

(1999) 12 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

COINPAR, CENTRE OF INDIAN Consumer Protection and
Research

APPELLANT

Vs

PARTHAS

RESPONDENT

Date of Decision : 29-12-1999

Acts Referred:

Citation : 2000 2 CPC 238 : 2000 3 CPJ 86 : 2000 3 CPR 384

Hon'ble Judges : L.Manoharan , K.M.Latha , R.Vijayakrishnan J.

Final Decision : Order set aside

Judgement

1. COMPLAINANT in O.P. 254/1997 on the file of the Consumer Disputes Redressal Forum, Thiruvananthapuram is the appellant. The complaint came to be dismissed for default by the District Forum on 31.12.1998. This appeal is directed against the said dismissal. The agent of the complainant submits that in Appeal No. 351/98, OP 254/97 was remitted to the District Forum for restoring the complaint and disposing it as stated in the said order. The order of this Commission directed the parties to appear before the Commission on 16.11.1998. The order sheet of the District Forum shows that on 16.11.1998 though the Counsel for the opposite party was present, the petitioner was absent. It also states that the case records were not received from this Commission. The matter was adjourned to 18.12.1998. It is noted that the records were received but there were no representation on the side of the petitioner. Petitioner was absent then it was posted to 31/12, since the petitioner was absent on that day also the complaint was dismissed.

2. THE agent of the appellant/complainant submits that he has filed his affidavit stating as to what happened on 16.11.1998. According to the averment in the affidavit and also submission made by the agent, the agent went to the District Forum on 16.11.1998 verified with the office clerk and since he told him that the records were not received and after the receipt of the record, notice would be sent to the parties for appearance, believing the same he left. THEREfore, on the subsequent postings he could not appear. On the other hand the learned Counsel

for the respondent/opposite party submitted, since the order required the parties to be present on 16.11.1998 before the District Forum, the complainant was bound to be present on that day and had he been present before the Court, he would have noted that the case was adjourned for receipt of records and consideration to 18.12.1998 as the party did not abide by the direction of this Commission the District Forum passed the impugned order. In view of the submissions by the agent of the appellant as well as the learned Counsel for the respondent, this Commission obtained the explanation of the concerned officer for not sending the records to the District Forum in time. It is stated by the concerned clerk that the records were handed over to him on 12.11.1998 and after taking photocopy of the judgment forwarded it to the CDRF, Thiruvananthapuram with LCR on 16.11.1998. The non-receipt of the records on 16/11 by the District Forum was on account of the delay in sending the records from this office. In testing as to the veracity of the affidavit sworn to by the agent, the effect that the record was not received at the District Forum on 16.11.1998 assumes importance. Once it is found that records really reached on 16/11, the averment in the affidavit gets support from the said circumstances. It is the policy of law that because of any act or omission by the Court no party should be put to difficulty. In view of the same we are of the view that the order of dismissal has to be set aside. We do so. The District Forum shall restore the complaint to file and dispose it of in accordance with law, after giving opportunity to both parties to substantiate their respective contentions. The parties shall appear before the District Forum on 31.1.2000. Order set aside.