

(1998) 03 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

PUBLIC WORKS DEPARTMENT

APPELLANT

Vs

T.R.NAWAL

RESPONDENT

Date of Decision : 09-03-1998

Acts Referred:

Citation : 1998 2 CPJ 535 : 1998 3 CPR 164 : 1999 1 CLT 103

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Application allowed

Judgement

1. THIS order will dispose of miscellaneous application dated 29.1.1997 made by the respondent seeking setting-aside of ex parte order in Appeal No. A-68/94 dated 2.8.1996. Briefly stated the material facts are that Mr. T.R. Nawal and Mrs. Sudesh Nawal filed a complaint against, (i) Union of India through its Chief Secretary, Ministry of Urban Development, New Delhi, and (ii) Delhi Administration through its Chief Secretary (Rent Recovery Cell), Land & Building Department, Vikas Bhawan, New Delhi. A written statement was filed by the Under Secretary (PWD), Delhi Administration, Delhi. On a consideration of the matter District Forum- 1 dismissed the complaint by order dated 18/ 25.1.1994. The complainants preferred appeal before this Commission which was registered as A-68/94. Notice was issued to the respondents in the appeal, the description and addresses being those of the opposite parties before the District Forum. None appeared for the respondents. The order dated 13.4.1994 passed in the appeal insofar as relevant reads as under: "Nemo for the respondent - Notices despatched in February. No one is present on their behalf. Ex parte against them."

2. NONE appeared for the respondents on any of the dates. The last date fixed for the hearing of the appeal was 2.8.1996 when no one appeared on either side and the appeal was allowed and the appellants awarded Rs. 10,000/- as compensation. It is this order which the applicant seeks to be set aside in this application. We have heard Mr. Govardhan, learned Counsel for the applicant and Mr. R.K. Jain, learned Counsel for the respondents and have carefully gone

through the records. The contention on behalf of the applicant is that Union of India, through Ministry of Urban Development was not even remotely connected with the present case and impleading the Union of India through the said Ministry was of no consequence. With regard to Delhi Administration, it was submitted that the Department concerned was PWD which is a different department from the Rent Recovery Cell, Land & Building, which was, in fact, impleaded. In other words, the Department concerned having not been impleaded notice of appeal was not received by the concerned Department and this had resulted in failure of justice. Mr. Govardhan contended that when the matter was pending before the District Forum, no doubt, the papers through the Chief Secretary found their way to the quarters concerned and the Under Secretary, PWD, filed his reply contesting the complaint, a duty was clearly cast on the complainants who came in appeal to have brought to the notice of the Commission that the case had been contested by the PWD Department of the Government of NCT and in all fairness notice of appeal should have been sent to the said Department. Mr. R.K. Jain, on the other hand, submitted that if the contesting party could appear before the District Forum, there was no reason why the said party could not appear before the Commission, if it really cared to contest the appellant's claim. We have given our anxious consideration to the respective submissions. It cannot be disputed that the Union of India, respondent No. 1, both in the complaint as well as the appeal had nothing to do in the matter and had been needlessly impleaded. Delhi Administration was impleaded through the Chief Secretary both in the District Forum as well as before the Commission through a Department which was not the concerned Department. Even though the technical rules laid down in the Code of Civil Procedure with regard to the description of the parties may not be strictly applicable to the proceedings before the Commission, the fact remains that the address furnished must be sufficient to bring to the notice of the concerned department about the pendency of the matter before the Forum. In this case, the Department concerned was PWD and the Government of NCT should have been impleaded through the Secretary (PWD). This was specially so as the matter has been contested in the District Forum by that Department, and this fact was clearly known to the complainants and was not brought to the notice of the Commission. Moreover, the technicalities apart the paramount consideration is always the interest of justice. The complainants cannot feel shy of having a decision on merits according to law. With regard to service in the appeal, which was based on the presumption that the notices sent under registered cover had not been returned undelivered raising a presumption service. Our observations in *Gautam Auto & Ors. v. Kiran Prabha & Ors.*, I (1997) CPJ 226 fully apply to the facts of the present case. The presumption of service is rebuttable and the same stands rebutted. We may invite reference to a recent decision of the Supreme Court in *Indian Bank v. Satyam Fibres*, 1996 (5) SCC 550 in which after a review of the case law their Lordships of the Supreme Court laid down that where the Court is mis-led by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order (vide para

23 of the report at page 563). In para 32 of the same judgment it was further laid down by the Apex Court that the above principle will apply not only to Courts of Law but also to statutory Tribunals which like the National Commission are conferred power to record evidence by applying certain provisions of the Code of Civil Procedure including the power to enforce attendance of the witnesses and are also given the power to receive evidence on affidavits. In our view the above statement of law covers the present case. "

For these reasons, the application is allowed and the ex-parte order passed in the appeal dated 2.8.1996 set aside. The respondent to file reply to the grounds of appeal. The case be listed for further proceedings for 24.3.1998. A copy of this order be sent to Mr. Goverdhan, Advocate for the applicant as well as to Mr. R.K. Jain, Advocate for non-applicant. Application allowed. _____