(1998) 09 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

PARVEEN OBEROI APPELLANT

Vs

Branch Manager, State Bank of India RESPONDENT

Date of Decision : 08-09-1998

Acts Referred:

Citation : 1999 1 CPC 562 : 1999 1 CPJ 224

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Complaint disposed of

Judgement

1. BY this order we propose to dispose of miscellaneous application dated 11.8.1998 made by the opposite party.

2. COMPLAINT Case C-33/1995 filed by Smt. Parveen Oberoi & Anr. against State Bank of India was fixed for final arguments on 12.2.1998. It appears that on the cause list the said case stood adjourned to 3.9.1998 as there was no possibility of its being reached. The case of the State Bank of India is that its Counsel noted the fact that the case stood adjourned to 3.9.1998 and went away and advised the Bank about the said adjournment by his letter dated 28.2.1998. It further appears that after the case had been adjourned and the opposite party''s Counsel had left, a prayer was made by Mr. Vivek Oberoi, authorised agent of the complainant for preponing the case and fixing a shorter date for final arguments. Acceeding to his request the case was pre-poned for final hearing to 4.5.1998 and it was directed that notice of the revised date shall be sent to Mr. S.L. Gupta, Advocate for State Bank of India and Mr. Vivek Oberoi would also inform him in writing about the revised date. The case was taken-up for final arguments on 4.5.1990. Only Mr. Vivek Oberoi, authorised representative of the complainants appeared alongwith Mr. Ashok Dewan, Advocate. None appeared for the opposite party at the time of final arguments. After hearing arguments, the orders were reserved and the order was pronounced and despatched to the parties on 5.6.1998. The case of the Bank is that in Delhi the complainant''s representative contacted the Bank and informed them about the final orders passed by the Commission. On coming to know about the decision of the matter, an application

dated 23.7.1998 was made for certified copy. The certified copy was made available on 7.8.1998 and the present application made on 11.8.1998 with the averments that no notice pre-poning the date of final arguments from 3.9.1998 to 4.5.1998 was served on the State Bank of India or Counsel at any stage and for this reason the Bank was not represented at the time of final hearing. It was, therefore, prayed that the order period without hearing the State Bank of India, arrayed as opposite party in this case be set-aside and the complaint be disposed of according to law after hearing Counsel for the opposite party. The application has been opposed and a detailed reply filed. In the reply, it has been stated that after the case had been pre-poned by order dated 12.2.1998, on 20.3.1998 the complainant sent a letter addressed to opposite party''s Counsel informing him about the next date fixed for final arguments namely 4.5.1998 and sent the same by ordinary post. It has further been stated that a copy of the aforesaid letter dated 20.3.1998 was also sent by registered post on 31.3.1998. Postal receipt has been placed on record. Lastly, it has been stated that the complainant came to learn from the Registry of the Commission that Court notice had not been issued by that time and, accordingly, a Court notice was received by hand and despatched to the opposite party through speed post on 1.5.1998. Receipt issued by the speed post authorities was filed.

The contention of Mr. Ashok Dewan, learned Counsel for the non-applicants (complainants) is that there is a presumption of service when notice regarding pre-ponement of date had been issued by registered letter which had been duly stamped with postal stamps and correctly addressed and put in course of transmission. Notice was also sent by ordinary post as well as through speed post and the opposite party having failed to appear on the revised date there was no case for setting-aside the order already passed. Reliance was placed on Indian Bank v. Dalta Venkata Chinna Krishnan Raju, 1992 HRR 332. It was held that where notice was sent by registered post but neither the A.D. card nor the un-served registered cover had been received back by the Court it would be presumed that the respondent had been served.

3. ON behalf of the opposite party, State Bank of India, it has been argued that the case was being contested from the very beginning. Detailed written version had been filed and there was no conceivable reason why the opposite party would not have appeared. Had it been aware of the revision in the date fixed for final arguments. It has been urged that right of being heard before taking a final view is a very valuable right and decision of the case without affording the said right of hearing had resulted in failure of justice. We have given our anxious consideration to the respective submissions of the learned Counsel for the parties. It is not disputed that the case was initially adjourned for final arguments to 3.9.1998 and the said date was prepared to 4.5.1998 at the request of Mr. Vivek Oberoi. This was subject to the condition of service of notice on the opposite party/its Counsel. According to the complainants three notices were sent including one by ordinary post, the other by registered post and the third one through speed post. No A.D. or acknowledgement issued either by the

Bank or by the Counsel has been placed on record. What has been filed is a postal receipt and despatch receipt regarding speed post. The sending of by registered post or by speed post raises a presumption of service which is a rebuttable presumption. We find no plausible reason why the State Bank of India or its Counsel would fail to appear if they knew about the changed date of hearing of final arguments. The categorical stand of the opposite party, applicants herein, is sufficient to rebut the presumption of service.

4. THE right of being heard is an invaluable right and for reasons already discussed the State Bank was denied opportunity of being heard before passing the final order. This is on account of the fact that the Commission proceeded on the mistaken footing that notice of the revised date appeared to have been served on Counsel for the opposite party. This was on mistaken basis. This Commission has ample powers to recall an order passed in these circumstances. Reference may be made to a recent decision of the Supreme Court in Indian Bank v. M/s. Satyam Fibre, AIR 1996 SC 2592. In para 22 of the report at page 2597 it was observed by the Supreme Court of India that the judiciary in India possess inherent powers (especially under Section 151, CPC) to recall its judgment or order. It was further observed that the inherent powers are powers which are resident in all Courts, especially of superior jurisdiction. It was pointed out that these powers spring not from legislation but from the nature and the construction of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. Continuing in the same refrain, their Lordships observed in para 23 that the Courts have been held to have inherent powers to set-aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order. THE above observations clearly apply to the present case and for these reasons we recall the order dated 4.5.1998/5.6.1998. THE complaint to be set down for final arguments in the presence of Counsel for the parties. A copy of the order be furnished to the parties. To come up on 30.9.1998. Complaint disposed of.