

(2010) 12 JH CK 0045

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3311 of 2010

Pradeep Kumar Jha

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Citation : (2011) 1 JCR 596

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—The only question raised in this writ petition is regarding the validity and legality of the impugned orders passed by District Consumer Forum, Jamtara as well as State Consumer Disputes Redressal Commission, Ranchi.

2. The Petitioner's claim was dismissed by learned District Consumer Forum at Jamtara on the ground that the Petitioner's case is barred by principle of res judicata. Reason in support thereof is that the Petitioner has not filed any paper to show that the earlier cases were not decided on merit.

3. According to the Petitioner, the earlier cases were dismissed for default. The Petitioner's claim at any stage was not decided on merit. It has been further stated that the present claim is based on fresh cause of action and no relief has been sought before the Forum on the basis of the earlier cause of action i.e. of the year 1993 and 1999. Learned State Consumer Disputes Redressal Commission, Ranchi has put its seal on the said impugned order of the District Consumer Forum, Jamtara observing that it is in complete agreement with the view taken by learned District Consumer Forum. It has been further submitted that learned District Consumer Forum passed the impugned order without hearing the Petitioner.

4. Learned Counsel for the Respondent-Jharkhand State Electricity Board (Board for short) submitted that in the years 1993 and 1999, the Petitioner's claim was

dismissed and, as such, fresh claim is not entertainable. Learned Counsel, however, has not disputed the proposition that principle of res judicata is not applicable in the cases where the same issues arising out of the same parties were not decided.

5. I have heard learned Counsel for the parties and perused the impugned order and other materials on record. From the earlier orders, it is evident that the Petitioner's petitions were dismissed for default. Learned Counsel for the Respondent-Board has not produced any paper showing that issues between the parties were ever decided on merit.

6. I find no basis on record for holding that the case is barred by res judicata. It appears that there was no proper application of mind in passing the impugned orders. Learned District Consumer Forum, Jamtara has clearly mentioned that there was no paper before it to show that the earlier cases were not decided on merit. In absence of any basis, it cannot be presumed that earlier cases were decided on merit, particularly when the Petitioner averred that earlier cases were dismissed for default and there was no contrary material on record to rebut the same.

7. In view of the above, the impugned orders cannot sustain and are set aside. The matter is remitted back to the learned District Consumer Forum, Jamtara to pass a fresh order in accordance with law after giving opportunity of hearing to the parties.

8. This writ petition is allowed.