

(2012) 09 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

NATIONAL SMALL INDUSTRIES CORPORATION LTD

APPELLANT

Vs

PUNJAB AND SIND BANK

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Citation : 2012 0 NCDRC 544

Hon'ble Judges : J.M.Malik , Vinay Kumar J.

Advocate : Shivnath Kumar , Pallav Saxena

Judgement

1. THE main question in this case, pivots around the question, "Whether an ex-parte order passed by the previous Bench of this Commission, dated 30.04.2012, is liable to be set aside under Section 22 (1) of the Consumer Protection Act, 1986? ".

2. WE have heard the learned counsel for the applicant/OP on the application for setting aside the ex-parte order at the stage of its admission. Although the petition itself states that the OP was not served with a notice in this case, yet during the arguments, the counsel for the OP submitted that they were served in this case. We have gone through the main file. Order dated 13.01.2010 goes to reveal that notice was duly served upon the OP and Acknowledgement Due of receipt of said notice is kept in Part-II file which has been seen by Hon "ble Justice R.K. Batta, who was presiding over the proceedings. We have also perused the A.D. Card. No one appeared on behalf of the OP. It was ordered that the case will be proceeded against ex-parte against the OP/ applicant. Consequently, the OP was not in a position to pick up a conflict with this fact. The second submission made by the applicant/OP was that previously, the peons used to deal with the notices/ summons, but now the system prevailing in the bank has changed. Para No.6 of the petition thus reads :- "6. As per the system pertaining to the receipt of postal articles and courier articles prevailing during the relevant time, the peons employed with the opposite party used to receive and handover the same to the concerned department and/or official(s). However, since the last six months, the opposite party, in order to rule out the possibility of

misplacement of any postal/courier article, has introduced a mechanism under which each and every postal/courier article is diarised in a Register and its receipt is duly documented. After entries have been made in the aforesaid Register, the postal/courier articles are marked to the relevant departments and/or officials.

It was argued that the said notice was misplaced.

The learned counsel for the applicant/OP submitted that the ex-parte order has been passed, wherein the OP has been directed to pay a sum of Rs.23,10,905/-, with interest @ 12% p.a. w.e.f. the date of filing of complaint till its payment. He contended that it is public money and opportunity of hearing should be granted in his favour. He contended that he has a very good case on merits.

Learned counsel for the petitioner cited few authorities in support of his case. He submitted that the facts of this case are not similar but the ratio of the same applies to this case. In *Amarjeet Singh Kalra (Dead) by LRs and Ors., Vs. Smt. Pramod Gupta (Dead) by LRs and Ors.*, reported in AIR 2003 SC 2588, it was held that :- "26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights to citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice "

He has also referred to three other authorities (1) *Abdul Qadeer Vs. Mohd. Saghir & Ors.*, reported in 95 (2002) DLT647; (2) *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, reported in AIR 1969 SC 1267; and (3) *State Bank of India Vs. Gobbs Kay India & Ors.*, reported in 1998 IV AD (Delhi) 499. These authorities hardly apply to the facts of this case. In the instant case, the service was affected but the OP did not appear deliberately. This case pertains to the year 2000. The dispute is pending between the parties for the last two decades. No cogent and plausible explanation was given for non-appearance of the OP/applicant. It is apparent that the absence of the OP was not bonafide. It was with a blatant motive of causing delay and prolonging the proceedings of the dispute. There should be sufficient reason for setting aside the ex-parte decree.

3. WHAT one garners from the above said facts is that the applicant bank, which is the custodian of public money handled the situation in a very maladroit way. The dollops of mystery surround this case. It appears that the notice from the Commission was received by a Peon or by a clerk or by the Manager, but he could not preserve the same in safe custody. The position remains opaque despite explanations. There is no inkling on the record that some action was taken against the wrong doer, who is responsible for this abysmal performance. The case pertains to the year 2000. A dozen years have already elapsed. The people of the country are exasperated by senseless delays. A right in favour of

the Complainant has already taken birth. The case of the complainant is that the interest for the period for which the payment of Bank Guarantees were unduly delayed. For the reasons detailed above, the application (MA No. 499/2012) for setting aside the ex-parte decree is bereft of merit and, therefore, the same is dismissed. List EA No. 16/2012 for arguments, on 02.11.2012. Issue notice to the parties on EA No. 16/2012, for the said date.