

(2002) 02 NCDRC CK 0020

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**Case No:** NoneANGAD ELECTRONICS
METHODIST CENTRE

APPELLANT

Vs

CHANDRA SHEKHAR SINGH

RESPONDENT

Date of Decision: Feb. 5, 2002**Citation:** 2003 1 CPJ 372**Hon'ble Judges:** Arun Mishra J.**Final Decision:** Writ Petition disposed of

Judgement

1. 1. PETITIONERS are assailing the order passed by the M.P. State Consumer Disputes Redressal Commission on 29.10.2001. The appeal was dismissed for non-prosecution with costs of Rs. 500/- as the appellants and their Counsel failed to turn up to present their case even in the second call.

2. LEARNED Counsel submits that since there is no provision in the Consumer Protection Act, 1986 for restoration of the appeal, as such the writ petition is the only remedy. The submission of the learned Counsel is that the M.P. State Consumer Disputes Redressal Commission is not going to entertain the restoration application which may be filed.

The submission of the learned Counsel for the petitioner is not acceptable. In *New India Assurance Co. Ltd. v. R. Shrinivasan*, I (2000) CPJ 19 (SC)=II (2000) SLT 520=(2000) 3 SCC 342, their Lordships of the Supreme Court, held that once a case is dismissed in default of appearance, restoration can be made in paragraph Nos. 17 and 18, the Apex Court held as under :

"17. But that is not the end of the matter. Mahmood, J. in his dissenting judgment in the Full Bench case of Narsingh Das v. Mangal Dubey, observed : "The Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle, prohibitions cannot be presumed, and in the present case, therefore, it rests upon the defendants to show that the suit in the form in which it has been brought is prohibited by the rules of procedure applicable to the Courts of justice in India." 18. We only intend to invoke the spirit of the principle behind the above dictum in support of our view that every Court or judicial body or authority, which has a duty to decide a lis between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the Court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. That is not the function of the Court or, for that matter of a judicial or quasi-judicial body. In the absence of the complainant, therefore, the Court will be well within its jurisdiction to dismiss the complaint for non-prosecution. So also, it would have the inherent power and jurisdiction to restore the complaint on good cause being shown for the non-appearance of the complainant."

Same is the view taken in *Indian Oil Corporation v. Laxmi Shanker Narayan*, (1999) 9 SCC 27.

3. IN view of the aforesaid discussion, it is clear that the petitioner is having the remedy to apply before the M.P. State Consumer Disputes Redressal Commission. Petitioner may file an application for restoration within one month, same may be considered on its merits by the State Forum.

Writ petition is disposed of with the aforesaid observation. Writ Petition disposed of.