 before the District Forum, alleging deficiency on the part of the Petitioner Society. The consumer complaint was contested by the petitioners.

4. DISTRICT Forum allowed the consumer complaint, vide order dated 10.8.2006.

5. BEING aggrieved, petitioners filed appeals before the State Commission which were dismissed in default, vide impugned order dated 12.7.2013.

6. THEREAFTER , petitioners filed present petitions challenging the impugned order of the State Commission.

7. IT is submitted by learned counsel for the petitioners, that counsel for the petitioners has been coming from Nagpur (Maharashtra) and due to heavy rain, they were unable to reach this Commission in time and as such the applications

may be allowed and the revision petitions may be restored.

8. IT is not for the first time that present revision petitions have been dismissed in default. Earlier also, these petitions were dismissed in default due to non - appearance of the petitioner on 5.12.2013. Thereafter, on application for restoration filed on behalf of the petitioner, same was allowed vide order dated 31.1.2014. Thereafter, notice was issued to the respondent and counsel for respondents has also appeared. However, again on 3.11.2014 these revision petitions were dismissed in default as well as for non -prosecution, due to non - appearance of the petitioner as well as his counsel. It may be pertinent to point out that on that date counsel for the respondent was present. The above facts clearly go on to show that petitioners have been pursuing these revision petitions in a very careless manner. Be that as it may, even the conduct of the petitioners before the State Commission was of gross negligence. The impugned order passed by the State Commission is reproduced as under: - "None present for the appellants. Adv. Mr. Kullarwar is present for the respondent. On last date also none had appeared for the appellant. Therefore, the appeal deserves to be dismissed in default. The appeal be recalled at 3.00 p.m. for order.

Appeal is recalled at 3.30 p.m. today. Presently also none appeared for the appellants. Adv. Mr. Kullarwar present for the respondent. As none appeared for the appellants on last date and today also, the appeal is dismissed in default."

9. AS per impugned order, it is manifestly clear that petitioner was absent for two consecutive hearings before the State Commission whereas the counsel for the respondent was present.

10. IT is well -settled that a valuable right has accrued in favour of the respondent, when appeal of the Petitioner before the State Commission, was dismissed in default as well as when present revision petitions were dismissed in default.

11. THE above facts show that petitioners have been conducting this litigation in a very careless and casual manner. Even when appeal was dismissed in default before the State Commission, the Petitioner did not become wiser and has been pursuing these revision petitions before this Commission in a lethargic manner. Under these circumstances, no sufficient ground is made out for restoration of the present revision petitions. The present applications for restoration are without any basis and there is no merit in these applications. Accordingly, applications for restorations stand dismissed. No order as to cost.