
(1997) 12 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

MOHINDRA COLD STORAGE

APPELLANT

Vs

PUNJAB STATE ELECTRICITY BOARD

RESPONDENT

Date of Decision : 17-12-1997

Acts Referred:

Citation : 1998 1 CLT 668 : 1998 1 CPC 275 : 1998 1 CPR 372 : 1999 1 CPJ 250

Hon'ble Judges : A.L.Bahri , R.L.Gupta , Gurkanwal Kaur J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is by the complainant M/s. Mohindra Cold Storage challenging order of District Forum, Jalandhar dated December 11,1996 whereby the complaint was dismissed with the direction that the complainant may pursue remedy in the Civil Court, if so advised.

2. THE facts arising out of the pleading of the parties can be summarised for decision of this appeal at this stage as the dispute is not to be adjudicated on merits. THE complainant raised a grouse regarding excessive electricity bills issued by the Punjab State Electricity Board. A civil suit was earlier filed by the complainant for refund of the amount charged in excess. THE suit was for recovery of Rs. 20,222/-. THE Electricity Board filed a written statement in that suit which was followed by a rejoinder by the plaintiff complainant. THEREafter, on an application filed the suit was withdrawn and dismissed as the complainant wanted to have recourse to the proceedings under the Consumer Protection Act. Hence the complaint was filed before the District Forum. The Electricity Board took up the plea that the complaint was not maintainable as the complainant had earlier filed the civil suit which was dismissed. The plaintiff filed a rejoinder stating therein that an application was filed in the Civil Court for dismissal of the suit with permission to file the complaint under the Consumer Protection Act. Copies of plaint and the application filed before the Civil Court for dismissal of the suit with permission to file the complaint were produced. The District Forum accepted the stand of the opposite party, the Electricity Board and held that after dismissal of the suit, recourse to the proceedings under the Consumer Protection

Act could not be held. This was so stated as copy of the order passed by the Civil Court was not produced on the record and it was taken that the suit was dismissed, simpliciter.

At the out set it may be stated that remedy under the Consumer Protection Act is additional remedy and the complainant can be ousted only on proof of the fact that his earlier suit was dismissed on merits and would operate as res-judicata. Since copy of the order passed by the Civil Court was not produced by the parties, the question of operation of the order of the Civil Court as res-judicata would not arise. It cannot be said that the suit was dismissed on merits on issues involved therein. In the absence of production of copy of order of Civil Court, no presumption can be drawn regarding its contents either in favour of any party or against. The fact remains that the opposite party having failed to produce copy of the order, objection raised on his behalf regarding jurisdiction of District Forum to entertain the complaint, cannot succeed. The order passed by the District Forum dismissing the complaint is not justified in law and is therefore set aside while accepting the appeal. The case is remanded back to the District Forum, Jalandhar for decision on merits according to law. Parties through their Counsel are directed to appear before the District Forum, Jalandhar on February 2, 1998. Copy of the order alongwith records be sent to the District Forum promptly. Appeal allowed.