
(2004) 03 NCDRC CK 0085

In the National Consumer Disputes Redressal Commission

PRADEEP RAYGONDA PATIL

APPELLANT

Vs

SOU. SUREKHA MAKARAND KONNUR

RESPONDENT

Date of Decision : 01-03-2004

Acts Referred:

Citation : 2004 4 CPJ 35

Hon'ble Judges : M.S.Rane , R.N.Varhadi J.

Final Decision : Appeal dismissed

Judgement

1. NONE is present on behalf of the respondents. It is stated they have duly served and proof of service is also made available.

2. WE are proceeding to dispose of this appeal at the stage of its admission itself on hearing the learned Advocate for the appellant and on perusal of the material available in the appeal paper book. In view of plea taken by the present appellant who is original O.P. No. 3 in the complaint that the District Forum has proceeded to pass the award impugned in this appeal against him ex parte without serving its process that we summoned the Record and Proceeding of District Forum, Kolhapur and the said record is made available.

The appellant is the original O.P. No. 3 being one of the partners of M/s. Mahalaxmi Tyres and Auto Services. Respondent Nos. 2 and 3 are respectively O.P. Nos. 2 and 3 stated to be other partners of the said firm along with appellant herein.

3. THE present appellant has taken exception to the order dated 3rd February, 2001 passed by District Forum, Kolhapur, which is a joint and several award against all the O.Ps. and Partnership firm for payment of Rs. 1,35,000/- with interest plus compensation of Rs. 5,000/- and cost of Rs. 200/-. There are two factors strongly militating against maintainability of this appeal.

4. FIRSTLY, the appeal is hopelessly time-barred. In that the award in this appeal has been passed on 3rd February, 2001 whereas the appeal has been filed on 21st December, 2002, excluding the 30 days period of filing appeal from the date

of order, delay is nearly 22 months in filing the appeal. Under Section 15 of Consumer Protection Act, 1986 appeal has to be filed within 30 days from receipt of the order and if there is a delay, under proviso thereof sufficient cause being shown by the appealing parties, same can be condoned. Here, we do not find sufficient cause having been made out for condoning such an inordinate delay. Second point is of non-service of the process. Even on that ground, we do not find any merit in the matter. The process of the District Forum was transmitted to the present appellant by Registered Post Acknowledgement Due somewhere around 21st December, 2000 which was returned unserved by the Postal Authority with endorsement "Not Claimed, Intimation Given".

5. WE further notice that Postal Authority has issued in all 3 intimations as reflected in the endorsement made on the postal envelop to the appellant but he did not respond. It needs to be stated that such mode of service as per settled position of law is held to be a proper and valid mode of service.

6. IN a nebulous manner attempt was made on behalf of the appellant to contend that during the relevant time appellant was not available at the said address and he has gone to some other place. However, no convincing and creditworthy evidence is made available to prove the same except bare assertion of the appellant. However, the record clearly shows that eventually the appellant has received the process in execution proceeding at the very address where the process was addressed which clearly ruled out the story set up by the appellant that he had shifted from the address which is in the Record and Proceeding. That being so, appeal herein has to be dismissed in limine on the two grounds mentioned hereinabove. ORDER 1. Appeal stands dismissed. 2. However there shall not be any order as to costs. 3. Amount deposited by the appellant with District Forum, Kolhapur as per our interim order dated 23rd December, 2003 be released to the complainant towards part satisfaction of the impugned award of the District Forum. 4. The Original Record and Proceeding received from the District Forum, Kolhapur to be returned to the said Forum. 5. At this stage, learned Counsel for the appellant requests that the interest @ 18% p.a. awarded on the principal amount is on higher side. He requests that the same be reduced. However, since we have proceeded to dismiss the appeal in limine, the request cannot be considered. However, we are providing liberty to the appellant to approach the District Forum and when so done, District Forum shall consider the same on merits. 6. Copies to be furnished to the parties.

Appeal dismissed.