
(2017) 06 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

Case No : 110 of 2016

RESHMA ISMAIL KUTCHI

APPELLANT

Vs

MUSTAN SAIFAN SHEIKH

RESPONDENT

Date of Decision : 30-06-2017

Acts Referred:

Consumer Protection Act, 1986, Section 19 - Appeals

Citation : 2017 3 CPR 154

Hon'ble Judges : S.M. Kantikar

Judgement

1. The above said first appeals have been filed under Section 19 of the Consumer Protection Act, 1986 against the order dated 6.1.2015 passed in complaints case No. CC/15/226 and CC/15/227 by Maharashtra State Consumer Disputes Redressal Commission, Mumbai (in short, "the State Commission"). By the said order, the complaints were dismissed in default.

2. The above said first appeals are before this Commission for restoration of their complaints, which were dismissed in default by the State Commission vide order dated 6.1.2016. The State Commission passed the following order : "None present for the complainant. Advocate Mr. Nagaraj Hoskari is present for the opponent.

Record shows that the complainant is not attending the Commission regularly. Today the opponent has moved an application for dismissal of complaint in default. Direction was given to both the parties to file affidavits of evidence by order dated 11 June, 2015 and matter was th adjourned on 13 October, 2015. On 13 October, 2015, the complainant th th remained absent. Prior to that complainant was absent. The complainant failed to file affidavit of evidence to prove the pleadings and failed to follow the directions. Hence, consumer complaint is dismissed in default. Parties to bear their own costs."

3. Learned counsel Mr. Nagaraj V. Hoskeri, on behalf of the complainants vehemently objected the submissions of learned counsel for the appellant. He

submitted that let the complainants file another complaint after the dismissal of said complaints. In this context, I would like to rely upon the recent judgments of Hon"ble Supreme Court in the case of Indian Machinery Company vs. M/s Ansal Housing & Construction Ltd. 2016 (202 ALL MR 974 (SC.) It was held that "the fact that the case was not decided on merits and was dismissed in default of non appearance of the complainant, cannot be overlooked and, therefore it would be permissible to file a second Complaint explaining why the earlier complaint could not be pursued and was dismissed in default. The matter was remanded back to National Commission for further adjudication.

4. On the basis of foregoing discussion and the authority, both the complaints need consideration on merits and not to be dismissed on mere technicalities. Hence, the orders of State Commission are hereby set aside and both the complaints are restored to its original number and remanded back to the State Commission to decide the complaints on merits. Both the parties are directed to appear before the State Commission on 9.8.2016 for further proceedings.