
(1999) 02 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

PRESIDENT, DISTRICT SAHAKARI BHUMI VIKAS BANK LTD APPELLANT
Vs
DEVRAJ PRASAD SHUKLA RESPONDENT

Date of Decision : 02-02-1999

Acts Referred:

Citation : 1999 1 CPC 396 : 1999 1 CPR 496 : 1999 2 CPJ 79

Hon'ble Judges : S.K.Dubey , Saroj Rajwade J.

Final Decision : Appeal dismissed

Judgement

1. THE opposite party has filed this appeal under Section 15 of the Consumer Protection Act, 1986 (for short the "Act") against the order dated 6.9.1995 passed in Case No. 47/93 by the District Consumer Disputes Redressal Forum, Rewa (for short the "District Forum").

2. THE facts giving rise to this appeal are that the complainant filed a complaint on 1.3.1993 alleging deficiency in service for not advancing a loan for purchase of tractor, manure and seed as a result of which he suffered loss, inconvenience, harassment and mental agony. After notice, the appellant resisted the complaint by filing the defence version. THE District Forum fixed the case for recording of evidence on 29.9.1993. On 29.9.1993 the opposite party and Counsel were absent. THEREfore, the case proceeded ex-parte against the opposite parties. THE District Forum after recording ex-parte evidence, fixed the case for hearing arguments on 30.9.1993. On that day, arguments were heard and the ex-parte order was passed on 1.10.1993, whereby compensation of Rs. 3,000/- with interest thereon at the rate of 12% per annum from 1.10.1993 was awarded holding that the complainant was illegally denied loan when he was entitled for that. This order was put to execution. THE opposite party filed an application under Order 9, Rule 13, Civil Procedure Code on 11.2.1994 for setting aside ex-parte order. THE District Forum dismissed the application on 6.9.1995 holding that the application is barred by time as not presented within 30 days from the date of the ex-parte order and that the sufficient cause has not been established for non-appearance of the opposite parties and their Counsel on 29.9.1993 when

the case was ordered to proceed ex-parte. Mr. S.K. Tiwari, learned Counsel for the appellants placing reliance on a decision of the National Commission in *Sunil Blood Bank and Transfusion Centre v. Naresh Kumar & Anr.*, I (1995) CPJ 57 (NC), and a decision of the West Bengal State Consumer Disputes Redressal Commission, Calcutta in case of *Reliance Industries Limited & Ors. v. Dipa Dutta Gupta & Ors.*, III (1997) CPJ 284 (West Bengal S.C.), submitted that the opposite parties were not afforded a fair opportunity to defend the complaint and that the provision of Order 9, Rule 13 applies. The application under Order 9, Rule 13, Civil Procedure Code was filed within 30 days from the date of knowledge. There was sufficient cause for non-appearance of the opposite parties and their Counsel on the day when the ex-parte order was passed.

This Commission recently in Appeal No. 188/95 decided on 4.1.1999, *Samta Sahakari Grih Nirman Sanstha Mydt. v. Jayantilal Majithiya*, considered the question of applicability of Order 9, Rule 9 and Order 9, Rule 13, Civil Procedure Code and observed thus : "It is well settled that when a Court, Tribunal or Authority has jurisdiction to dismiss the case in default or to pass an ex parte order or decree in the absence of the opposite party, it has jurisdiction to restore the case dismissed in default or to set-aside the ex-parte order or decree, ex-debito justitiae if the proper case of sufficient cause is made out for that. The view of the Delhi State Consumer Disputes Redressal Commission Delhi in *Majestic Auto Limited & Ors. v. Sh. K. Kanti*, II (1991) CPJ 466, which followed decisions of the Supreme Court in *Grindlays Bank Limited v. Central Government Industrial Tribunal & Ors.*, AIR 1981 SC 194, supports our view."

3. IN case of *Reliance Industries Limited* (supra), the West Bengal State Commission considered the question whether an ex-parte decree can be set-aside by a Consumer Dispute Redressal Agency. Though, the provision of Order 9, Rule 13, Civil Procedure Code has not been expressly mentioned in Section 13 of the Act, the Commission after considering the scheme of the Act and the provisions and the rules observed that certain provisions of the Civil Procedure Code have been mentioned specifically as Section 13 gives special right to a Court for conducting a proceeding before a Tribunal. These rights are specifically given because without such rights it would have been difficult on the part of a Forum to conduct a proceeding under Section 13 of the Act. It does not mean that the other natural provisions are expressly barred. This point should be considered also in the background of Section 25 of the Act where an order made by the District Forum, the State Commission or the National Commission is enforceable as a decree of the Court. Thus a final order passed by the Forum or a State Commission or the National Commission is necessarily a decree and its efficacy must be judged on the basis of corollary powers enabling the Forum or the Commission to dispense justice. It is an idle argument that a case dismissed for default or heard ex-parte cannot be reopened, the next moment after the order is passed, of course if such an order is tried to be set-aside after the lapse of considerably period it should not be easily granted. In case of *Sunil Blood Bank* (supra), the National Commission observed that all the provisions of the

Code of Civil Procedure are not applicable to the proceedings before the Redressal Forums constituted under the Consumer Protection Act and only certain specific provisions enumerated in Section 13(4) of the Act are made applicable to such proceedings. However, considering the scope of Section 13(4) and the facts of the case wherein the State Commission proceeded ex-parte in the absence of opposite party and on the next date opposite party requested to file written statement not allowed, observed that to adopt such a procedure in the absence of any compelling provision in the statute would constitute denial of natural justice. In as much as the impugned order has been passed without giving the opposite party a fair opportunity to place its defence before the State Commission. Therefore, the National Commission was constrained to allow the appeal.

4. IN view of the above the contention of the respondent that setting aside of the ex-parte decree would amount to review or recalling of the order passed by the District Forum cannot be accepted. In the case in hand, the application for setting aside the ex-parte decree was clearly beyond time as not presented within 30 days from the date of the ex-parte order. The analogy from the date of the knowledge of the decree would not apply as it is not a case where the summons were not duly served. The application to condone delay does not disclose sufficient cause. Moreover, on facts also in the absence of the affidavit of the Counsel representing the opposite parties before the District Forum, the District Forum rightly did not find sufficient cause established for non-appearance of the opposite parties and their Counsel on the date fixed for recording of evidence. The finding so recorded is a finding of fact which is neither illegal nor perverse. In the result, the appeal fails and is dismissed with no order as to costs. A copy of this order be conveyed to the parties. A copy of this order be sent along with the record of the case to the District Forum. Appeal dismissed.