

(2015) 08 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

Case No : 3310 of 2012

KALPANABEN KRISHNAKANT GUPTA

APPELLANT

Vs

BHUTADIYA DINESHBHAI PARAGBHAI & 2 ORS.

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21](#), [Section 19](#), [Section 15](#), [Section 17](#) - Jurisdiction of the National Commission - Appeals - Appeal - Jurisdiction

Citation : (2015) 08 NCDRC CK 0061

Hon'ble Judges : K.S. Chaudhari

Advocate : PRAVIN SATALE, Puja Singh, Hemantika Wahi

Judgement

1. This revision petition has been filed by the petitioner against the order dated 16.03.2012 passed by the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad (in short, "the State Commission") in Appeal No. FA/266 of 2012 - Kalpanaben Krishnakant Vs. Dineshbhai Paragbhai Bhutadiya (Patel) & Ors. by which, while dismissing appeal, order of District Forum allowing complaint was upheld.

2. Brief facts of the case are that Complainant/Respondent no. 1 filed complaint before District Forum against OP No. 1&2/Respondent No.2&3 before District Forum and later on complainant moved application before District Forum for impleading OP No. 3/Petitioner as OP No. 3 in the complaint and learned District forum vide order dated 4.11.2011 allowed application and impleaded petitioner as OP No. 3. In order sheet dated 18.11.2011, it was observed as under: "Through notice was issued to proposed party, no one is appeared on its behalf and it is ordered to join it as party in this case. Make necessary changes in the complaint. Adjourn for submission of reply and objection for opponent and evidence of complainant."

3. After hearing complainant and OP No. 1 & 2, learned District forum allowed

complaint against OP No. 3 and directed him to handover registration certificate to the complainant and dismissed complaint against OP No. 1&2. Appeal filed by OP No. 3 was dismissed by learned State Commission vide impugned order against which this revision petition has been filed.

4. None appeared for Respondent No. 1 even after service and he was proceeded ex-parte.

5. Heard learned Counsel for the petitioner and respondent no. 2 & 3.

6. Learned Counsel for the petitioner submitted that inspite of no proof of service of notice of complaint on petitioner, learned District forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside and matter may be remanded back to District Forum. Learned Counsel for the Respondent No. 2 & 3 submitted that no order has been passed against them by Fora below.

7. Perusal of order sheet dated 18.11.2011 reveals that notice was issued to proposed party and proposed party i.e. OP No. 3 did not appear. He was impleaded as a party and District Forum further directed to make necessary changes in the complaint and matter was adjourned for submission of reply and evidence of the complainant. It appears that after impleading OP No. 3 as a party, no notice was issued to OP No. 3 for filing written statement and on the basis of notice to the proposed party, i.e. OP No. 3, District forum proceeded ex-parte against OP No. 3 and passed order which could not have been passed without service of notice after impleading OP No. 3 as a party and giving him opportunity to contest case. Learned State Commission further committed error in dismissing appeal and not considering this aspect that OP No.3 was not served notice by District forum.

8. In the light of aforesaid discussion, revision petition is to be allowed and impugned order is liable to set aside.

9. Consequently, revision petition filed by the petitioner is allowed and order dated 16.3.2012 passed by the State Commission in Appeal No. FA/266 of 2012 - Kalpanaben Krishnakant Vs. Dineshbhai Paragbhai Bhutadiya (Patel) & Ors. and order of District Forum dated 2.2.2012 passed in CC No. 79 of 2011 - Dineshbhai Paragbhai Bhutadiya (Patel) Vs. Regional Transport Officer & Ors. is set aside and matter is remanded back to learned District Forum to decide complaint after taking written statement of petitioner on record and after giving him an opportunity of adducing evidence.

10. Petitioner is directed to appear before District Forum on 5.10.2015 and file written statement on that date.