

STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW

APPEAL NO. 129 OF 2010

(against the judgment and order dated 08.05.2008 in Complaint case no. 147/2006 passed by the District Consumer Forum, Sitapur)

Jivandeep Mission

Appellant

Versus

Abhay Kumar Singh

Respondent

BEFORE

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT

HON'BLE SYED ALI AZHAR RIZVI, MEMBER

HON'BLE MR. RAM PAL SINGH, MEMBER

For the Appellant : Sri Yogendra Singh, Advocate.

For the respondent : None is present.

DATED: 04.02.2010.

JUDGMENT

MR. JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

Heard Sri Yogendra Singh, learned counsel for the appellant and perused the record.

Obviously, the appeal is miserably barred by time. The judgment dated 08.05.2008 subjected to challenge by way of this appeal was passed by the Forum below in complaint case no. 147/2006. The appellant contested the complaint by filing its written statement and also the counter affidavit in support of its version. The ^{said} version was considered by the Forum below and the complaint was allowed on merit.

The appellant moved recall application on 29.07.2008 and it was rejected on 13.07.2009. There are two aspects of the matter in so far as the restoration of the complaint having been sought before the Forum below is concerned. One, as to whether there was a sufficient reason for recall of the original judgment and the other is as to whether the judgment passed in the original complaint was ex-parte. The appellant moved the recall application before the Forum below on the ground that the complainant had promised to withdraw the complaint but he committed breach of trust and continued the proceedings resulting with the ex-parte judgment. This averment cannot be

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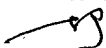
said to be sustainable as the appellant did not enter into any compromise in writing with the complainant nor any such assurance or commitment made by the complainant was reduced in writing. So mere statement regarding assurance of the complainant to withdraw his complaint without any consideration does not seem to be worthy of credit.

Secondly, the judgment pronounced on 08.05.2008 was on merit and the recall application or an application for restoration of the complaint was definitely not maintainable. We therefore, find that the order dated 13.07.2009 whereby the recall application was rejected is perfectly just and legal.

Adverting to the point of limitation, it may be observed that the recall application was rejected on 13.7.2009 but the present appeal has been filed on 22.01.2010 i.e. more than six months after. The explanation for condonation of delay is not at all convincing. In the affidavit of Sri Usman Khan, the Manager of the appellant, it is simply mentioned that the delay in filing the appeal is neither deliberate nor intentional but there is no explanation at all as to why delay has taken place. The oral submission of the learned counsel for the appellant that it was on account of delay on the part of the appellant's counsel, engaged before the Forum below ~~was~~ ^{RP} responsible for the delay, hardly has any merit as the name of the counsel has not been disclosed; and if he was the same counsel who did not appear before the Forum below to argue the appellant's case after filing the written statement and the counter affidavit, the appellant should not have placed reliance upon him. Any way, name of the counsel has not been disclosed nor the details as to how he was responsible for the delay have been disclosed. Obviously the delay of more than six months in filing the appeal seems to be fatal in the absence of any explanation much less satisfactory one. We would therefore, hold that the instant appeal is liable to be dismissed as barred by time.

Even on merit the appellant's case is devoid of substance. It is noteworthy that the appellant admitted having issued the membership of its Mission to the complainant on payment of Rs.2,199/- and the very fact of the complainant being member of Jivan Deep Mission was more than enough to

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authorize and entitle him to claim insurance amount in case of there being an accident. The complainant proved that he met with an accident on 07.09.2005 while he was coming riding his motorcycle towards his village. He suffered serious injuries and was treated of them in Lucknow Medical College where he incurred an expenditure of Rs.70,000/-. The appellant did not dispute the complainant's right to claim insurance amount. However, it was pressed into service that the Oriental Insurance Company Limited was liable to make the payment good but the terms and conditions of the agreement between Jivan Deep Mission and the Oriental Insurance Company Limited were neither filed before the Forum below nor a sincere effort has been made to bring them before us for our perusal. Although the said plea was held to be not sustainable by the Forum below in the absence of some documentary piece of evidence, yet the appellant did not consider it appropriate to file any agreement that might have been entered into between the Manager of the appellant and the Oriental Insurance Company Limited. Even if it is assumed for the argument sake that there was some agreement, the appellant may prefer a claim against the insurance company but in so far as its own liability vis a vis the complainant is concerned, it must make the payment good.

For the reasons disclosed above, we may conclude that the present appeal is liable to be dismissed on the ground of limitation as well as on merit.

Order accordingly.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(SYED ALI AZHAR RIZVI)
MEMBER


(RAM PAL SINGH)
MEMBER