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**(1997) 01 NCDRC CK 0026**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

RAJ KUMAR

APPELLANT

Vs

KALA VIHAR CO-OP. G/H SOCIETY

RESPONDENT

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**Date of Decision:** Jan. 31, 1997

**Citation:** 1997 1 CPC 564 : 1997 1 CPJ 356 : 1997 2 CPR 248

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

**Final Decision:** Appeal allowed with costs

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**Judgement**

1. RAJ Kumar, hereinafter referred to as the complainant, became a member of Kala Vihar Cooperative Group Housing Society Ltd. referred to as Opp. Party, on 1.5.82. The General Body of the Opp. Party Society is believed to have a meeting on 5.5.912 in which it was decided to expel the complainant from the membership of the Society. Thereafter, the order of expulsion was got approved under the Delhi Cooperative Societies Act from the Joint Registrar, Cooperative Societies. The complainant appears to have filed an appeal to the Lt. Governor. Simultaneously, he approached District Forum-I by filing a complaint against the Cooperative Society alleging certain acts of deficiency on its part. Appearance was entered on behalf of the Cooperative Society before District Forum and a detailed reply was filed. The complaint was posted for filing complainant's evidence on 20.7.94. The complainant as well as his Counsel failed to appear. Mr. Surinder Kumar appeared for the Opp. Party. The District Forum, by a brief order, observed that the complainant appeared to have filed an appeal before the Lt. Governor which, having been dismissed, an application for restoration of the same was pending. It was further observed that as the complainant had already approached the Lt. Governor for vindication of his rights, the District Forum was not inclined to entertain the complaint and, accordingly, the same was dismissed. The complainant obtained a certified copy of the order passed by the District Forum on 10.8.94, and filed the present appeal on 8.9.94.

2. THE reason for absence of the complainant and his Counsel was that the Counsel could not appear on account of strike observed by Members of the Bar and the complainant had to attend the last ceremony of some unfortunate death in the neighborhood in which his participation was necessary. A certificate regarding the strike issued by the Secretary of the Bar as well as the complainant's own affidavit were filed. THE appeal has been contested and a large number of pleas taken in a detailed reply filed by the Cooperative Society.

We have gone through the record of the case including the written notes of arguments submitted by both sides and have heard learned Counsel for the parties.

The first question is whether the appeal has been filed within limitation. The contention of learned Counsel for the respondent Society is that the appeal was required to be filed within 30 days of the order of the District Forum namely 20.7.94. The appeal was, in fact, filed on 8.9.94 and it was barred by limitation. In *Haryana Housing Board v. Housing Board Colony Welfare Association & Ors.*, III (1995) CPJ 28 (SC), the Supreme Court authoritatively laid down that the time for filing an appeal under the Consumer Protection Act starts running not from the date of passing the order but from the date the order is communicated to the parties. In the present case, it is not disputed, that the appellant was communicated the certified copy of the order on 10.8.94. The appeal having been filed within 30 days of the communication of the order, is within limitation.

3. THE next question, is whether there was sufficient cause of the non-appearance of the complainant and/or his Counsel. It is not disputed in the counter affidavit that the complainant had to attend the last rights of some unfortunate death in the neighborhood and he could not, therefore, attend the District Forum on the date fixed in the complaint. His Counsel could not attend because of the strike having been observed by Members of the Bar. Without going into the question whether absence on account of strike by the Members of the Bar was a sufficient ground, the fact remains that the complainant has suffered because of the absence of his Lawyer and it is settled law that broadly speaking the litigant should not be made to suffer for the default of the Lawyer. THE fact also remains that the impugned order was passed by the District Forum without hearing the complainant or his Counsel. At the relevant time, the view which had been taken by the District Forum, was that no application for restoration of a complaint dismissed for default was maintainable.

THE view has since been set aside by this Commission. It follows that no useful purpose would have been served if the complainant had moved an application for restoration of the complaint on the following day. THE complainant, therefore, filed the present appeal which, as stated above, is within limitation. On behalf of the respondent Society a large number of objections have been raised to the maintainability of the complaint before the District Forum. THESE are both legal as well as on facts. We do not propose to examine any one of those objections.

A perusal of the impugned order shows that the same cannot be considered to be a speaking order. It does not purport to deal with the various pleas raised on behalf of the Opp. Party and record a finding thereon one way or the other. In our view, the brief order in question has resulted in failure of justice and it would be in the interest of justice if the matter is heard and disposed of afresh according to law.

4. WE are satisfied that the complainant was prevented from appearing by a sufficient cause. Because of the failure of the complainant to appear, the matter has been considerably delayed. WE, therefore, set aside the order of dismissal subject to appellant paying Rs. 500/- as costs. The appeal stands allowed. The case is remanded to District Forum-I. The District Forum shall proceed afresh and dispose of the case according to law. The parties shall appear before the District Forum-I on 3.3.97. A copy of this order be communicated to both the parties as well as D.F.-I. Appeal allowed with costs.