**(2017) 02 NCDRC CK 0020**

**In the National Consumer Disputes Redressal Commission**

**Case No :** 3 of 2017

M/S. PERFECT PRINTS THROUGH ITS SOLE PROPRIETIR, SMT. VEENA GUPTA — APPELLANT

Vs

ORIENTAL INSURANCE CO. LTD. — RESPONDENT

**Date of Decision :** 07-02-2017

**Acts Referred:**
<a href=3999>Consumer Protection Act, 1986</a>, <a href=3999-27>Section 27(1)</a>, <a href=3999-25>Section 25(3)</a> - Penalties - Enforcement of orders of the District Forum, the State Commission or the National Commission.

**Citation :** 2017 1 CPR 363

**Hon'ble Judges :** V.K. Jain

**Advocate :** Veena Gupta, Pradeep Gupta

**Final Decision :** Appeal Dismissed

## Judgement

1. Vide order dated 27.05.2015, passed in RP No. 90 of 2011, this Commission held and directed as under:

" In a complaint filed by Smt. Veena Gupta, Proprietor of M/s. Perfect Print against the Oriental Insurance Co. Ltd., the State Commission vide its decision dated 25.11.1998 passed the following order:-

"The complaint is allowed in part. The complainant''s claim of Rs. 11,20,479/-, Rs. 1,00,000/- (Rs. One lakh only), Rs. 3,000/- and the amounts actually paid by complainant to U.P.F.C. and D.I.C. Agra for the period mentioned in the earlier part of the judgment to be determined in execution proceedings shall also be payable by the insurance company. The order shall be complied within two months time failing which the damages in the form of interest @ 18% per annum will be payable on the total amount awarded."

2. Being aggrieved from the order passed by the State Commission, the Insurance Company preferred an appeal before this Commission. The complainant also preferred a separate appeal, challenging the above referred order of the State Commission. Vide order dated 10.02.2003, this Commission

disposed of the appeal filed by the Insurance Company in the following terms:

"Accordingly, award of these amounts is struck down. While agreeing with the State Commission that the harassment, inconvenience and expenditure has resulted to the insured in pursuing his claim over such a long period, we uphold the award of compensation of Rs. 3,000/-. Further, we feel that the rate of interest is on the higher side and that ends of justice will be met if the rate of interest is reduced from 18% to 12%. Except for the aforesaid modifications, the impugned order is upheld. There will be no order as to costs."

The appeal filed by the complainant, however was dismissed on the ground that it was barred by limitation.

3. The complainant approached the Hon''ble Supreme Court by way of Civil Appeals No. 9129/2003 and 5894/2004 against the above referred orders passed by this Commission. Both the appeals were decided vide order dated 23.07.2009. The aforesaid order reads as under:-

"It appears that the appellant had a factory in Agra, in which a theft took place on 12 th March, 1994. The appellant lodged a First Information Report on 13.03.1994 and also brought it to the notice of the insurance company with which the factory was insured. According to the appellant, the incident took place within the period during which the factory was insured. On 16.03.1994 and 30.03.1994, the surveyors visited the premises and took photographs but did not settle the claim of the appellant.

Since, the claim was not settled by the insurance company, the appellant filed a claim petition before the U.P. State Commission Consumer Protection, Lucknow on 12 th January, 1996 which was allowed in part by the State Commission vide its judgment dated 25 th November, 1998. The State Commission apart from upholding the claim of Rs. 11,20,479/- also awarded a sum of Rs. 1,00,000/- for harassment cost to the appellant and a cost of Rs. 3,000/- and also granted interest @ 18% per annum.

The insurance company filed an appeal before the National Consumer Disputes Redressal Commission, New Delhi which has been disposed of by the National Commission by the order dated 10 th February, 2003. The National Commission has rejected the claim of Rs. 1,00,000/- on account of harassment compensation and also reduced the rate of interest from 18% to 12%.

On the facts of the case, we uphold the order of the State Commission for grant of Rs. 1,00,000/- towards harassment cost, in addition to the principal amount alongwith interest at the rate of 12% from the date of the order of the State Commission till payment along with pendentelite interest on the principal amount at the rate of 12% per annum from the date of filing of the complaint till that date on which the principal amount was paid to the appellant. We also direct that the aforesaid payment shall be made within two months from today."

4. The issue involved in this revision petition is as to whether the entire payment

 

in terms of the above referred order of the Hon''ble Supreme Court has been made or not. In our opinion, the following payments were required to be made to the complainant in compliance of the above referred order of the Hon''ble Supreme Court (1) principal amount -Rs. 11,20,479/-, (2) harassment cost - Rs. 1 lakh, (3) cost of litigation-Rs. 3,000/-, (4) interest (simple) at the rate of 12% per annum on the principal amount of Rs. 11,20,479/- w.e.f. the date of the order of the State Commission, i.e. 25.11.1998, till the date the principal amount of Rs. 11,20,479/- was paid to the complainant and (5) interest (simple) at the rate of 12% per annum from the date of filing of the complaint i.e. 12.01.1996, till the date on which the principal amount of Rs. 11,20,479/- was actually paid to the complainant.

5. The learned counsel for the Insurance Company submits that interest cannot be paid over twice and if the interest is paid in the above referred manner, it will result in double payment of interest for the period from the date of the order of the State Commission till the date on which the principal amount of Rs. 11,20,479/- was paid to the complainant. In this revision petition, we are required to ensure compliance of the directions of the Hon''ble Supreme Court as are contained in the order dated 23.07.2009 and in our opinion, the aforesaid order does require the Insurance Company to pay interest on the principal amount of Rs. 11,20,479/-, firstly for the period from the date of the order of the State Commission till the date of payment of the principal amount and then again w.e.f. the date of filing of the complaint, till the date the aforesaid amount of Rs. 11,20,479/- was paid to the complainant. If there is a mistake in the order of the Hon''ble Supreme Court, as is contended by the learned counsel for the Insurance Company, it is not for us to go into that question, and take a view one way or the other.

6. The Insurance Company is directed to calculate the interest payable in the above referred terms within eight weeks from today and make payment of the balance amount to the complainant within four weeks thereafter. Once the Insurance Company has complied with this order, the amount which the said Company has deposited with this Commission be refunded to it alongwith the interest, which may have accrued on that amount.

7. It is made clear that in case the payment is not made by the Insurance Company in terms of this order, the attachment, if any, of the bank account of the Insurance Company under the order of the State Commission shall become operative. The revision petition stands disposed of."

2. It would thus be seen that as far as this Commission is concerned, RP No. 90 of 2011 stood finally disposed of on 27.05.2015.

3. It appears from the documents filed by the petitioner that in execution no. 08/2010, the State Commission vide order dated 22.09.2016, held that prima facie , the respondent had not complied with the order of this Commission dated 27.05.2015 and directed personal appearance of the respondent on 17.10.2016,

 

to explain and show cause why the respondent be not punished for not complying with the aforesaid order. The State Commission also merged execution application no. 08/2016 with execution application no. 08/2010.

Vide order dated 17.10.2016 passed in execution application no. 08/2010, the State Commission adjourned the matter to 30.11.2016. No further order of the State Commission appears to have been filed by the petitioner, who has again approached this Commission with the following prayers:

1. Discharge the order in RP/90/2011 dated 27/5/2015, being ineffective and without any force of executability, and rule out misuse as being noticed in the case under process before State Commission in UP in EP/8/10.

2. Dismiss the order of Hon''ble State Commission dated 30.11.2016, recorded an oral and imaginary facts in violation of the process of law.

3. Once the order of Hon''ble Supreme Court and execution order therein has attained finality, State Commission has no jurisdiction to test or challenge its correctness.

4. Release the amount of security held with this Hon''ble Commission to be adjusted in the mounting interest, as per law of appropriation settled by Constitution Bench of Hon''ble Apex Court, and many other orders and stay stand vacated through successive orders and in RA/198/2013, the amount which has reached nearly thrice to of the deposit due to fault of only and only JDs M/s Oriental Insurance Company Ltd. and issue the Recovery Certificate as per Sub Sec 3 of Sec 25 of the CPA 1986, for the remaining amount. (Cal. Chart attached....)

5. Allow compensatory costs for all unjustified and uncalled for adjournments forced on this ailing senior citizen "Consumer".

6. To order to initiate all necessary actions to execute the order and judgment of Hon''ble Supreme Court dated 27.05.2009 as decided in Ex. Order 10/2010 and 8/2016 under Sub Sec 1 of Sec 27 of CPA if necessary as a last resort.

7. Any other order this Hon''ble Commission may think in the interest of justice.

As noted earlier, RP No. 90 of 2011 was finally disposed of by this Commission vide its order dated 27.05.2015. It is for the State Commission to ensure execution of the said order. The execution application filed by the petitioner is still pending before the State Commission. Therefore, approaching this Commission by way of this Appeal Execution is pre-mature. As regards the prayer seeking discharge of the order of this Commission dated 27.05.2015, no such prayer can be granted by this Commission which became functus officio on finally deciding the said revision petition and the only remedy available to an aggrieved person was to file a review application, as per the rules of this Commission seeking review of the said order or to challenge the aforesaid order dated 27.05.2015 before a higher Forum.

 

4. In these circumstances, no relief to the complainant can be granted by this Commission at this stage. The Appeal Execution is therefore, dismissed. One copy each of this order be immediately sent to the parties as well as to the concerned State Commission for information.