

(1997) 02 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

VINIT SURI

APPELLANT

Vs

B.P. SAHA

RESPONDENT

Date of Decision : 27-02-1997

Acts Referred:

Citation : 1997 1 CPJ 454

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Order set aside

Judgement

1. TWO important questions have been raised in this revision. These are: (i) Whether the Fora constituted under the C.P. Act has power to allow amendment under Order 6 Rule 17, CPC; (ii) Whether the Fora is required to pass a speaking order disposing of the application for amendment.

2. BRIEF facts in which the above questions have arisen are that Mr. B.P. Saha, complainant for short, filed a complaint against Dr. Vinit Suri and Miss Beena, a nurse, with certain allegations. In the prayer clause it was stated that necessary action may be taken against the said persons and a thorough investigation be made. Notice was issued, opposite party 1 was served and he entered appearance and filed written version to the complaint. An application for amendment was moved alongwith the proposed amended complaint. Copy was given to Counsel for opposite party 1 and he was called upon to file written statement to the amended complaint. On 3.1.96, opposite party 1 filed reply to the application for amendment. It appears that Counsel for opposite party 1 requested the District Forum to pass an appropriate order on the application for amendment either allowing the amendment or rejecting the same. Instead of passing any order one way or the other, the District Forum appears to have told Counsel for opposite party 1 that the amended complaint had already been accepted by the Forum. An application u/Section 151, CPC was made on behalf of opposite party 1 for passing orders on the application for amendment. It was reiterated by the Forum that application for amendment had already been accepted. Aggrieved by these orders the opposite party Dr. suri has filed this

revision. We have heard Mr. Rajiv Nehru, Advocate, for the revision petitioner and Mr. B.P. Saha, who is an Advocate, in person.

We had occasion to examine the question whether the Fora had jurisdiction to deal with the allow amendment under Order 6 Rule 17, CPC. In *Rita Virmani v. Woodstock Nursing Home*, C-198/95 we reached the conclusion in our order dated 6.6.96 that the Fora had jurisdiction to deal with an application under Order 6 Rule 17, CPC which included power to allow amendment in appropriate cases. Our attention has been invited to a decision of the Uttar Pradesh Consumer Disputes Redressal Commission to the same effect in *New India Assurance Company v. Sri Gopal*, I (1996) CPJ 290. We, therefore, hold that the Fora does have the power to allow amendment in all appropriate cases.

3. WHENEVER a miscellaneous, application is made and the same is contested, the Forum is required to record a reasoned order disposing of the application. In the facts of the present case, we find that no such order was passed. It is no doubt true that the CPC as such has not been made applicable to the proceedings before the Fora, it has been laid down by the National Commission that sound principal of law and procedure embodied in the Code of Civil Procedure are to be followed by the Fora. Reference be made to *Branch Manager, LIC & Anr. v. Smt. Zarina Suleman*, I (1995) CPJ 4 (NC). u/Section 141, CPC applications made are required to be disposed of in the manner prescribed for the disposal of suits. In the facts of the present case, the opposite party had raised several questions which were required to be dealt with by the District Forum. The order to be passed can be brief but there is a vital and basic difference between an order being brief and blank. For these reasons, we set aside the order to the effect that the amendment had already been allowed and direct District Forum to hear both the parties, dispose of the application for amendment according to law and thereafter proceed to decide the main case. The parties, through their Counsel, informed us, the next date already fixed before the District Forum. The parties shall appear for further proceedings. A copy of this order be furnished to both the parties as well as D.F.-II. Order set aside.