

(1996) 01 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

R R Gopal Alias R Rajagopal

APPELLANT

Vs

CHAIRMAN TAMIL NADU ELECTRICITY BOARD

RESPONDENT

Date of Decision : 03-01-1996

Acts Referred:

Citation : 1996 1 CLT 605 : 1996 1 CPC 175 : 1996 1 CPJ 143 : 1996 1 CPR 60

Hon'ble Judges : G.M.MIR , K.L.Gupta J.

Judgement

1. A complaint under Section 13 of the Consumer Protection Act was lodged by the Respondent No.1 herein in the Divisional Forum, Jammu on 19.1.1991. It was with regards to the supply of an allegedly defective Electronic Type -Writer the M/s. Ranka Brothers, Shalamar Road, Jammu by M/s. Network India Limited, New Delhi. The complainant had paid Rs. 10,000/- as advance and the remaining amount had to be paid on installation of the machine. The balance money was also later on paid by M/s. Ranka Brothers to the Appellant herein. An amount of Rs. 23,000/- was thus received by the Appellant Firm, New Delhi. The machine was found defective and M/s. Network was informed about the defect. The Network was informed but they failed to set right the machine. An Engineer was deputed by the firm from Delhi to Jammu but with no results as he also could not repair it. In spite of the demands made by the purchaser of the machine for its repair or replacement no effective steps were taken by the firm towards that end. Parties entered into private negotiations also but without any result. A complaint, therefore, was lodged in the Divisional Forum, Jammu. The Divisional Forum having received the complaint, issued a notice to the Appellant herein on 21.1.91 and directed them to cause appearance in the Forum within 30 days of the Notice. The Appellant was served but failed to appear in the Divisional Forum, Jammu. Ex -parte proceedings were ordered by the Divisional Forum, Jammu on 8.3.1991. Statements of witnesses were recorded by the Divisional Forum, Jammu and the final orders were passed on 11.4.1991. It was ordered that the Appellant herein will refund Rs. 23,000/- being the purchase money of the Electronic Type -Writer and it was also directed that interest shall be calculated till realisation of the same which shall be paid to the Respondent

No.1 herein. The Divisional Forum also awarded Rs. 7000/- as compensation for having caused agony, inconvenience to the Ranka Brothers, the complainant before it.

2. THE Commission was holding its sittings in Srinagar when it was on 2nd of August, 1991 that the present appeal was received by post there. The appeal was directed to be registered and necessary orders for the disposal of copies of the appeal as well as the order passed by the Commission was directed to be sent to the respondent. It was also directed that till further orders under appeal shall remain stayed. It was directed also that for further proceedings the appeal will come up in Jammu on 13.9.1991, as the petition pertained to the Jammu Division. The Appellant has averred in the appeal that though the order impugned appears to have been announced on 11.4.1991 the Appellant came to know about the same only on 11.6.1991 when he applied for a copy of the judgment. According to the Appellant he obtained the copy on the same day and after preparing the appeal forwarded the same to the Commission Office at Srinagar. The appeal, however, did not reach the President of the Commission as the Postal Authorities failed to deliver the same to him. The appeal was, however, sent again by the Appellant and was delivered to the President at Srinagar as stated in para 2 above. After obtaining objections from the other side and on completion of other formalities, arguments were heard. It was submitted that the appeal was hopelessly time barred and therefore should not have been admitted and once it has been admitted it requires to be dismissed outright. It was further argued that the Appellant was all along in the know that the complaint was pending against it in the Divisional Forum, Jammu. It has been further stated that the appellant appeared in the Divisional Forum, Jammu once but then remained absent. This fact is borne by the record itself.

3. FROM the perusal of the record produced it was found that the judgment was delivered on 11.4.1991 and a copy of the same has been obtained by the appellant on 11.6.1991. It has been admitted in the appeal that the parties had entered into mutual negotiations and the Appellant was under the impression that some arrangement with regards the supply of the machine would be arrived at between the parties and that was why the copy of the judgment was obtained only on 11.6.1991 as the negotiations going on in between the parties bore no fruit. The learned Counsel for the appellant in his arguments laid much stress on the point that the limitation for filing the appeal would start from the date of knowledge of the order appeal against and not from the actual date of order of the Divisional Forum. His submission was that the appeal having been first sent to Srinagar address on 1.7.1991 be taken as the date of filing the appeal and the date of receipt of the copy of judgment by him may be taken as date of order of the judgment by the Divisional Forum, he continued to argue and having adopted these two dates as submitted the appeal be held to be within time. The fact as to whether the appeal had been sent to Srinagar immediately after 11.6.1991 is not known nor established. The appeal appears to have been received in Srinagar and admitted on 2.8.1991. The respondent has, stated that the appellant had

caused his appearance in the Divisional Forum and knew about the judgment passed by that Forum and had full knowledge of the impugned order and, therefore, the date of order as well as the date of knowledge of the order were one and the same. That fact also has to be established in evidence.

4. FROM the facts of the case brought to our notice from the record file of the Divisional Forum especially from the final order one cannot escape the conclusion that the appellant herein has been in the know of the proceedings going in before the Divisional Forum and has even appeared there once or twice. When such may be the case, the knowledge of the order under appeal may be lawfully and reasonably presumed to be the same as that of the order. The facts appearing herein lead to no other conclusion; and as such the point that the appeal has been filed beyond the period fixed for this purpose in the Act has much substance. Relying on this conclusion we hold that the instant appeal was barred by limitation and, therefore, ought to be rejected and we hereby reject it and vacate the stay order. No order as to costs. The copies of this order be sent to the Appellant by post and given to the Respondent free of cost.