

(2003) 07 NCDRC CK 0099

In the National Consumer Disputes Redressal Commission

EASTERN TELECOM AND TECHNOLOGY LTD.

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Citation : 2003 4 CPJ 104 : 2004 2 CPR 392

Hon'ble Judges : Lokeshwar Prasad , Rumnita Mittal J.

Final Decision : Application dismissed

Judgement

1. THIS order shall govern the disposal of complainant's application dated 26.11.2001, filed for the restoration of the complaint, dismissed in default, vide order dated 5.11.2001.

2. THE facts, relevant for the disposal of the above mentioned application, lie in a narrow compass. THE complainant/applicant, Eastern Telecom & Technology Limited, a company, incorporated under the provisions of the Companies Act, 1956 through Shri S.V. Gupta, Managing Director, has filed a complaint under Section 17 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") alleging deficiency in service on the part of the opposite parties. This Commission vide order dated 30.4.1997 had given directions to the complainant for filing rejoinder and affidavit by way of evidence and on 30.4.1997 the case, filed by the complainant, was adjourned to 9.7.1997. On 9.7.1997 the learned Counsel for the complainant prayed that the complainant be given some more time for filing rejoinder and affidavit by way of evidence. In the interest of justice that prayer, made by the learned Counsel for the complainant, was allowed and the case was adjourned to 19.9.1997. Even on 19.9.1997 no rejoinder and affidavit by way of evidence was filed and on the request, made by the learned Counsel for the complainant, the complainant was given one more opportunity for filing rejoinder and affidavit by way of evidence and the case was adjourned to 15.12.1997. On 15.12.1997 neither the complainant cared to appear nor cared to file any rejoinder and affidavit by way of evidence. However, in the interest of justice no adverse order was passed and the complainant was again

given a final opportunity to file rejoinder and affidavit by way of evidence. On 30.3.1998 the complainant filed rejoinder only to the reply/written version filed on behalf of O.P. No. 2 and requested that the complainant be given some more time to file rejoinder to the reply/written version, filed on behalf of O.P. No. 1 and affidavit by way of evidence on behalf of the complainant on the next date of hearing i.e. on 16.7.1998. On 16.7.1998 rejoinder to the reply/written version, filed on behalf of O.P. No. 1, has been filed but no affidavit by way of evidence was filed on behalf of the complainant. However, the complainant was given further time of four weeks for filing affidavit by way of evidence and the matter was adjourned to 28.9.1998. On 28.9.1998 none was present on behalf of the complainant, but in the interest of justice a final opportunity was given to the complainant to file affidavit by way of evidence and the matter was adjourned to 11.1.1999. On 11.1.1999 too none was present on behalf of the complainant and a last opportunity for filing affidavit by way of evidence on behalf of the complainant was given to the complainant subject to payment of costs and the matter was adjourned to 3.5.1999. On 3.5.1999, as none was present on behalf of the complainant, the complaint, filed by the complainant, was directed to be dismissed by this Commission vide order dated 3.5.1999. Thereafter, the complainant on 30.8.1999 filed an application for the restoration of the case dismissed in default, by this Commission, vide order dated .5.1999.

After hearing the learned Counsel for the parties and also after taking into consideration the facts stated in the above said application this Commission vide order dated 28.10.1999 directed for the restoration of the complaint, dismissed in default vide order dated 3.5.1999, subject to payment of costs which was quantified at Rs. 1,000/- to be paid by the complainant to O.P. No. 2. The case on 28.10.1999 was adjourned to 3.1.2000 for payment of costs. On 3.1.2000 the complainant neither cared to appear nor cared to pay the costs with the result that the complaint, filed by the complainant, was again dismissed by this Commission vide order dated 3.1.2000.

3. THEREAFTER, the complainant filed another application for the restoration of the complaint, dismissed in default by this Commission vide order dated 3.1.2000. The above mentioned application, filed by the complainant/applicant, was allowed by this Commission vide order dated 10.5.2001 again subject to payment of costs which was quantified at Rs. 1,000/- to be paid by the complainant and the case was adjourned to 5.11.2001. On 5.11.2001 there was no one present on behalf of the complainant, though the matter was called out twice on that date. As none was present on behalf of the complainant, the complaint, filed by the complainant, was directed to be dismissed in default of the appearance of the complainant. The above mentioned application dated 26.11.2001 has been filed by the complainant for the restoration of the complaint, dismissed in default vide order dated 5.11.2001. As on 5.11.2001, the date on which the complaint was directed to be dismissed in default, the learned Counsel for O.P. No. 2 was present, this Commission vide order dated 5.12.2001 directed that a notice of the above mentioned application be issued to O.P. No. 2

through Counsel. A detailed reply to the above said application has been filed on behalf of O.P. No. 2 to which a rejoinder has also been filed on behalf of the complainant.

4. IN so far as the above mentioned application, filed on behalf of the complainant/applicant, is concerned we have carefully gone through the contents of the application, that of the reply and rejoinder filed by the parties and have also heard the learned Counsel for the parties at length. During the course of arguments the learned Counsel for the complainant/applicant vehemently contended that in the interest of justice and in view of the facts stated in the application, the complaint, dismissed in default vide order dated 5.11.2001 deserved to be restored to its original number. The learned Counsel for the complainant/applicant during the course of arguments has placed reliance on two decisions of the Hon"ble Supreme Court in case State Bank of India v. Chandra Govindji (KM), reported as VIII (2000) SLT 143=(2000) 8 SCC 532, and O.P. Srivastava v. K.K. Raizada & Ors., reported as (2000) 3 SCC 54. On the other hand the learned Counsel for O.P. No. 2/non-applicant stated that the above mentioned application, filed by the complainant/applicant is devoid of substance. It was submitted by him that as would be apparent from the previous conduct of the complainant/applicant, the complainant only wants to harass the O.Ps. by adopting dilatory tactics. It was stated by him that the above mentioned application, filed by the complainant/applicant which is devoid of substance deserved to be dismissed with costs. INsofar as the above mentioned application, filed by the complainant/applicant, is concerned, the observations of the Hon"ble Supreme Court in case New India Assurance Company Limited v. R. Srinivasan, reported as I (2000) CPJ 19 (SC)=II (2000) SLT 520=(2000) 3 SCC 242, are of utmost significance. IN the above said decision their Lordships of the Hon"ble Supreme Court have made the following observations : "We cannot also lose sight of the fact that a complainant may harass a party by repeatedly filing a complaint against him. He may file a complaint, draw the opposite party to the State or National Commission and then have the complaint dismissed for default. He may repeat the exercise again only to harass the defendant. This practice, or to put it a little sternly, these tactics would be intolerable for any authority under the Act. IN such a situation, the District Forum or the State or National Commission would not be helpless and it would be open to them to dismiss the fresh complaint on the ground of abuse of the process available under the Act. They can, in that situation, legitimately invoke the principles of Order 9 Rule 9, C.P.C."

In the present case also from the narration of the sequence of events as stated by us earlier it is apparent that the complainant all through had not been serious in prosecuting its case. Earlier no rejoinder and affidavit by way of evidence had been filed by the complainant though good number of opportunities were given and thereafter the complainant was irregular in causing appearance in the present matter. The age old saying is that "once bitten is twice shy" but in the present case as already stated not only once but twice the complaint, filed by the

complainant was dismissed in default but in the interest of justice, condoning earlier default, the complaint was directed to be restored. It is worth mentioning that this Commission vide order dated 10.5.2001 had directed the restoration of the complaint dismissed in default vide order dated 3.1.2000 subject to payment of costs. On 10.5.2001 the learned Counsel for the complainant made a statement before this Commission that the complainant would be paying costs in terms of order dated 10.5.2001 on the next date of hearing. On the above statement of the learned Counsel for the complainant the matter was adjourned to 5.11.2001. On 5.11.2001 the complainant neither cared to appear nor cared to pay costs and, therefore, this Commission was left with no other alternative but to dismiss the complaint, filed by the complainant, in default of appearance of the complainant. In case New India Assurance Company Limited (supra), their Lordships of the Hon''ble Supreme Court have held that on "good cause" being shown for non-appearance, the complaint dismissed in default can be restored to its original number. In the application dated 26.11.2001, filed on behalf of the complainant, the reason assigned is that on the morning of 5.11.2001 the learned Counsel for the complainant had acute pain in stomach as a result of which he neither could inform any representative of the complainant Company nor could make any alternative arrangement for attending the hearing on 5.11.2001. No medical certificate in support of the above contention has been filed by the learned Counsel for the complainant either along with the application or along with the rejoinder dated 5.2.2003. In the absence of any such document it cannot be stated that due to good cause there was no appearance on behalf of the complainant on the date of hearing i.e. on 5.11.2001. The approach, as is evident from the sequence of events detailed in the earlier part of this order, of the complainant in prosecuting the above complaint decidedly although has been casual/non-serious. As regards the decisions of the Hon''ble Supreme Court, relied upon by the learned Counsel for the complainant/applicant the position is that there can be no two opinions about the proposition of law laid down therein is concerned but the same in the given facts in no way help the cause of the complainant/applicant insofar as the above mentioned application is concerned. In view of the above discussion, in our opinion, the above mentioned application, filed by the complainant/applicant, is devoid of substance. The same merits dismissal. Accordingly the same is dismissed. In the facts and circumstances of the case, the parties are left to bear their own costs. The above mentioned application, filed by the complainant/applicant stands disposed of in above terms. Application dismissed.