

(1992) 10 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

Sita Decors

APPELLANT

Vs

State Consumer Disputes Redressal Commission, Madras

RESPONDENT

Date of Decision : 26-10-1992

Acts Referred:

Citation : 1993 2 CPJ 911

Hon'ble Judges : Srinivasan J.

Final Decision : Revision Petition dismissed

Judgement

1. THE petitioner is challenging the order of the State Consumer Disputes Redressal Commission, Madras. THE order is one passed on appeal and a petition for stay was presented along with the appeal. THE petitioner was the respondent in O.P. No. 279 of 1991 preferred by Leo Laboratory Services which is the second respondent herein before the District Consumer Disputes Redressal Forum. THERE was a complaint under Sec. 12 of the Consumer Protection Act. Inspite of notice being served, the petitioner remained absent and the District Forum passed an order directing return of Rs. 4,000/- collected by way of charges by the petitioner and a sum of Rs. 100/- by way of damages for the negligence and indifferent attitude of the petitioner. THE petitioner filed an application to set aside the exparte order. That application was returned to the petitioner with an endorsement that his remedy was to file an appeal before the State Forum as final orders have been passed in the main O.P. Accordingly, the petitioner filed an appeal with an application for stay which was taken on file as A.P. No. 198 of 1991 and C.M.P. No.108 of 1991.

2. THE appeal as well as the petition for stay were heard by the State Forum and dismissed in limine. THE State Forum did not find any reason to interfere with the order of the District Forum. THE said order is challenged in this civil revision under Article 227 of the Constitution of India. Learned Counsel for the petitioner contends that the procedure adopted by the State Forum in dismissing the appeal in limine without ordering notice to the second respondent is volatile of the provisions of the Act and Rules framed there under. According to him right of

appeal is provided in the Act and whenever an appeal is presented it should be automatically taken on file and notice should be issued to the respondent and it is only after hearing both parties in the appeal, the State Forum could dispose of the appeal. Learned Counsel for the petitioner places reliance on the provisions of Sec. 18 of the Consumer Protection Act, 1986 which is in the following terms : "The procedure specified in Sees. 12,13 and 14 under the rules made there under for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission."

Learned Counsel for the petitioner contends that no modifications have been made in the Act or in the Rules and the procedure as prescribed in Sees. 12 to 14 of the Act for the disposal of disputes before the District Forum would apply to the appeals before the State Forum. Sec. 12 refers to the manner in which a complaint was made before the District Forum. Sec. 13 prescribes the procedure on receipt of the said complaint. Under that Section, whenever a complaint is received, the District Forum shall refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum after conduct of the enquiry. Learned Counsel for the petitioner draws my attention to Rule 9 of the Tamil Nadu Consumer Protection Rules, 1987. That Rule, prescribes the procedure for hearing appeals. Sub Rule 6 states that on the date of hearing or any other date to which hearing may be adjourned, it shall be obligatory for the parties or their authorized agents to appear before the State Commission and if the appellant or his authorized agent fails to appear on the said date the State Commission may, in its discretion, either dismiss the appeal or decide it on the merits of the case. Similarly, the State Commission is empowered to proceed *exparte* and decide *exparte* on merits if the respondent or his authorized agent fails to appear on the said date.

Learned Counsel for the petitioner submits that on a reading of Sees. 12 to 14 of the Act along with Rule 9(6) of the Rules, it is clear that in all appeals filed before the State Forum a notice shall be issued by the Appellate Forum to the respondent and only, thereafter, the appeals could be disposed.

3. I do not agree with the contention of the learned Counsel for petitioner. Sec. 18 of the Act itself states that Sees. 12 to 14 would be applicable only with such modifications as may be necessary for the purpose of disposal of the appeal. In the case of original petition before the District Forum it is absolutely necessary to issue a notice to the respondent as the District Forum will not be in a position to decide the case of the petitioner without hearing the respondents. It cannot even without giving notice to the respondent pass an order allowing the application filed by the complainant. Consequently, a notice is a must in an original petition. However, the position in the case of appeal is entirely different. The appellant has to make out a case that the order of the District Forum suffers from errors or

defects. If the State Forum is not convinced that there was any error or defect in the order of the District Forum there is no necessity at all to issue notice to the respondent and drag him before the Court. It cannot be said that even after giving notice to the respondent he shall be heard by the appellate forum. After giving notice to the respondent and after hearing the appellant, if the appellate forum thinks that no case has been made out by the appellant, it is certainly entitled to dismiss the appeal without calling on the respondent to argue the same. Thus, the appellate forum is vested with the discretion to decide whether notice should be issued to the respondent on the facts and circumstances of the case. There is no Rule compelling the State Forum to issue notice to the respondent in every appeal whether there is merit in the appeal or not. Sec. 18 of the Act cannot be understood or interpreted in the manner in which the learned Counsel for petitioner wants me to interpret the same. Rule 9(6) of the Rules enables learned Counsel for petitioner to contend that in all the appeals, the respondent shall be heard or that notice shall be issued to the respondent. Sub-rule (6) of Rule 9 provides that if in an appeal a date of hearing is fixed and in such cases if the notice had been issued to the respondent and service had been effected then the parties or their agents shall be present. Sub-Rule (6) does not compel the State Forum to issue notice in every appeal. This is the only contention urged by learned Counsel for the petitioner. I do not accept the same. No other argument is advanced. Hence, the revision petition fails and is dismissed. Revision Petition dismissed.