
(2002) 10 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

P.C.MISHRA

APPELLANT

Vs

SKY VIEW HOME CABLE

RESPONDENT

Date of Decision : 28-10-2002

Acts Referred:

Citation : 2003 0 CTJ 1041 : 2003 1 CPJ 416 : 2003 2 CPC 646 : 2003 2 CPR 233 : 2003 3 CLT 69

Hon'ble Judges : D.M.Patnaik , Arati Mohanty , Pramodnath Das J.

Final Decision : Appeal dismissed

Judgement

1. IN this appeal the main question involved, though short, a decision on the issue either way is of great public importance. The question is : whether an authorised agent of a complainant can plead and argue a case before the Consumer Forum ? The District Forum, Khurda at Bhubaneswar, has held that such an agent, if not an Advocate, cannot plead on behalf of a party. 1. Complainant through his authorised agent Ulamani Acharya, representing a non-Government voluntary organisation, namely "World of Mothers", filed the complaint case against the Sky View Home Cables. A point was raised by the opposite parties that the authorised agent was not competent to argue the matter, since he was not an Advocate and does not held a licence to practise. The District Forum on hearing both sides held that the authorised agent is only competent to appear for the complainant and take all steps on behalf of the complainant, but he cannot argue the matter.

2. MR. Acharya, being the Authorised Agent, drew our attention to various provisions of the Consumer Protection Act ("the Act", for short). The main thrust of his argument is that the Act is a beneficial statute enacted to provide an easy and inexpensive redressal agency to the general public. He further argued that the Act does not anywhere restrict/prohibit in specific language an Authorised Agent to take up the cause of a complainant before the Consumer Forum only up to a certain specified limit. It is further stressed that the Act nowhere postulates that the complainant would be bound to take the help or assistance of an

Advocate. Since the provisions of the Act mention about an Authorised Agent competent to file a complaint, it necessarily implies that all other steps necessary for furtherance of the case towards its conclusion can be taken by the said Authorised Agent and that would include also the right to argue. Mr. S.S. Das, learned Counsel for respondent No. 1 raised the following points for consideration : Firstly, the appeal is incompetent since the order is not a final order touching any of the disputes as enumerated under Section 14 read with Section 15 of the Act. Secondly, it was argued that the appeal memo filed does not contain the grounds of appeal and thereby violates the procedural mandate, as provided in the Code of Civil Procedure; the principles of which and certain provisions of which are being made applicable to the Consumer Forums. Thirdly, referring to Section 29 of the Advocates Act, it was strenuously urged that only one type of persons are competent to practise in the Court of Law and they are only the Advocates and none else. He further stressed that an Authorised Agent is not competent to argue a case. Under the provisions of the Act such an Authorised Agent is only competent to file a complaint and take such steps on behalf of the complainant as may be necessary. Thus, Mr. Das supported the judgment in its entirety.

Having heard both the sides and on examination of various provisions of the Act as well as Advocates Act, we are of the view that an Advocate because of his having a licence and thus an authority under the Advocates Act, has a right to appear act and argue a case before any Court of Law. This right under the Advocates Act is not available to any person who is not an Advocate, though he may be having a Law Degree to his credit or may be an expert on the subject. Therefore, a person even though authorised by a party who is not an Advocate cannot claim, as of right, to argue a matter before any Court and even a Consumer Court.

3. WHILE Section 29 of the Advocates Act permits only an Advocate to practise the profession of law, Section 30 predicates that an Advocate is entitled as of right to practise in all Courts throughout the territory of India, but he must have enrolled himself as an Advocate and this is the language of Section 33 of the Act. Therefore, a person who is not an Advocate cannot claim, as of right, to argue the matter before any Court. Needless to say, Consumer Court is a Court. Certain specific provisions of the C.P.C. have been made applicable and also the principles of the C.P.C. are applied in appropriate situations for adjudication of disputes. But that does not mean that a person/citizen who is himself a party cannot pleads his case before a Court of Law merely because he does not engage an Advocate. There is a constitutional guarantee that the person who is a party to the litigation has a right to place his case in any Court of Law, and for that he does not need authority. Now the question arises when he authorises someone to represent his cause whether that person can act and plead in a case on his behalf like that of an Advocate. The Legislature in its wisdom has taken care of such a situation where the engagement of an Advocate is not possible for various reasons - vide Section 32 of the Advocates Act. The Supreme Court in the case

of *Harishankar Rastogi v. Giridhari Sharma*, AIR 1978 SC 1019, held that a private person who is not an Advocate has no right to argue before a Court for a party. He must get the prior permission of the Court for which motion must come from the party himself. It is open to the Court to grant or refuse permission in its discretion. In fact the Court may even after grant of permission, withdraw it half way through if the representative proves himself reprehensible. The antecedents, the relationship, the reasons for requisitioning the service of the private person and a variety of other circumstances must be gathered before grant or refusal of permission. While holding that Courts do possess discretionary power to either allow or reject such a representation by a non-Advocate, the Court took into account the conduct, behaviour, demeanour of such representative and the Court expressed the same in their own language which we quote : "...If the man who seeks to represent has poor antecedents or irresponsible behaviour or of dubious character, the Court may receive counter-productive service from him. Justice may fall if a knave were to represent a party. Judges may suffer if quarrelsome, ill-informed or blackguardly or blockheadly private representatives filing arguments at the Court. Likewise the party himself may suffer if his private representative deceives him or destroys his case by mendacious or meaningless submissions and with no responsibility or respect for the Court. Other situations, settlements and disqualifications may be conceived of where grant of permission for a private person to represent another may be obstructive, even destructive of justice. Indeed, the bar is an extension of the system of justice, an Advocate is an officer of Court. He is master of an expertise but more than that accountable to the Court and governed by a high ethic. The success of the judicial process often depends on the services of the legal profession."

(p. 1021)

4. A decision *Engineers India Ltd. v. Ghaziabad Development Authority*, I (2001) CPJ 8 (NC)=2001 NCJ (NC) 262, was cited on behalf of the appellants. Relying on the said decision it was argued that such representation can be allowed and the representative is competent even to argue before the Consumer Forum. We have carefully gone through the decision. The decision is not applicable to the present case. In the case cited the preliminary objection of the contesting party was that the cause of action in that case arose when the complainants got themselves registered in the year 1995 whereas the service rendered by the opposite party was claimed to have been so rendered in the year 1993. Therefore, the case was not maintainable at the instance of the complainants. The National Commission did not accept this, holding that it could not be the intention of the Legislature that the group coming into existence before any specific cause of action alone are eligible under Section 2(b)(ii) to file a complaint, because in the opinion of the Hon'ble Commission, this would be a narrow depiction to read. Further, the reason given was that there are a number of examples where welfare associations are normally formed after taking possession of the flats to protect and promote the common interest of the users. The case before us certainly involves a totally different issue. The scheme of the Consumer Protection Act and

the Rules are aimed at giving quick relief to the aggrieved party, i.e., a consumer. Complicated points of law and complicated points on facts have been purposefully eliminated from the scope of the Act for adjudication. Examination of lengthy and voluminous documents have been done away with. The principles of the Evidence Act in a demanding situation are made applicable while adjudicating the case in the Consumer Forum. Unless such principles are employed, the decisions are bound to be arbitrary, calling for interference. From the various provisions of the Act it is apparent that the hearing of argument is not specifically provided, as has been provided under the C.P.C. Argument under the C.P.C. is taken to be a part of the hearing until the case is concluded. The Consumer Protection Act nowhere makes any such provision for any argument. Therefore, neither the Forum should insist for an argument nor it should allow any person or even an Advocate to advance an argument, the way it is done in a Civil Court. Section 13/14 provide that the Court should proceed to "settle" the dispute and the Legislature have purposefully omitted the word "decide". Therefore, it goes without saying that when argument is not provided under the Act nor it is to be encouraged in such a situation asking the agent of a party who is not an Advocate to argue the matter, would be only an idle exercise of power. But it does not prohibit the Court/Forum to ask the party or the Advocate to clarify certain points at issue necessary for the purpose of settling the dispute between the parties and this should be done only when the Court is satisfied that such argument limited to the minimum is necessary for the purpose of appreciating the case of a party. It should not encourage either the Advocate or the party to advance an elaborate and lengthy argument. In such a situation, the authorised agent is only competent to act on behalf of the complainant but he does not have a right to argue and cannot insist to plead on behalf of the party.

5. NOW the next question remains as to how the agent should act and to what extent and on the basis of what authority. An Advocate is authorised to act and plead on the basis of the authority from the side of a party, that is, the "Vakalatnama". Same way an Advocate can only appear before the District Forum/Commission on the basis of a Vakalatnama and no Forum/Commission should accept any other form of authority from the Advocate on behalf of the complainant which is not permissible. Advocate appearing for any party under a mere written authority should not be allowed to be engaged by a party but such engagement must be by filing a Vakalatnama. Any such authority on a plain paper by a party in favour of an Advocate should not be accepted and the practice as is found prevailing shall be discontinued forthwith. If an Advocate appears he has to appear pursuant to a Vakalatnama or a power of attorney and not by any other authority.

6. SO far as an authorised agent is concerned, it is noticed that they are appearing on the basis of a bare authority signed by the complainant on a plain paper. This is not permissible in any circumstances. In Civil Procedure Code ("the CPC", for short), the procedure in the Civil Court about appearance of a party through a recognised agent is found in Order 3 Rule 1. It is prescribed that a

party may appear is person or by a recognised agent or by Pleader. Under Rule 2 of the said order, recognised agents are those agents through whom a party appears and they are "(a) persons holding power-of-attorney authorizing them to make and do such appearance, applications and acts on behalf of such party; (b) (not relevant for our present purpose)". Not a recognised agent holding a general power-of-attorney cannot be placed in the same position as an Advocate having a Vakalatnama in his favour. Such recognised agent cannot plead and address the Court. [vide the decision in *P. Sarma v. State of Madras*, 1969 (1) Madras LJ 207]. Therefore, the C.P.C. prescribes that the person who would act as an agent or recognised agent for a party, must be a person holding a power-of-attorney under the Power-of-Attorney Act. A question may be posted that the Consumer Protection Act being a beneficial Act and the provisions being meant for the poorer section of the people who cannot afford to litigate against the big traders, asking them to file power-of-attorney in favour of an authorised Agent would cause financial hardship to them in view of their economic conditions and their limited scope in facing or filing a litigation. We are conscious of such situation. But then the prescription of law should be followed. If the Civil Court would recognize an Agent only on the basis of power-of-attorney, there is no reason why the Consumer Forums who are also Courts should not insist on such power-of-attorney on behalf of the recognised agent-authorised agent. It is seen that the cases of the complainants are being taken up by voluntary organizations. It would not be too much to expect such a power-of-attorney from the NGOs who take up the cause of the complainants because of their poverty or their illiteracy or ignorance of law. There may be every justification to allow a poor man filing a case against a trader to authorise any person in his individual capacity to act for the party in any case before the Forums on the basis of a plain authority. But this should not be allowed if a recognised or any voluntary organisation takes up the cause of a person and in that case a special power-of-attorney should be demanded from the organization.

During the course of argument it was highlighted by Mr. Das that sometimes Advocates, the party against whom the authorised agents argue and sometime the Courts/Forums take exception to the unmannerly and reprehensible submissions by such authorised agent unlike an Advocate who is specifically trained to maintain decorum and dignity of the Court. We have already observed in this regard and quoted the language of the Apex Court in the case of *Harishankar Rastogi* (supra). However, we keep it on record that in case of misbehaviour, misdemeanour and objectionable statements of any person, may be an Advocate, may be a recognised agent or even a party, the Consumer Court being a Court, can make such person be liable for Contempt of Court for such misconduct, and the Forums should not shirk to take any action that demands in a given situation. We dismiss the appeal and confirm the lower Court's order. Appeal dismissed.