

(1991) 05 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

MARIKKAR (MOTORS) LTD.

APPELLANT

Vs

MARY POULOSE

RESPONDENT

Date of Decision : 02-05-1991

Acts Referred:

Citation : 1991 0 CPC 408 : 1991 2 CPJ 283 : 1991 2 CPR 251

Hon'ble Judges : G.Balagangadharan Nair , R.Ramachandran Nair , C.G.Sethu Lakshmi J.

Final Decision : Order accordingly

Judgement

1. THE appeal has been brought under Section 15 of the Consumer Protection Act by the opposite party from an order of the District Forum Ernakulam. IA. No. 14 of 1991 has been filed by the appellant to condone the delay of 16 days in bringing the appeal. Under Section 15 the appeal has to be filed "within a period of thirty days from the date of the order" and the proviso to the Section empowers the State Commission to entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing the appeal within that period. THE order of the District Forum is dated January 7, 1991 and the appeal was filed before this Commission on 23.2.1991. This is admittedly thirty days after the date of the order of the District Forum. By the application LA. 14/91 the appellant prays to condone the delay. THE supporting affidavit states that although the order is dated 7.1.1991 it was issued on 24.1.1991 and was received by the appellant only on 4.2.1991. THE appellant, it is further stated, came to know of the order only on 4.2.1991 and it was under the impression that the appeal could be filed within 30 days of the date of communication of the order, that the appeal was filed on 23.2.1991. It is also stated that subsequently the appellant learnt that the appeal was to be filed within 30 days from 7.1.1991 which is the date of the order. Adding that there was no wilful negligence or omission on the appellant's part, the affidavit prays that the delay be condoned. THE application is for that purpose.

2. THE respondent resists the application on a counter affidavit, contending that

the actual delay is more than a month and that the appellant's plea of ignorance of the statutory provision is unacceptable. At the hearing of the application Counsel for the appellant-petitioner contended that although an application to condone the delay, has been made by way of caution, the appeal is in time as the period has to be reckoned only from 4.2.1991 when the appellant got knowledge of order and the appeal was filed on 23.2.1991. Counsel pointed out that the copy of the order sent to the appellant by the District Forum was signed by the Senior Superintendent only on 24.1.1991 and that the appellant's allegation that the order reached them only on 4.2.1991 is probable, apart from being uncontested. Counsel argued that the expression "from the date of the order" has to be interpreted as "date of knowledge of the order", and that if time is reckoned from the actual date of the order, it may often work injustice where, as in this case, the order is passed in the absence of the potential appellant and it is communicated to him only later.

After considering the question in detail we are inclined to accept the appellant's contention, in fact the principle of the matter is no longer *res Integra*. In the *Assistant Transport Commissioner Luc know & others v. Ndn Singh*, AIR. 1980 SC 15 the question arose under the U.P. Motor Vehicles Taxation Act. Under Section 15 of the Act an appeal has to be filed within 30 days of the order of the Taxation Officer. In that case the order of the Taxation Officer although dated October 24, 1964 was received by the respondent only on October 29. He filed the appeal within 30 days of October 29, but beyond 30 days of October 24. If October 24, could be taken to be the date of the order, then the appeal was out of time but if however the date of the order, in the context of Section 15, meant the date of Communication of the order, then the appeal was within time. The Lordships followed an earlier decision of the Court, *Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer*, AIR 1961 SC 1500 and observed. (Page 16). "It is plain that mere writing an order in the file kept in the Officer of the Taxation Officer is no order in the eye of law in the sense of affecting the rights of the parties for whom the order is meant. The order must be communicated either directly or constructively in the sense of making it known, which may make it possible for the authority to say that the party affected must be deemed to have known the order. In a given case, the date of putting the order in communication under certain circumstances may be taken to be the date of the communication of the order on the date of the order but ordinarily and generally speaking, the order would be effective against the person affected by it only when it comes to his knowledge either directly or constructive otherwise not".

3. WE might also refer to *Madan Lal v. State of U.P. & others*, AIR 1975 SC 2085. Section 1 of the Indian Forest Act allows an appeal to be preferred against the order passed by, the Forest Settlement Officer and prescribes a time limit of three months from the date of the order for presenting the appeal. The question that fell to be decided was whether the order in question should be treated as having been passed on the date it bore or when it came to the notice of the

appellant, Forest Department. Their Lordship followed AIR 1961 SC 1500 and held that time ran from the date when the Forest Department came to know the order. The head note embodies the principle laid down by the Court. "The Forest Act does not state what would happen if the Forest Settlement Officer made an order under Section 11 without notice to the parties and in their absence. In such a case, if the aggrieved party came to know of the order after the expiry of the time prescribed for presenting an appeal from the order, would the remedy be lost for no fault of his? It would be absurd to think so. It is a fundamental principle of justice that a party whose rights are affected by an order must have notice of it. This principle is embodied in O.20 R. 1 of the Code of Civil Procedure : though the Forest Settlement Officer adjudicating on the Claims under the Act is not a Court, yet the principle which is really a principle of fair play and is applicable to all tribunals performing judicial or quasijudicial functions must also apply to him".

In the course of the arguments Counsel for the appellant brought to our notice a decision of the Kerala High Court, Surendran v. The Munsiff Rent Controller, Perinthalmanna, (1989) 2 KLJ 508 in which a learned Judge extended the principle of the above decisions, to hold that the words "date of death" in Rule 10 of the Kerala Buildings (Lease and Rent Control) Rules can be read as "date of knowledge of death".

4. IN the light of the decisions of the Supreme Court we hold that the expression "date of the order" in Section 15 should be construed as "date of knowledge of the order". So construed the appeal is within time as the appellant got knowledge of the order only on 4.2.1991 and filed the appeal within thirty days, on 23.2.1991. Ordered accordingly. Order accordingly.