

(1999) 11 NCDRC CK 0066

In the National Consumer Disputes Redressal Commission

NATIONAL CO-OP. CONSUMER'S STORE LIMITED	APPELLANT
Vs	
SAINIK SCHOOL SUNAPUR TIHRA	RESPONDENT

Date of Decision : 17-11-1999

Acts Referred:

Citation : 1999 2 CPC 610 : 1999 3 CPJ 448 : 2000 1 CLT 97 : 2000 1 CPR 36

Hon'ble Judges : P.N.Nag , I.D.Bali , Krishana Tandon J.

Final Decision : Order set aside

Judgement

1. THIS appeal primarily seeks to set aside the ex parte order passed by the District Forum against the appellant on 26.3.1999.

2. AT the very outset Mr. Vipin Negi, learned Counsel for the appellant submits that the appellant/ opposite party (hereinafter to be referred to as the opposite party) was proceeded ex parte before the District Forum although he was not served and the finding of the District Forum in this context is erroneous. We have seen the record of the case and we find remarks of the Postman on the envelope that after repeatedly going and informing, the addressee was not available and hence the envelope was returned back. From this report, it is not clear as to whom the Postman had informed about the registered letter he intended to deliver to the addressee. The report is very clear that the envelope was sent back, as the addressee was not available. There is no material on the record to show that the opposite party was aware of the proceedings going on before the District Forum. As a matter of fact, the party should not have only the mere idea of the proceedings, but must have a notice of the exact case he is to meet before the Court. In these circumstances, we are of the firm opinion that the opposite party was not duly served and ex parte proceedings before the District Forum are unsustainable legally.

The learned Counsel for the respondent/ complainant (hereinafter to be referred to as the complainant) by having relied upon the authority of the Hon'ble Supreme Court in *Jyotsana Arvind Kumar Shah & Ors. v. Bombay Hospital Trust*, III (1999) CPJ 1 (SC)=1999 (1) CCC 581 (SC), has contended that there is no

provision in the Act enabling the State Commission to set aside an ex parte order.

3. THERE is no force in this submission of the Counsel. The observations of the Hon"ble Supreme Court in the aforementioned case have been made only in the context of the ex parte order passed by the State Commission itself. It is no doubt true that the State Commission has no power to set aside the ex parte order passed by itself, but certainly it has the power to set aside the ex parte order in the appellate jurisdiction under Section 15 of the Consumer Protection Act, 1986 if the facts and circumstances so warrant and if an appeal is preferred against the order of the District Forum. In the appellate jurisdiction, the State Commission has the power to examine both facts and law. Viewed from another angle, the order of the District Forum cannot be sustained, as held above, there has been no notice to the opposite party and any order passed without notice is void ab initio in the eyes of law.

4. IN the light of foregoing, the order of the District Forum is set aside and the District Forum is directed to decide the matter afresh in accordance with the law. Since we are setting aside the order, it is not necessary to go into the merits of the case. The appeal stands disposed of in above terms. Order set aside.