

**(2004) 10 NCDRC CK 0096**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

V.D. GONDHALEKAR

APPELLANT

Vs

FRONTIER TRADING

RESPONDENT

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**Date of Decision:** Oct. 26, 2004

**Citation:** 2005 2 CPJ 105

**Hon'ble Judges:** M.S.Rane , R.N.Varhadi J.

**Final Decision:** Appeal allowed

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**Judgement**

1. RESPONDENT is present in response to the notice before admission issued by us earlier through his Advocate. We are proceeding to dispose of this appeal at the stage of its admission itself on hearing the appellant who is appearing in person and the learned Advocate for the respondent as above and on perusal of the material available in the appeal paper book. (For brevity's sake appellant is hereinafter referred to as "complainant" and respondent as "O.P").

2. THE complainant has filed this appeal against the order dated 22nd July, 2002 whereby District Forum proceeded to dismiss his complaint for default in his appearance.

On perusal of the memo of appeal, it is noticed that the complainant used to personally appear and conducts his matter before the District Forum and on the relevant date he was required to go to Indore for his office work.

Mr. Walanju says as per judgment of the Supreme Court in the case of New India Assurance Co. Ltd. v. R. Srinivasan, reported in II (2000) SLT 520=II (2000) CLT 30 (SC)=(2000) 3 SCC 242 the complainant ought to have moved the application before

the concerned District Forum seeking restoration of the complaint and filing of the appeal was not the remedy.

3. WE have perused the said judgment and noticed that the Supreme Court has held that Consumer Disputes Redressal Agencies possessed inherent powers of jurisdiction to restore the complaint dismissed for default on sufficient cause being shown.

Since, however, the complainant has filed the appeal herein and he is appearing in person, in interest of justice, we think it appropriate that he should be given chance to work out his matter on merits. It is also necessary to know that District Forum has proceeded to dismiss the complaint on the basis of "Dismissal Simplicitor" and that has not adverted to the factual aspects as also the merits thereof. Hence in interest of justice, we are allowing the appeal and restoring the Complaint No. 235/2000 on the file of South Mumbai District Forum. ORDER

1. Appeal is allowed and its impugned order dated 22nd July, 2002 dismissing the complaint for default is set aside and the said Complaint No. 236/2000 is restored to the file of South Mumbai District Forum for disposal in accordance with the Law and the Rules. 2. As far as this appeal is concerned, no order as to costs. 3. Copies of the order to be furnished to the parties as also to the South Mumbai District Forum. 4. Appeal stands disposed of.

Appeal allowed.