

---

**(2001) 03 NCDRC CK 0015**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

Thankachan

APPELLANT

Vs

R.D.PANICKER

RESPONDENT

---

**Date of Decision:** March 14, 2001

**Citation:** 2002 3 CPJ 301

**Hon'ble Judges:** L.Manoharan , R.Vijayakrishnan J.

**Final Decision:** Appeal allowed

---

**Judgement**

1. THIS appeal has been filed by the opposite party against the order of the District Forum, Kottayam in O.P No. 372/1997.

2. BRIEFLY the facts are that the complainant, entrusted the work of furnishing his house which included fixing of ceramic tiles, wash basins, comodes, etc. with the opposite party who undertook to complete the work within one month from April, 1996. But, he failed to complete the work within the period and the careless manner of work made the bathrooms unsuitable for use.

Opposite party entered appearance and filed version claiming that the works were carried out by him and other labourers on daily wages basis and due to the non-payment of arrear wages they had to discontinue the work.

District Forum accepted the complaint in file and numbered it as OP 483/96, but dismissed for default on 9.12.1996. Later restoration allowed and renumbered it as OP 372/97, and allowed Rs. 10,000/- as compensation and Rs. 1,000/- as costs, to the complainant.

3. AGGRIEVED against this order, the opposite party has come up in appeal and has challenged the correctness of the order of the District Forum.

We have heard the learned Counsels for the parties and perused the records of the District Forum which we received on request.

4. MAIN grievance of the appellant is that no notice was issued to the appellant/opposite party on restoration petition, hence impugned OP 372/97 being without notice is liable to be set aside.

Learned Counsel for respondent resisted the contention stating that the opposite party entered appearance in OP 483/96 and filed version, and before the restoration fresh notice was ordered by the District Forum on 23.4.1997. Since the opposite party failed to appear before the Forum, and contest the case in OP 372/97, District Forum appointed a Commission and relying on the Commission Report, the District Forum passed the order. Hence the order is not infirm.

Much stress has been made by the appellant that no notice was served before restoring the complaint after dismissal of OP 483/96, whereas the respondent contended that on 23.4.1997 notice was ordered by the District Forum. Hence the crucial question before us is whether notice was issued and served, as alleged by the respondent.

5. ON perusal of the order sheet of the District Forum it is found that on 23.4.1997 District Forum ordered to issue notice to opposite party. It also states that notice issued and despatched on 25.4.1997 and posted to 18.6.1997. But the lower Court record contains as undelivered registered letter with the postal cover addressed to the opposite party returned to the sender after inquiry made by the postal authorities. In the light of the above facts, it is found that though notice was issued by District Forum, but it was not served, whereas returned unserved.

6. IN the light of the above stated facts, the irresistible conclusion is that the District Forum allowed restoration and renumbered the complaint as 372/97 and disposed of the matter without notice and in the absence of the opposite party.

The sending of notice by registered post raises a presumption of service which is rebuttable. Since the notice returned without service, its proper procedure was to issue a fresh notice. Hence, the order of the District Forum in restoring the complaint cannot be sustained, as there has been no service of notice to the opposite party.

In the light of the above discussion, the order of restoration and the order in OP 372/97 are not sustainable in the eye of law, and liable to be set aside. The orders of the District Forum are therefore set aside.

7. THE best course to be adopted in such circumstances is to remit the matter to the District Forum for consideration afresh the order of restoration, after affording opportunity to both parties for arriving at a just decision. Since this complaint is of 1996 the District Forum shall dispose of the matter within the minimum time required.

For the aforesaid reasons, we accept the appeal, set aside the order of the District Forum and remand the case to it for deciding the matter afresh. No order as to costs. Appeal allowed.