
(1994) 04 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

RAUGHBIR WATCH CO.

APPELLANT

Vs

JAMMU AND KASHMER MOTOR CORPORATION

RESPONDENT

Date of Decision : 07-04-1994

Acts Referred:

Citation : 1995 1 CPJ 490 : 1995 2 CLT 225

Hon'ble Judges : G.M.Mir , Begam Khursheed Bakshi , KrRameshwar Singh J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the order of Divisional Forum Jammu dated 27.9.1990 alongwith an application for condonation of delay and an application for Stay. The appeal alongwith the said application was filed in this Commission on 2.11.1993. The grounds taken in the appeal inter alia are that the order was passed in ex-party without notice to the Appellant who came to know about the passing of the impugned order for the first time on 20.9.1992 when a notice was received by them from the Court of District Judge to file their objections in the matter of execution proceeding taken out by the complainant Decree Holder. The appellant immediately appeared before the District Judge on 3.10.92. In execution proceedings pending in that Court the appellant came to know that the final order has been passed by the Divisional Forum, Jammu on 27.9.1990. It has been alleged before us that the appellant had no knowledge of the order nor have received any notice. That the case has been fixed in the Divisional Forum for argument on 27.9.1990 and because of this the appellant did not cause its appearance in the Divisional Forum on that particular date. It has been submitted that in the interest of justice it would be just and lawful to condone the delay caused in filing the instant appeal, against the impugned order of the Divisional Forum and that the appeal be heard and disposed off on merits as the order under appeal was defective on a variety of grounds and could not have been passed by the D/F had the law points raised therein been considered. The opposite party vehemently opposed and has submitted that there was no reasonable case shown by the appellant for condonation of delay.

2. IT appears that the complaint in the D/F was filed on 9.11.89 and it was disposed off on 27.7/90. The contents of the complaint reveal that in the year 1980 a car was booked by the complainant herein with the JK Motors Corp., Ltd., Jammu and paid Rs. 500/- as earnest money. On 22.12.89 the complainant was asked to take the delivery of the car on payment of Rs. 61,900/-. He went to the office of the respondent where he was told to deposit Rs. 10,000/- more. He did so and was told that he will be given delivery of the car soon thereafter. The Car, however, was not delivered and the matter was being delayed. The complainant was made to run from pillar to post to get the delivery of the Car and when the applicant failed to do so the respondent in the alternative asked for the refund of the amount paid by him but neither the amount was paid to him nor the car was delivered. He, thereafter, filed the complaint in the Divisional Forum, Jammu. A notice came to be sent from the said Forum to the appellant herein directing them to file their version of the case. IT was further said in the notice that in the same of failure the Forum shall settle the dispute under the provisions of the Consumers Protection Act, 1987. The case was adjourned to 11.12.89 for further proceedings. The appellant appeared on 8.12.89 in the Forum and filed objections but thereafter failed to attend the Forum on the next date fixed i.e. 11.12.89. The Forum therefore, proceeded ex-party against the absent party. The other respondent therein also appeared and filed objections. On 5.4.90 which was fixed by the next date, none appeared and, therefore, ex-party proceedings were set against the respondents 2 and 3. The complainant in his evidence got himself examined and after hearing the arguments the Divisional Forum disposed of the complaint by venture of the impugned order dated 27.7.90. It appears that appellant who was respondent No. 3 in the complaint before the Divisional Forum Jammu has appeared throughout on almost all dates fixed in the Divisional Forum but the complaint was listed for hearing of arguments and disposal, the appellant was not represented by the Counsel. The Divisional Forum proceeded ex-party and heard the complaint therein and passed the order which is impugned in this appeal.

It is admitted during the arguments by the learned Counsel for the appellant that the appeal has been filed after 2 years of the passing of the order by the Divisional Forum. It has been however, stated, on affidavit and vehemently argued by the said learned Counsel that the date of passing the judgment by the learned Divisional Forum was not at all known to them as otherwise they would have appeared and submitted arguments. It has been submitted that the knowledge of the final order of the D/F came to them only when the execution proceedings had been ordered by the District Judge, Jammu and the notice in these proceedings was the appellant. The learned Counsel, however, failed to convince the appellant. The learned Counsel, however, failed to convince us that this absence from the Divisional Forum on 7.9.90 was not deliberate and that there was sufficient cause for his absence on that fateful day in the Divisional Forum. The fact that till that date the appellant has been appearing in the Divisional Forum and has been taking interest in its proceedings is admitted and

established. The submission made by the learned Counsel for the appellant that a notice should have been sent to him about the date fixing for arguments and also that a copy of the final order passed by the Divisional Forum ought to have been sent to the appellant on the facts of the case have some what little force. The Divisional Forum was not bound to issue notice of the date of hearing arguments though it had to send a copy of the final order to the respondent herein the appellant. Even if he was not present on the date of the order. In ordinary course of business however the practice in this Commission as well as in the Divisional Forums is that the copy of the final order is always sent to the concerned party. It will not, therefore, be considerable to presume that in this case also the ordinary course has been followed and information has been sent to the respondent therein with regards the disposal of the case. In any case, the appellant after the date of the final order i.e. 27.7.90 appears to have completely forgotten that there was a case against it pending in the Divisional Forum Jammu and completely forgot to find out as to what had happened with its case on the fateful day and long thereafter. The blame squarely lies on the shoulders of the appellant for having caused its own absence. It will not be unreasonable to presume that the absence was deliberate. On as late as 2.11.92 however, the appellant remembered its case in the Divisional Forum and having come to know the fate cause to the Commission and represented against it. No reasonable cause and good ground has been shown for condonation of such a long delay in filing the appeal. The respondent has obtained a right that the right created in his favour by the judgment of the Divisional Forum would not be destroyed unduely and illegally on mere whims of the appellant and that he right to have obtained the Decree shall be maintained. In our view a right has in fact been credited in favour of the respondent that no appeal would be heard against the orders of the Divisional Forum filed beyond time without giving sound and reasonable ground for the same.

3. IN our view the appellant has failed to give any sound reason for having filed the appeal after such a long time. The condonation application, therefore is rejected and it is held that the appeal being beyond time cannot and should not be heard on merits however strong the ground on merits may appear to exist. Copies of the order be given or sent to the concerned parties in Registered post and be also sent to the Divisional Forum for information. Appeal dismissed.