

**(1996) 08 NCDRC CK 0019**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

DIVYA LAND PROMOTERS (P) LTD

APPELLANT

Vs

KULBHUSHAN SURI

RESPONDENT

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**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

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**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 effected nor notice was tendered to the appellant. It is settled law that report of refusal only raises a presumption of service which is rebuttable. When the addressee takes a categorical 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.