

(1992) 11 NCDRC CK 0067

In the National Consumer Disputes Redressal Commission

SHASHI RADIO AND ELECTRIC COMPANY

APPELLANT

Vs

SUDESH SINGHAL

RESPONDENT

Date of Decision : 06-11-1992

Acts Referred:

Citation : 1992 3 CPJ 617 : 1994 1 CLT 310

Hon'ble Judges : S.S.Sandhawalia , Basanti Devi , S.Kulwant Singh J.

Final Decision : Appeal terminated

Judgement

1. WHETHER the terminus ad quern for preferring an appeal under Section 15 of the Act by registered post is the date of its posting by the appellant or the date when it is actually received in the office of the State Commission? This is the somewhat interesting threshold question in this appeal.

2. THE order under appeal of the District Forum, Hisar is dated the 27th of July, 1992. THE present appeal was lodged against the said order by registered post and was received in the office, of the Commission on the 31st of August, 1992. THE prescribed period under Section 15 being 30 days, the appeal thus appeared to be delayed by four days and has been consequently listed for hearing on the preliminary issue of limitation. Mr. Atul Lakhanpal, the learned Counsel for the complainant had taken the stand that a copy of the order was despatched by the District Forum to the appellant on the 3rd of August, 1992 and was obviously received much later by the appellant. However, the appellant, according to him had posted the appeal under registered acknowledgment due on the 24th of August, 1992, which was received by the Commission on the date aforementioned. Learned Counsel took up the plea that the terminus for preferring the appeal would be the date of its actual posting by the appellant irrespective of the date when it is received in the office of the Commission later.

In order to appellate the aforesaid admission it is apt to straight away refer to the two relevant statutory provisions. Section 15 of the Act is in the following terms: Section 15: "Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a

period of thirty days from the date of the order, in such form and manner as may be prescribed: Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period."

The Haryana Consumer Protection Rules, 1988 vide Rule 8(1) and (2) prescribed as under :- 8(1): Procedure for hearing appeal Section 15. "Memorandum shall be presented by the appellant or his authorised agent to the State Commission in person or sent by registered post addressed to the Commission. 8(2): Every memorandum filed under sub-rule (1) shall be in "legible handwriting preferably typed and shall set forth concisely under distinct heads, the grounds of appeal without any argument or narrative and such ground shall be numbered consecutively."

3. NOW a plain reading of the aforesaid provisions when read together as they must be, would indicate that an appeal is to be preferred in such form and manner as may be prescribed by rules framed under the Act. By virtue of the relevant rule 8.1, it firstly may be presented by the appellant or his Counsel or his authorised agent in person to the State Commission. In the alternative, the rule also provides for such presentation by registered post addressed to the Commission. Herein, we are not concerned with the former mode. One must therefore focus oneself on the latter one of presenting the appeal by registered post. In the strict matter of limitation, it becomes crucial whether the terminus closes with the posting of the memorandum of appeal by the appellant after registering it or is it only so by the time when the same is transmitted and actually received in the office of the Commission. The crucial question therefore is as to which of the two dates is the real terminus-a-quam for purpose of limitation. It would appear that the question before us is res integra. In any case, no authority or judgment with regard to the relevant provisions or one by way of analogy could be cited by the learned Counsel for the appellant. In the absence thereof, he, sought to draw some strength from Section 4 of the Indian Contract Act. It was his plea that either this provision applies stricto-sens, or in any case the principles underlying the same with regard to the time when the communication of a proposal or its acceptance is complete, would be equally attracted to the situation.

4. THERE is a modicum of merit in the stand taken by the learned Counsel. It is true that Section 4 of the Act does not strictly cover the field on all fours. It can only assist by virtue of the principles underlying therein and by way of analogy. For facility of reference, the relevant part of the Section and the illustration may be noticed :- "4. Communication when complete The communication of a proposal is complete, when it comes to the knowledge of the person to whom it is made. The communication of an acceptance is complete, as against the proposee, when it is put in a course of transmission to him, so as to be out of the power of the acceptor, as against the acceptor, when it comes to the knowledge of the proposer. The communication of a revocation is complete. Illustrations (a)

(b) B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete as against A, when the letter is posted; as against B, when the letter is received by A."

It is trite knowledge that the aforequoted Section 4 incorporates and codifies the old and hallowed principles of the English Contract Law on the point. The principle underlying the same would indicate that in the eye of law, a communication becomes complete either when it is actually received or comes to the knowledge of one party or when it is put in a course of transmission to the other so as to be out of the power of the sender. In practical terms in the context of transmission by post, the terminus is either when the same is posted or when it is actually received by the other party. Herein, the choice is between the strict rule of actual receipt or the slightly liberal one of the date of the posting of the memorandum of appeal. In a beneficent statute, we are inclined to opt for the latter and the more liberal view in the context of a limitation provision. The larger principles which is well-settled is that the law tilts towards an actual adjudication of a lig on merits rather than its closure by the strict and technical rules of limitation. The matter can also be examined from another refreshing angle. In this context if it were to be held that presentation of the appeal is complete only when it is actually received in the office of the Commission, the same would become subject to the proverbial vagaries of the post. In our country, it is the more so and it is not unusual for a letter even though a registered one to be delayed in transmission inordinately. Should such a mishap take away the valuable right of appeal under the Act by mere delay in the course of transmission by post is the question. In our view, taking such a strict or technical view could sometimes be conducive of considerable mischief.

5. FOR the foregoing reasons, the answer to the question posed at the outset is rendered in the affirmative. It is held that the terminus for preferring an appeal under Section 15 of the Act by registered post is the date of its posting by the appellant and not the date of its actual receipt in the office of the State Commission.

6. ONCE it is held as above, the appellant is on strong ground. As already noticed earlier, the order of the District Forum is dated the 27th July, 1992 and proof of the postal receipt buttressed by the firm averments has been brought to show that the memorandum of appeal was posted on the 24th of August, 1992. Taking these two termination, the appeal is therefore within the prescribed period of thirty days and consequently must be entertained. Notice issue, to the respondent for a hearing of the appeal on merits for 2nd of December, 1992. Appeal terminated.