
(1996) 08 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

GAUTAM AUTO

APPELLANT

Vs

KIRAN PRABHA

RESPONDENT

Date of Decision : 09-08-1996

Acts Referred:

Citation : 1997 1 CPJ 226 : 1998 1 CPC 332 : 1998 1 CPR 378

Hon'ble Judges : A.P.Chowdhri , S.Brar J.

Final Decision : Ex-parte Order set aside

Judgement

1. THIS is an application for setting aside ex-parte order dated 2.5.94 passed by this Commission in Appeal No. A-340/93. The brief relevant facts are that Smt. Kiran Prabha, complainant for short, instituted a complaint in District Forum against M/s. Bajaj Auto Ltd., for short the manufacturer, New United Motors, the dealer, who was later on succeeded by M/s. Gautam Auto, a partnership concern as opposite party 2 and Registering Authority (Directorate of Transport) as opposite party 3. In brief, her case was that she purchased a Bajaj scooter from the dealer on 16.10.89. In the registration book issued by opposite party 3 and given to the complainant through the dealer the engine number and chassis number were wrongly mentioned and inspite of the fact that she had been making complaints and sending reminders, necessary action to rectify the mistake was not being taken. Ultimately, having failed to get any redress, the complainant instituted a complaint against the dealer, manufacturer and the Registering Authority. The District Forum disposed of the complaint by its order dated 14.5.93 directing the opposite parties No. 1 to 3 jointly and severally to pay Rs. 5,000/- as compensation to the complainant. Opposite party 3, Registering Authority, failed to enter appearance and was proceeded ex-parte in the District Forum.

2. AGGRIEVED by the order, opposite parties No. 1 and 2 preferred Appeal No. 599/95. Again no appearance was entered on behalf of Registering Authority. The appeal was partly accepted. The appellants, opposite parties 1 & 2 before the District Forum, were absolved of their liability and the Registering Authority was

held liable to pay the aforesaid amount. The present application for setting aside the said ex-parte order was filed on 28.11.95. It was stated that no notice with regard to the complaint filed in the District Forum or the appeal filed before this Commission had ever been served on the applicant. It was further stated that in fact, there existed no Registering Authority, under the Directorate of Transport and the address given in the District Forum as well as the appeal was insufficient to locate the office of Motor Licensing Officer, West Zone, Directorate of Transport, Government of NCT, Road No. 17, Block B, Community Centre, Janakpuri, New Delhi which was the correct address. The applicant acquired knowledge about the proceedings and the order only when notice u/Section 27 was served on the Secretary, Department of Transport. Thereafter, the present application was moved.

Reply has been filed by the appellant M/s. Gautam Auto.

3. WE have heard Mr. M.L. Mahajan, Advocate for the applicant, Mr. Kishan Chand Kohli, authorised agent for Gautam Auto, dealer and authorised agent of the complainant. There is no dispute that the personal service of the Head of Department or for that matter the person with the designation of Registering Authority under the Transport Department had not been effected either before the District Forum or before this Commission. The admitted position is that notice was presumed to have been served by registered post as the same was not received back undelivered raising a presumption of service. It is settled law that such a presumption is rebuttable. Where the claim made by the party concerned is that no service was effected, the complainant or appellant has to prove that service was, in fact, effected on the party denying it. No such evidence has been placed on record by the appellant in this case. It follows that the initial presumption of service stands rebutted. Apart from what has been stated above it is also significant to add that there exists no functionary under the Department of Transport as a Registering Authority. The notice was, admittedly, sent addressed to the Registering Authority. In other words, there is nothing on record to show that the notice was duly served on the Motor Licensing Officer.

4. YET another reason to hold that service in the present case had not been effected on the proper person is, that a party arrayed in the appeal was Registering Authority and it has been shown by the applicant that no such authority exists. It is pertinent to add that in addition to the public officer concerned, assuming that Registering Authority was the concerned officer of the Directorate of Transport, the Government had not been impleaded. Non-joinder of the State Government is contravention of the provisions of Order 27 and Section 79 of the Code of Civil Procedure. The underlying principle applies to the present proceedings. It is well-known that if process is not served on the public officers envisaged under the Code of Civil Procedure in the case of the State or Central Government, effective representation cannot be expected and this leads to endless difficulties in ultimately enforcing the orders. In the present case, there is no doubt that the public officer concerned was not correctly impleaded

nor was the State Government of NCT, Delhi impleaded. For these reasons the application must be allowed. We order accordingly. The ex-parte order, in question, is set aside. The applicant, who is respondent No. 3 in the aforesaid appeal, shall file its reply in the appeal on 16th Sept.,96 so that the appeal can be heard and disposed of according to law. A copy of this order be communicated to the parties. Ex-parte order set aside.