

(2000) 10 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

P.D.VYAS MARKETING P. LTD.

APPELLANT

Vs

Sushma Kapoor

RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Citation : 2001 1 CPC 395 : 2001 1 CPR 513 : 2003 2 CPJ 680

Hon'ble Judges : S.K.Dubey , B.L.Khare J.

Final Decision : Appeal disposed of

Judgement

1. MR. Justice S.K. Dubey, President-This appeal is directed against the order dated 24.1.2000 passed in Case No. 253/1999 by the District Consumer Disputes Redressal Forum, Indore (for short the "District Forum") whereby the District Forum having found deficiency in service ordered the appellant to return Rs. 18,295/-, the purchase price of the washing machine within a period of one month and to pay compensation of Rs. 1,000/- and Rs. 500/- as costs of the proceedings.

2. MR. Sunil Rai, learned Counsel for the respondent raised an objection about the maintainability of the appeal being incompetent as the appeal is barred by time, not filed within the prescribed period of 30 days from the date of communication of the order along with an application with affidavit to condone delay. The question for our consideration is whether the appeal filed beyond the period of limitation not accompanied by an application to condone delay supported by an affidavit is incompetent. To consider the question it would be appropriate to refer to Section 15 of the Consumer Protection Act, 1986 (for short the "Act") and Rule 8 of the M.P. Consumer Protection Rules, 1987 (for short the "Rules") framed by the State Government of Madhya Pradesh in exercise of the powers conferred by Sub-section (2) of Section 30 of the Act. Rule 8 of the M.P. Consumer Protection Rules, 1987 (for short the "Rule") which we quote : "15. Appeal - Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of order, in such form and manner as may be

prescribed : Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period. Rule 8. Procedure for hearing appeal.- (1) Memorandum shall be presented by the appellant or his authorised agent to the State Commission in person or sent by registered post addressed to the Commission. (2) Every memorandum under Sub-rule (1) shall be in legible handwriting preferably typed and shall set forth concisely under distinct heads, the grounds of appeal without any argument or narrative and such grounds shall be numbered consecutively. (3) Each memorandum shall be accompanied by the certified copy of the order of the District Forum appealed against and such of the documents as may be required to support grounds of objection mentioned in the memorandum. (4) When the appeal is presented after the expiry of period of limitation as specified in the Act, memorandum shall be accompanied by an application supported by an affidavit setting forth the fact on which appellant relies to satisfy the State Commission that he has sufficient cause for not preferring the appeal within the period of limitation. (5) The appellant shall submit four copies of the memorandum to the State Commission for official purposes. (6) On the date of hearing or any other day to which hearing may be adjourned, it shall be obligatory for the parties or their authorised agents to appear before the State Commission. If appellant or his authorised agent fails to appear on such date, the State Commission may, in its discretion, either dismiss the appeal or decide it on the merit of the case. If respondent or his authorised agent fails to appear on such date, the State Commission shall proceed ex parte and shall decide the appeal ex parte on merits of the case. (7) The appellant shall not, except by leave of the State Commission, urge or be heard in support of any ground of objections not set forth in the memorandum but the State Commission, in deciding the appeal, shall not confine to the grounds of objections set forth in the memorandum or taken by leave of the State Commission under this rule : Provided that the State Commission shall not rest its decision on any other grounds unless the party who may be affected thereby, has been given, at least one opportunity of being heard by the State Commission. (8) The State Commission may, on such terms as it may think fit and at any stage, adjourn the hearing of appeal, but not more than one adjournment shall ordinarily be given and the appeal should be decided within 90 days from the date of hearing. (9) Order of the State Commission on appeal shall be signed and dated by the Members of the State Commission constituting the Bench and shall be communicated to the parties free of charge."

Rule 8 speaks of procedure for hearing appeal. Sub-rule (4) of Rule 8 mandates that when the appeal is presented after the expiry of period of limitation as specified in the Act, the memorandum shall be accompanied by an application supported by an affidavit setting forth the facts on which appellant relies to satisfy the State Commission that he has sufficient cause for not preferring the appeal within the period of limitation. The provision is mandatory and is in pari materia with the Order 41 Rule 3(A)(1) of the Code of Civil Procedure. Order 41

Rule 3A reads thus : "3-A. Application for condonation of delay-(1)When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring appeal within such period. (2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under Rule 11 or Rule 13 as the case may be. (3) Where an application has been made under Sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing the Rule 11, decide to hear the appeal."

3. FROM a bare reading of Sub-rule (4) of Rule 8 or Order 41 Rule 3A(1) it is evident that the provision has been enacted with an object to provide a procedure so that the question of condonation of delay is decided for one and all at the time of initial stage and that an appeal may not drag on for considerable time only to be dismissed at the end on the ground of limitation. The Madhya Pradesh High Court in case of State of M.P. v. Savjiram, as a short noted decision in 1995 (II) MPWN 193, after considering the mandate of Order 41 Rule 3A of the C.P.C. inserted by C.P.C. (Amendment) Act, 1976 observed that time barred appeal which is not accompanied with application for condonation of delay and affidavit is not competent.

4. IN case of Pooran Singh Rajput v. INdira Rajput, 1997 (1) MPLJ 280, the Madhya Pradesh High Court observed that when an appeal is filed beyond the time provided for and not accompanied with the application for condonation of delay under Section 5 of the Limitation Act, not supported by an affidavit as required under Order 41 Rule 3A, C.P.C. is incompetent. The language of the provision makes it incumbent for the appellant to accompany the memorandum of appeal by an application for condonation of delay supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period as provided for. The provision comes into operation the moment the limitation for filing of the appeal has run out. It is settled proposition that Sub-rule (1) of Rule 3A are mandatory and there can be no exception for any thing giving option for deviation from the mandatory provision of law especially allowing the violation of the mandate of the legislation. Therefore, the appeal filed by the appellant without an affidavit, setting forth facts, was not competent. However, since the law has not provided the consequences as to what ought to have been done in such a situation and the provision has not said for the dismissal of the appeal, as provided under Order 41 Rule 17 of the Code of Civil Procedure. The main purpose is advancement of justice by due obedience to the mandate of the law, the propriety for the Court for cause of justice is to direct for return of the appeal so that the appellant may have opportunity for complying the provision of Order 41 Rule 3A of the Code of Civil Procedure. In view of the above, we hold the

appeal is incompetent as not presented in the manner prescribed under Sub-rule (4) of Rule 8 of the Rules. However, following the decision of Madhya Pradesh High Court in case of Pooran Singh Rajput (supra), instead of dismissing the appeal being incompetent, we direct the memorandum of appeal together with the certified copy of the order be returned to the appellant within 7 days subject to the application having been made by the learned Counsel for the appellant so as to act accordingly. Accordingly, the appeal being incompetent shall stand disposed of with no order as to costs. Appeal disposed of.