
(2017) 02 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

Case No : 721 of 2016

GLOBAL HEALTH PVT. LTD. & ANR.

APPELLANT

Vs

NISARG SHAILESH SHAH

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Citation : 2017 1 CPR 705

Hon'ble Judges : M. Shreesha, Presiding

Advocate : Shyel Trehan, Himanie Katoch, Ankit Shah

Judgement

1. Aggrieved by the orders dated 16.02.2016 and 06.04.2016 passed by the Delhi State Consumer Disputes Redressal Commission (for short "the State Commission") in Complaint No.56 of 2015, Opposite Parties No.1 and 3 have preferred this Appeal. By the order dated 16.02.2016, the State Commission proceeded ex parte proceedings against the Appellants herein. By the order dated 06.04.2016, the State Commission dismissed the Application preferred by the Appellants herein as not pressed and observed that even on merits, the Commission had no power to review or recall its own order.

2. Keeping in view the fact that the Application was dismissed as not pressed on 06.04.2016 and also in view of the judgement of the Hon'ble Supreme Court in "Rajeev Hitendra Pathak & ors. Vs. Achyut Kashinath Karekar & Anr. (2011) 9 SCC 541", the State Commission does not have the power to review or recall its own order, I find that there is no illegality or irregularity in the order dated 06.04.2016.

3. The order of the State Commission dated 16.02.2016 reads as follows:
C-56/15

16.2.2016

Present : Proxy for counsel for Complainant

Ops-1 & 3 have been served by registered AD post.

Despite awaiting no one has appeared on behalf of OPs 1 & 3.

OPs 1 & 3 are proceeded ex parte.

OP-2 is not yet served.

4. Issue fresh notice to OP-2 through registered AD cover as well as by speed post for filing written version within 30 days from the date of receipt of notice.

5. A copy of the complaint be also sent along with notice.

6. Renotify on 27.05.2016.

7. Learned Counsel appearing for the Appellants vehemently argued that the Complaint was listed on 24.08.2015 for hearing on admission before the State Commission and as on the said date, the summons were not received by the second Appellant, and hence they could not appear on 24.08.2015. The first Appellant was served by registered post only on 25.11.2015 for appearance on 24.08.2015 and hence, they could not appear before the State Commission on 24.08.2015. Learned Counsel also submitted that both the Appellants did not receive the copy of the Complaint along with the notice which is in violation of the procedure laid down in the Act for "issue of summons". She further submitted that the Counsel's clerk had mistakenly noted the date as 16.03.2016 instead of 16.02.2016 which was a bonafide mistake and therefore, they could not appear before the State Commission on 16.02.2016. She argued that the State Commission has erred in setting them ex parte as the summons were served after the returnable date.

8. Vide order dated 09.12.2016, this Commission sought for the record of the State Commission as there was a submission of there being some confusion with regard to service of notice on the Appellants herein.

9. Learned Counsel for the Respondent/Complainant strenuously contested the matter and drew our attention to the first notice which was issued by the State Commission which was sent on 09.07.2015 for appearance on 24.08.2015. It is observed from the record that the second set of notices were sent by the State Commission on 23.12.2015 returnable on 16.02.2016 which were admittedly received. Therefore, the contention of the Counsel for the Appellants that her clerk had mistakenly noted the date as 16.03.2016 is unsustainable. It was also pointed out by the Counsel for the Respondent that in para (3) of the affidavit filed by the Appellants herein, it is stated that the notices were served on the second Appellant on 03.09.2015, 24.11.2015 and 18.01.2016. A copy of the notice dated 18.01.2016 clearly states that it is returnable on 16.02.2016 and therefore, the contention that the wrong date had been given by the Registry is not sustainable.

10. A perusal of the record of the State Commission does show that the notices issued on 23.12.2015 were served on the Appellants herein, arrayed as Opposite Parties No.1 and 3, before the State

11. Commission returnable on 16.02.2016. However, keeping in view that it is a case of medical negligence and the judgment of the Hon''ble Supreme Court dated 10.02.2017 in Reliance General Insurance Co. Ltd. And Anr. vs. M/s Mampee Timbers And Hardwares Pvt. Ltd. And Anr. (Diary No.2365 of 2017), in which it has been laid down that it would be open to the concerned Forum to accept the Written Statement beyond the stipulated time of 45 days in an appropriate case , on suitable terms, including the payment of costs and to proceed with the matter, I find it a fit case to allow the Appeal. Accordingly, this Appeal is allowed; the ex parte proceedings against the Appellants herein are set aside and they are permitted to file their Written Version within 30 days from today with an advance copy to the Complainant within two weeks from today. However, for the latches on behalf of the Appellants, costs of 60,000/- is imposed on them, out of which 50,000/- shall be paid by the first Appellant Hospital and remaining 10,000/- by the second Appellant Doctor to the Complainant within two weeks from today.

12. The parties/their Counsel are directed to appear before the State Commission on 31.03.2017 for further proceedings.