
(1992) 07 NCDRC CK 0040

In the National Consumer Disputes Redressal Commission

M.I. MISHRA

APPELLANT

Vs

SOCIETY SCOOTER

RESPONDENT

Date of Decision : 24-07-1992

Acts Referred:

Citation : 1992 3 CPJ 55 : 1994 1 CLT 356

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Final Decision : Revision petition allowed

Judgement

1. BY our Order dated 1st March, 1992 we had called for a report from the State Commission as to the correctness or otherwise of the averments contained in paragraph 5 to 11 of the Memorandum of Revision (wrongly styled as appraisal) to the effect that no notice had been issued to the complainant respondent before the Order condoning the delay in filing the appeal was passed by the State Commission. Despite a telegraphic reminder sent to the State Commission on 17th July, 1992, the State Commission has not so far sent its report to this Commission. In the circumstances, we proceed to dispose of the case on the basis of the averments contained in the Revision Petition, the truth of which has not been challenged on the side of the respondents.

2. WE are constrained to observe that, the procedure adopted by the State Commission in allowing the application for condonation of delay of about six months in filing the appeal. Without issuing any notice to the respondents, and in simultaneously setting aside the Order passed by the District Forum in favour of the complainant respondent and remanding the case to the District Forum on the condition as to payment of costs is manifestly illegal and cannot be sustained. By virtue of the failure of the Opposite Party to file an appeal within the statutory period of limitation, avested right had accrued to the Opposite Party and such right could not be taken away by an Order of condonation of delay in presenting the appeal passed behind the back of the Opposite Party without any notice. The proper procedure that should have been adopted by the State Commission was to issue a notice to the concerned respondents and afford them a hearing on the

question as to whether the delay deserved to be condoned or not. It is only thereafter that any question of consideration of the merits of the Order passed by the District Forum could arise before the State Commission. The order passed by the State Commission is in clear violation of the principles of natural justice and it will stand hereby set aside. The appeal and the petition for condonation of delay are remanded to the State Commission for fresh disposal after hearing both sides firstly on the question as to whether, valid and sufficient grounds have been made out for condonation of delay in filing the appeal and in case the State Commission is of the view that the delay should be condoned only thereafter should the appeal be considered on the merits after affording due opportunity to both sides to present their case. The Revision Petitioner will get the costs from the respondent, which we fix at Rs. 500/-. Revision petition allowed with costs.