

(2004) 07 NCDRC CK 0095

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

LML LIMITED

APPELLANT

Vs

KAMAL KUMAR KAKKAR

RESPONDENT

Date of Decision: July 9, 2004

Citation: 2004 2 CPC 508 : 2004 3 CLT 573 : 2004 3 CPR 698 : 2004 4 CPJ 256

Hon'ble Judges: K.K.Srivastava , MajGenS.P.Kapoor , Devinderjit Dhatt J.

Final Decision: Revision allowed

Judgement

1. THIS revision is directed against order dated 16.4.2004 of the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh [for short hereinafter referred to as the District Forum] vide which bailable warrant of arrest of Shri Deepak Kumar Singhania, accused No. 1 were directed to be issued in the sum of Rs. 10,000/- with one surety in the like amount for 19.5.2004. Summons of O.P. No. 2 were also directed to be issued for the same date. An application under Section 27 of the Consumer Protection Act, 1986 [for short hereinafter referred to as the C.P. Act] was moved by the complainant who is respondent before us for proceeding against the O.Ps. for non-compliance of the decree passed by the District Forum.

2. ON the date when the impugned order was passed i.e., 16.4.2004, Shri Vaneesh Khanna, Advocate appeared for O.P. No. 1 Shri A.K. Johri. Shri Ram Sharma, agent of O.P. No. 2 was present. The complainant was present in person. O.P. No. 1 Shri A.K. Johri filed reply to the application under Section 27 of the C.P. Act which was not entertained on the ground that Shri A.K. Johri was not an accused in that case and he had no locus standi to file any reply to the complaint filed under Section 27 the C.P. Act Mr. Vaneesh Khanna, Advocate moved an application for and on behalf of

Shri Deepak Kumar Singhania, Managing Director of LML Limited for exemption of his personal appearance. The same was also declined as Mr. Vaneesh Khanna, Advocate was not in a position to give any undertaking that Shri Deepak Kumar Singhania shall appear in person before the District Forum on the next date of hearing.

The learned Counsel for the petitioner contended that the complaint filed by the respondent/complainant bearing No. 1003/1999 was initially decided ex parte by the District Forum vide order dated 14.1.2003, which was challenged in appeal before this State Commission. The State Commission dismissed the appeal and the petitioners who were O.Ps./respondents in the complaint and the appeal complied with the order. However, the respondent/complainant filed an execution petition in July, 2003 complaining that the order passed by the District Forum in the complaint case has not been complied with. The petitioners filed a reply before the District Forum after service of notice and contended that they had duly complied with the orders of the District Forum but still, the District Forum passed an order on 16.4.2004 vide which summons were issued to the petitioner No. 2 Shri Deepak Kumar Singhania, Managing Director, LML Limited and the same were directed to be served through Senior Superintendent of Police, Chandigarh.

The impugned order of the District Forum has been challenged on the ground that Shri Deepak Kumar Singhania had been impleaded in the execution application for the first time by name and he was not so impleaded as an opposite party in the complaint case. LML Limited, it was alleged, was a public limited company having the regional office at SCO No. 84-85, Sector 17- C, Chandigarh from which Shri Deepak Kumar Singhania did not function. The said company was represented by its duly authorised signatory Shri A.K. Johri who had placed on record the authorization letter regarding this case and made his appearance before the District Forum. There was no direction in the order passed by the District Forum against Shri Deepak Kumar Singhania and as such Shri Deepak Kumar Singhania could not be described to be a person who was directed to comply with the directions made in the order deciding the complaint case. The respondent/complainant had impleaded Shri Deepak Kumar Singhania in the execution petition with a view to play mischief and cause hardship and harassment to him. It was also urged that the District Forum went wrong in refusing to recognize the presence of Shri A.K. Johri as a person authorised to represent the public company LML Limited.

3. A perusal of the complaint case will go to show that LML Limited was impleaded through its Managing Director, Regional Office-I, Chandigarh and M/s. Em Pee

Motors and Scooters (Private) Limited. Shri Deepak Kumar Singhania was not impleaded in person in the complaint case nor his name was mentioned in the description of O.P. No. 1, in the complaint case. Thus, in the instant case, Shri Deepak Kumar Singhania was not disclosed as the person through whom the company had been arrayed as an opposite party.

The reply, which was filed to the application under Section 27 of the C.P. Act, was signed by the whole time Director of the company namely Shri Sanjeev Shriya who also appointed Shri Rakesh Kerwell son of Shri B.S. Kerwell, resident of H. No. 1522, Sector 18-D, Chandigarh presently working as Senior Manager and Shri A.K. Johri son of Shri O.P. Johri c/o. 2224, Sector 44-C, Chandigarh presently working as Commercial Officer, as company's true and lawful attorneys and on behalf of the company to do, perform and execute the acts mentioned in the power of attorney. It is also not in dispute that the company is a public company and the reply had been filed to the application under Section 27 of the C.P. Act by the company to whom directions were issued by the District Forum for compliance. Hence the District Forum, in our considered opinion, committed an error in law in refusing to entertain the reply filed by the LML Limited through Shri A.K. Johri, Commercial Officer and in insisting upon the presence of Shri Deepak Kumar Singhania in connection with the non-compliance of the order passed by the District Forum.

4. RESULTANTLY, the revision has considerable merit and is allowed to the extent that the impugned order refusing to entertain the reply filed by LML Ltd. through Shri A.K. Johri is set aside and further the order for issuance of bailable warrant of arrest for Shri Deepak Kumar Singhania is also set aside. The District Forum shall proceed to hear the Counsel for LML Limited on the reply filed by the company through Shri A.K. Johri and shall proceed to determine the liability of the person duly authorised to represent the company and who is liable to implement and comply with the order of the District Forum. The parties are directed to appear before the District Forum on 21.7.2004. Parties shall bear their own costs of revision. Copies of this order be sent to the parties free of charge. Revision allowed.