

**(2000) 06 NCDRC CK 0030**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

ASHWANI KUMAR

APPELLANT

Vs

S.D.O., PUNJAB STATE  
ELECTRICITY BOARD

RESPONDENT

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**Date of Decision:** June 2, 2000

**Citation:** 2000 2 CLT 641 : 2001 1 CPC 81 : 2001 1 CPJ 133

**Hon'ble Judges:** H.S.Brar , Jasbir Singh , Davinder Kaur Bhamrahs J.

**Final Decision:** Appeal dismissed

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**Judgement**

1. BRIEF facts taken from the complaint are that Sh. Ashwani Kumar had filed the complaint before the District Consumer Disputes Redressal Forum, Bathinda (hereinafter called the District Forum) stating therein that he was consumer of electric connection installed at the premises of President Hotel, Bathinda existing in the name of his father Sh. Dharam Chand. On 10.12.1998, Flying Squad headed by Sr. Executive Engineer checked the abovesaid connection and the load at the spot was found to be 12.926 K.W. against the already sanctioned load of 15.66 K.W. The opposite parties had issued notice dated 10.12.1998. The allegations made in that notice were totally false and baseless. The opposite parties had issued another notice amounting to Rs. 5,130/- without adopting the required procedure. The complainant had deposited the abovesaid amount under protest on 2.1.1999. The opposite parties disconnected the electric connection of the complainant and issued notice demanding Rs. 23,122/-. It was ultimately prayed in the complaint that the opposite parties be directed to restore the electric connection of the complainant, refund the amount of Rs. 5,130/- with interest and to pay a compensation of Rs. 2,50,000/-.

2. THE opposite parties had filed joint reply and had contested the complaint. First legal objection taken was that the complainant was not a consumer since the electric connection was in the name of Dharam Chand and the actual connection holder had already filed a civil suit regarding the same dispute. It is then stated in the reply that on 10.12.1998 Flying Squad visited the premises of the connection holder and found that one phase of the meter was dead and the connection holder had installed selective switches on each phase. THE connection holder had done the setting in such a manner that the load was shifted to the dead phase which amounted to theft of energy. It was further stated in the reply that connection holder had been given full opportunity and had been issued proper notice raising the demand of Rs. 23,122/- as per rules and the amount of Rs. 5,130/- deposited by the connection holder had already been adjusted.

After hearing the Counsel for the parties and going through the record, District Forum, Bathinda dismissed the complaint by holding that Ashwani Kumar was not a consumer of the opposite parties. The other ground on which the complaint was dismissed was that Dharam Chand, the consumer, had filed a civil suit on the same cause of action and thus complaint could not be filed on the same cause of action.

We have heard the learned Counsel for the parties and have gone through the record with their assistance.

3. THE learned Counsel for the appellant has argued that Ashwani Kumar, complainant is a consumer of the electric connection. Though the connection is in the name of Dharam Chand, his father, but he in fact is the real beneficiary. THE order of the District Forum thus according to the learned Counsel by not recognizing the complainant as a consumer is illegal and is liable to be set aside. He has cited III (1995) CPJ 1 (SC)=1996 (1) CON.LT 1, Indian Medical Association v. V.P. Shantha & Ors., to substantiate his argument. On the other hand, learned Counsel for the other side submits that the appellant-complainant is not a consumer, since electric connection in question was in the name of Dharam Chand. Dharam Chand, the actual connection holder had filed a civil suit regarding the same dispute and thus no complaint could be filed before the District forum for the same matter and on the same cause of action.

In our considered view, it has rightly held by the District Forum that Ashwani Kumar is not the consumer of the opposite parties and thus he was not competent to lodge the complaint before the District Forum. Admittedly, the electric connection is in the name of Dharam Chand and not Ashwani Kumar, complainant before the District Forum. Ashwani Kumar complainant cannot be regarded as a consumer being

beneficiary as he has alleged. The factum of Dharam Chand being the actual consumer is fortified by his pleadings in Para No. 1 of his plaint (Ex. R-2/A) filed in the Civil Court. It has been clearly stated in Para No. 1 of the plaint that Dharam Chand was subscriber of Electric Meter a/c No. KN 32/671, which was installed at Hotel President and he had been paying its bills, etc. regularly to the Department (PSEB) and nothing was due against him. Ashwani Kumar, complainant has nowhere alleged in his complaint that he was owner or partner in Hotel President.

4. SECTION 2(1)(d)(ii) of Consumer Protection Act, 1986 defines the consumer as under :

"Consumer means any person who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the first-mentioned person."

According to the abovesaid definition, consumer includes beneficiary when such services are availed of by him with the approval of the first mentioned person i.e., the person, who actually hired the services. The electric connection in this case was obtained by Dharam Chand for Hotel President. It is nowhere mentioned by Ashwani Kumar, complainant in his complaint that he was partner in the business of the Hotel President or in any way availed the services of the Electricity Board i.e., opposite parties with the approval of Dharam Chand, actual connection holder. The perusal of Ex. R2/1 a suit filed by Dharam Chand in the Civil Court wherein Dharam Chand had described himself as an actual connection holder alone nullifies the contention of Ashwani Kumar that he was beneficiary of the connection held by Dharam Chand. Thus, the authority cited by the Counsel for the appellant-complainant is not relevant to the facts of the case in hand, as he has failed to prove that he was in any way connected with the business of the Hotel President or had been availing the services of the opposite parties with the approval of Dharam Chand. The complainant has not even filed any power of attorney from Dharam Chand, actual connection holder to show that Dharam Chand had authorised Ashwani Kumar to file the complaint. Ashwani Kumar did not even file an affidavit to show that he was in any way connected with the business of Hotel President.

We, thus, affirm the order of the District Forum wherein it has been held that Ashwani Kumar was not competent to file the complaint being not a consumer of the opposite parties.

5. THE next submission made by the learned Counsel for the appellant is that though Dharam Chand had filed a civil suit regarding the same dispute but that suit was withdrawn by him lateron. Learned Counsel submits that though remedy of civil suit is available to the consumer but he can invoke the jurisdiction of the District Forum under the Consumer Protection Act, 1986 because the remedy before the Consumer Fora was an additional remedy. According to the learned Counsel, thus, the order of the District Forum in dismissing the complaint on the basis that earlier a civil suit was filed though withdrawn lateron was also not sound and liable to be set aside. Learned Counsel has cited III (1996) CPJ 1 (SC)=1997 (1) CON.LT 1, M/s. Fair Air Engineers Pvt. Ltd. v. N.K. Modi and 1999 (1) CON.LT 106, THE State of Bihar v. M/s. Magadh Motors, to substantiate his argument.

6. ADMITTEDLY, Dharam Chand had filed a civil suit in the Civil Court on the same cause of action regarding which Ashwani Kumar has filed the complaint before the District Forum. That civil suit was not withdrawn by Dharam Chand with permission to file either another civil suit or to file a complaint before the District Forum. Though, we have already held that Ashwani Kumar is not a consumer of the opposite parties and thus he was not competent to file the complaint. Even if for the argument sake, we consider Ashwani Kumar and Dharam Chand as the same person, even then no complaint could be filed before the District Forum with regard to the same matter on which the suit was filed in a Civil Court. As we have already stated above, that civil suit was not withdrawn with permission to file a fresh suit or complaint before the District Forum on the same cause of action. We produce hereunder relevant portion of the order passed by the Civil Court in the civil suit filed by Dharam Chand :

"In view of the statement of the Counsel for the plaintiff the suit is dismissed as withdrawn, but the observation that the plaintiff may file written representation with any of the defendants, within one month from today, and thereafter, defendants receiving written representation will forward the same to Dispute

Settlement Committee or Zonal Level Committee of PSEB, as the case may be. The Committee concerned will decide the written representation of the plaintiff after its receipt within six months through reasoned and speaking order after affording full opportunities of hearing to the parties."

Thus, the order itself shows that the suit was not withdrawn from the Civil Court with permission to file a fresh civil suit or a complaint before the District Forum under the Consumer Protection Act on the same cause of action. The authorities cited by the learned Counsel are not thus relevant to his case. The judgment in Indian Medical Association's case (supra), is also of no help to the complainant because Dharam Chand had already availed of his remedy by a civil suit about the same matter, which is involved in this complaint.

In II (1993) CPJ 182 (NC)=1993 (2) CPR 402, M/s. N.J. Industry v. State Bank of India, it has been held that when the subject-matter of a complaint filed before Redressal Forum is substantially same as in the suit earlier pending adjudication before Civil Court between the parties, the complaint was liable to be dismissed. The Hon"ble National Commission in II (1991) CPJ 665 (NC), Mohd. Basheer & Co. v. State Bank of Hyderabad & Ors., has also ruled that where the complainant got the suit dismissed as withdrawn, it was not legally open to the complainant to re-agitate the same matter before the Commission by filing a complaint. We, thus, find no force in the second submission made by the Counsel for the appellant. In view of our discussion made above, we do not find any merit in this appeal, which is hereby dismissed with costs. Costs are quantified as Rs. 2,000/-. Appeal dismissed.