

DIVYA LAND PROMOTERS (P) LTD Vs KULBHUSHAN SURI

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Aug. 2, 1996

Citation: 1996 3 CPJ 291 : 1997 1 CPR 328

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

Final Decision: Appeal allowed with costs

Judgement

1. BRIEF facts giving rise to this appeal are that the respondent filed a complaint before District Forum-II against the appellant. His grievance was

that he had paid Rs. 15,000/- to the opposite party by cheque dated 16.10.90 under an agreement to purchase 1000 sq. yards of orchard land

and the opposite party had failed to develop the land and handed over the same to the complainant. The opposite party was proceeded ex-parte

and the complaint was allowed by the District Forum by ex-parte order dated 6.1.95. It appears that the complainant took out execution. Notice

was issued u/Section 27 which was served on one of the Directors of the appellant on 2.11.95. An application for setting-aside the ex-parte order

was moved by the appellant before the District Forum on 3.11.95. By a later order dated 10.11.95 the District Forum directed certain corrections

to be made in the main order and on the same day dismissed the application for settingaside the ex-parte order passed in the main case. Hence this

appeal.

2. WE have heard Mr. J.K. Nayyar, Advocate for the appellant and Mr. J.P.N. Gupta, Advocate for the respondent.

Service in the complaint was passed on report of refusal by the postal authorities. The categorical case of the appellant is that no service was ever

affected nor notice was tendered to the appellant. It is settled law that report of refusal only raises a presumption of service which is rebut table.

When the addressee takes a categorycal stand that service was not effected nor he refused the notice, it becomes incumbent on the complainant to

prove by satisfactory evidence that the notice was in fact tendered to the right person and he refused to accept the same. No such evidence is

available in this case. We are therefore, clearly of the view that the ex-parte order must be set-aside. Mr. Gupta stated at the time of arguments

that he had no objection to the ex-parte order being set-aside. His prayer is that the case has been hanging fire for a long time and the same may

not be delayed further. In the facts and circumstances of the case, the appeal is allowed, ex-parte order dated 6.1.95 as corrected by order dated

10.11.95, is set-aside subject to payment of Rs. 500/- as costs. The parties, through their Counsel, are directed to appear before District Forum-

II on 30.8.96 for disposal of the complaint according to law. The opposite party, appellant herein, shall be given reasonable opportunity of filing its

written version and the case proceeded with according to law. A copy of this order be conveyed to both the parties. The District Forum shall

dispose of the case by giving it priority over others cases. Appeal allowed with costs.