

(1992) 02 NCDRC CK 0010

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

GURCHARAN SINGH OF BARARA

APPELLANT

Vs

SHASHI BHUSHAN OF BARARA

RESPONDENT

Date of Decision: Feb. 4, 1992

Citation: 1992 1 CPJ 334

Hon'ble Judges: S.S.Sandhawalia , S.Kulwant Singh J.

Final Decision: Complaint dismissed

Judgement

1. WHETHER the spirit (though not the letter) and the rationale behind 9 Rules 8 and 9 of the Civil Procedure Code is attracted in analogous situations in consumer disputes is the solitary though significant threshold question in this case.

2. THE relevant facts to the aforesaid issue may be noticed with brevity. THE present complaint seeks a monetary relief to the tune of Rs. 1,17,00/- odd against the three opposite parties. On the complainant's own showing the cause of action arose to him in the month of July, 1991 and he preferred the earlier complaint No. 14 of 1991 before this Commission on the 25th of July, 1991. Notice was issued to the opposite parties in the said complaint and they duly entered appearance. THE complainant, however in the said complaint chose to not put in appearance on a number of occasions and ultimately this Commission by its detailed speaking order dismissed the complaint in default under Rule 4 (8). It is expressly noticed that on earlier occasions also the opposite parties had come present and on the date of the order also they were represented by Mr. Ram Chander, Advocate. Observing that the complainant was not serious in prosecuting the case and the opposite parties were being put to persistent harassment, the case was dismissed. Subsequently an

application for restoration of the complaint was made which after notice to the parties and hearing of arguments by the learned Counsel was dismissed on December 19, 1991 by speaking order.

The present complaint admittedly has been filed on an identical cause of action and the stand taken therein is that since the earlier complaint was dismissed in default, therefore, that order does not operate as a res judicata and the present complaint is being filed. The case was listed for arguments on the preliminary issue of the maintainability of the complaint.

Mr. S.M. Sharma, the learned Counsel for the complainant had contended that as yet the complaint was within the period of limitation and despite the earlier dismissal a fresh complaint would nevertheless be maintainable. The further submission was that irrespective of the number of times for which an earlier complaint is dismissed for default of appearance on behalf of the complainant (despite the presence of the Opposite Party) there was no bar for filing a fresh complaint for the same cause of action. It was submitted that the rigour of the procedural rules under the Civil Procedure Code did not apply and consequently whatever be the harassment to the opposite parties no legal jurisdictional bar existed because of the previous dismissal.

3. WE regret our inability to subscribe to the aforesaid submission. Reference inevitably has first to be made to the specific statutory provision of Rule 4(8) of the Haryana Consumer Protection Rules. This mandates that where the complainant or his authorised agents failed to appear on the date of the hearing the District Forum may in its discretion either dismiss the complaint for default or decide on merits. There is thus express power given by the rule to dismiss the complaint in default which has been validly exercised and not at all seriously challenged herein. It is true that this particular sub-rule and equally the other procedural provisions in the body of the rules do not expressly provide for the restoration of a complaint, so dismissed or the maintainability of a fresh one in the particular context where the opposite parties have put in appearance and were present on the date of its dismissal.

In the event of a vacuum in the express statutory procedural provisions on this specific point one has necessarily to fall back on the larger principles of justice, equity and good conscience. The present case in a way is itself illustrative of the hardship and harassment which would ensue to the opposite party if unending fresh complaints were to be entertained for the same cause of action even after the dismissal in default, where opposite parties had been served and had put in appearance. In the present case whilst the complainant treated the matter cavalierly

the opposite parties diligently came present and incurred the expense and trouble of engaging Counsel and personal appearances. If the submissions of Mr. Sharma were to be accepted, it would be open to an unscrupulous complainant to absent himself at his choice and harass the opposite parties by repeated fresh complaints for the same cause of action. Learned Counsel Mr. Sharma's extreme submission that it would be open to a complainant to file any number of fresh complaints despite an earlier dismissal for default of appearance by the complainant, whilst the opposite parties were present, has only to be noticed and rejected.

4. IN this context a beacon light is also provided by the relevant rule in Order 9 of the Civil Procedure Code pertaining to the appearance of parties and consequences of non-appearance. It is true that the letter of these provisions does not in strictitude apply to consumer disputes. Equally true, it is that redressal agencies under the Act have to be wary that they should not again become shackled with the technicalities of civil procedure from which the Consumer Protection Act and the rules framed there under have mercifully freed them. Nevertheless the spirit and the rationale which under-lies some of the procedural provisions can always be imported on the larger jurisprudential principles of natural justice and equity and good conscience. Rules 8 and 9 of Order 9 in a way are a pointer to the principle that should prevail in such a situation. Rule 8 aforesaid provides that where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit, be dismissed unless of course the defendant admits the whole or the part of the claim. The consequences of a dismissal under this rule are then provided by the succeeding Rule 9, the relevant part of which may be quoted for facility of reference: -

"(1) Where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was a sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit."

A bare reading of the opening part of this Rule would show that under the C.P.C. a statutory bar is created against bringing a fresh suit in respect of the same cause of action where the earlier suit had been dismissed owing to the non-appearance of the plaintiff whilst the defendant was in attendance. Even Mr. Sharma had fairly conceded that an unbroken chain of precedents has settled the rule that a fresh suit

would be barred under these conditions and not only that such a suit by the plaintiff's assignees or heirs or legal representative would be equally not maintainable. There appears no reason why this larger principle as also the analogous precedents, should not be imported in the trial of consumer disputes before the redressal agencies under the Consumer Protection Act.

In the light of the aforesaid discussion, the answer to the question posed at the outset is rendered in the affirmative. It is held that though the letter of Order 9 Rule 9 is not in strictitude applicable yet the spirit and the rationale behind it is attracted in an identical situation to the consumer disputes as well.

Once it is held as above, it necessarily follow that the present complaint which is admittedly for an identical cause of action is not maintainable after the dismissal of the previous complaint in which the opposite Parties had duly entered appearance and were: equally present and represented on the date of its dismissal. Consequently, the preliminary question is decided against the complainant and his complaint is dismissed. Complaint dismissed.