
(2000) 01 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

VENKATA SAI FINANCE AND CHITS

APPELLANT

Vs

A.RAJENDRA PRASAD

RESPONDENT

Date of Decision : 28-01-2000

Acts Referred:

Citation : 2000 2 CPJ 546 : 2001 1 CPC 309 : 2001 1 CPR 159

Hon'ble Judges : S.Parvatha Rao , Mamata Lakshman J.

Final Decision : R.P.allowed subject to payment of costs

Judgement

1. THIS RP is filed questioning the order of the Nizamabad District Forum in IA No. 53 of 1999 in CD No. 223 of 1998 dated 3.12.1999. That IA was filed by the petitioner in the RP, who was the petitioner in IA No. 53 of 1999 and opposite party in CD No. 223 of 1998, for permitting him to file his counter and contest the CD. The respondent in this RP is the complainant in CD No. 223 of 1998 and respondent in IA No. 53 of 1999.

2. IN the affidavit in support of IA No. 53 of 1999 the petitioner sated as follows : "That the above case was filed by the respondent/complainant against me. That the above case was posted to for filing counter of me, as I had not filed the counter, this Hon"ble Forum forfeited my right to file the counter and posted the case for filing affidavit of the complainant. That on the said date of hearing I could not file the counter due to out of station and I had not instructed my Counsel to prepare the counter to the above case. That on the said date of hearing I went to Hyderabad to see my relatives who are not feeling well. That non filing of the counter on the said date of hearing is neither intentional nor deliberate, but prurely the above said reason only."

That IA was dismissed by the District Forum holding that the IA was not maintainable. IN Ranga Krishna and Company v. Vudari Yadagiri, II (1999) CPJ 389=1999 (1) ALD (CONSUMER) 159, while holding that in view of the statutory duty cast on the Tribunals under the Consumer Protection Act, 1986 to dispose of the complaints filed before them expeditiously with a minimum number of adjournments it was incumbent on the opposite party to present their versions/

counters immediately on the dates to which the matter was first posted for appearance or atleast on the next date to which the matter was adjourned for that purpose and that they should not take inordinate time for filing their versions/counters and seek adjournment after adjournment for that purpose, we observed as follows : "Even if an opposite party is set ex parte, it does not preclude the District Forum from receiving the version/counter if immediately thereafter it is filed with a proper reasonable explanation for not being able to file it within the time allowed or acceptable. It is also open to the District FORA to impose costs depending upon the attitude and conduct of the opposite party (parties) in filing the version/counter. This would be a reasonable approach especially when, after setting the opposite party/parties ex parte, there is no further progress in the hearing of the CD. If, after the opposite party/parties are set ex parte, evidence of the complainant/complainants is taken and the matter is posted for arguments/judgment then different consideration may arise-even then, a counter may be received in order to comply with the requirements of principles of natural justice and fair play, if there was no recalcitrant or obdurate attitude displayed by the opposite party. It all depends on the facts of each case. We are making these observations to indicate the approach that may be adopted in the matters like this depending on the facts of each case. There cannot be a hard and fast rule. IN dealing with this aspect of the matter the District FORA will have to keep in view that clear mandate of the Act that expeditious disposal of the complaints has to be taken as the preponderant guiding factor at the same time keeping in view the principles of fair play and natural justice."

On 11.1.2000 we admitted this RP and directed notice to the respondent and on the same day in RP IA No. 4 of 2000 we made the following order : "The petitioner shall deposit a sum of Rs. 1,000/- before this Commission within 2 weeks from today i.e., by 25.1.2000 by way of pay order/demand draft drawn in favour of the Registrar, A.P. State Consumer Disputes Redressal Commission. Counsel shall file a memo of compliance before this Commission as well as before the District Forum alongwith a copy of the receipt evidencing payment of the same. The Registrar shall give a receipt after the said sum is deposited before this Commission, to the learned Counsel for the petitioner. Subject to further orders of this Commission, the District Forum shall receive the counter which is said to have been already filed by the Counsel for the petitioner/opposite party - he states that it has been filed alongwith the IA No. 53 of 1999 - and proceed with the CD No. 223 of 1998 and give opportunity to the opposite party to adduce evidence both documentary as well as oral on the basis of the counter. The District Forum shall keep in view our observations in Rangakrishna and Company v. Vudari Yadagiri (supra)."

The petitioner deposited Rs. 1,000/- before this Commission as directed by us on 22.1.2000 by way of pay order drawn on State Bank of Hyderabad dated 19.1.2000.

Counsel for the petitioner in this RP also filed the certified copy of the docket

sheet giving the dates to which the CD was adjourned from time to time for counter of the petitioner in the RP as per our directions in RP No. 2 of 2000. We find that the petitioner herein was served notice in CD No. 223 of 1998 on 30.7.1998 and that he appeared through his Advocate Sri N. Srinivas Raju on that day and took time till 31.10.1998 for counter. Thereafter the CD was being adjourned from time to time for counter - from 31.10.1998 to 21.11.1998 , then to 12.12.1998, 6.2.1999, 20.2.1999, 5.6.1999 and then to 30.7.1999. On that day docket recorded as follows : "Counter. Not filed. Call on 20.8.1999 for affidavit of complainant."

3. IT was only then that on 20.8.1999 the petitioner herein filed counter alongwith IA No. 53 of 1999 for permitting him to file the counter and to contest the case. From this it is obvious that the petitioner herein was seeking adjournment after adjournment without filing the counter for nearly one year. No explanation whatsoever was given by the petitioner in his affidavit in support of the IA for the inordinate delay in filing the counter. As indicated by us in the case of Ranga Krishna and Company (supra) the facts of the present case warrant heavy costs. We are inclined to set aside the order of the District Forum only because the petitioner herein filed the counter alongwith IA No. 53 of 1999 and in view of the fact that the complainant had not adduced any affidavit evidence. In Sunil Blood Bank and Transfusion Centre v. Naresh Kumar & Anr., I (1995) CPJ 57 (NC), the National Commission held as follows : "The impugned order was passed by the State Commission ex parte without permitting the appellant herein, who was the opposite party before it, to file its written statement in opposition to the complaint petition. The justification given by the State Commission for adopting the said procedure is that on an earlier date when the case had stood posted, the appellant herein had failed to appear before the State Commission and it had consequently been "set ex parte" and hence though it appeared before the State Commission on the next day of posting of the case viz., 29th January, 1990 and requested for an opportunity to file his written statement and adduce evidence in support of its contention the said request was not liable to be granted inasmuch as the appellant herein had already been "set ex parte". We are unable to approve of the said procedure adopted by the State Commission. All the provisions of the Code of Civil Procedure are not applicable to the proceedings before the Redressal Forums constituted under the Consumer Protection Act and only certain specific provisions enumerated in Section 13(4) of the Act are made applicable to such proceedings. Hence the State Commission should not have imported the hypotechnical procedure of debarring a party from filing his written statement and adducing his evidence in opposition to the complaint petition on the ground that he was absent on an earlier date of posting and had been set ex parte. To adopt such a procedure in the absence of any compelling provision in the statute would constitute denial of natural justice. Inasmuch as the impugned order has been passed without giving the appellant a fair opportunity to place its defence before the State Commission, we are constrained to allow this appeal, set aside the order passed by the State

Commission and remand..."

We may also observe that the District Forum ought not have allowed as many adjournments as it had allowed in this case. Two or three adjournments would have sufficed and thereafter what the District Forum did on 30.7.1999 it should have done on 21.11.1998, or on 12.12.1998 at the most. This would have obviated a further delay of one year in taking up the matter. After one or two adjournments, if counter is not filed by the opposite party, the District Forum can simultaneously proceed with receiving the affidavit evidence and other documentary evidence for the complainant and make the matter ready for immediate disposal on the date to which the matter is finally posted as a last chance for filing counter. That will disable the opposite party from contending that no further steps were taken in the matter and, therefore, his counter should be entertained.

4. WE are inclined to allow this RP subject to payment of costs of Rs. 1,500/- to the complainant in CD No. 223 of 1998 on the file of Nizamabad District Forum by depositing the said amount in the District Forum within 2 weeks from today. After he deposits the said amount he (petitioner) shall be permitted to withdraw Rs. 1,000/- deposited by him before this Commission. The learned Counsel for the petitioner shall immediately inform the petitioner of this order. Office is directed to communicate this order to the District Forum immediately and also furnish a copy to the Counsel for the petitioner. 7. Counsel for the petitioner shall file a receipt issued by the District Forum evidencing deposit of the sum of Rs. 1,500/- before it, which the District Forum shall furnish to the petitioner herein i.e., opposite party in CD No. 223 of 1998. Failure to deposit as directed will entail dismissal of the RP. Post this RP for reporting compliance on 15.2.2000. R.P. allowed subject to payment of costs.