

STATE CONSUMER DISPUTES REDRESSAL COMMISSION  
UTTAR PRADESH LUCKNOW

APPEAL NO. 770/2000

(against the order dated 15.02.2000 in Complaint case no. 929/99 passed by the District Consumer Forum, Kushinagar).

Avdesh Kumar s/o Sri Nathuni  
r/o Belwa Durgarai, Post Kasya District  
Kushinagar and another

Appellants

Versus

Chotey Lal son of Ram Preet  
r/o Belwa Ramjas, Post Kasya District  
Kushinagar and another

Respondents

BEFORE

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT  
HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER  
HON'BLE RAM PAL SINGH, MEMBER

For the Appellant : Sri B.K. Upadhyaya, Advocate  
For the Respondent : None is present.

DATED: 16.03.2011

JUDGMENT

MR. JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

The case called out.

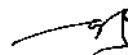
Sri B.K. Upadhyaya, learned counsel for the appellant is present.

However, none is present for the respondents.

Since it is an old appeal of the year 2000, we find it appropriate to decide it on merit.

The judgment dated 15.02.2000 of the District Consumer Forum, Kushinagar, has been subjected to challenge on the ground that the appellants could not get notice of the complaint which was decided ex parte; even without knowledge of its pendency. The contention seems to be sustainable. A perusal of the order sheet of the complaint no. 929/1999, as recorded by the Forum below, appears to indicate that the complaint was filed on 29.10.1999 and the District Consumer Forum

BS:jb




directed for issuance of notice with a further direction to list the matter on 23.12.1999 for hearing. On 23.12.1999 the hearing was adjourned further and 15.02.2000 was fixed. On that date the following order was passed :-

15.02.2000

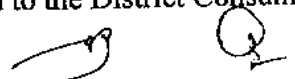
पुकार कराई गयी। विपक्षीगण की तरफ से कोई प्रतिवाद पत्र दाखिल नहीं हुआ न ही कोई उपस्थित है। शिकायतकर्ता को सुना गया।  
निर्णय, डिक्टेड किया गया तथा शिकायतकर्ता के पक्ष में घोषित किया गया।

It is obvious from perusal of the above quoted order that the District Consumer Forum had not ascertained as to whether the service of the notice had been effected or not upon the appellants/opposite parties. Not only the above referred order is silent about the notice but the impugned judgment too has no reference to the service of the notice. It appears that the District Consumer Forum proceeded to decide the complaint ex-parte on the assumption that the appellant had been served with the notice. However, such approach was misconceived particularly when the District Consumer Forum, as is evident from the judgment in question, was aware that the office of the Rapti Group of Companies was lying locked and closed. Not only this but the Forum below had observed that its Managers were also not available, all being untraceable. In such circumstances it was imperative for the District Consumer Forum to have taken recourse to "substituted service" of notices by way of publication in the news paper of wide circulation. However, instead of following the proper procedure the District Consumer Forum proceeded in haste and decided the complaint ex-parte. We therefore, hold that the appellants have been condemned unheard. This has resulted in miscarriage of justice.

Accordingly, we are of the decisive view that the appeal deserves to be allowed.

The appeal succeeds and is hereby allowed. The impugned judgment is set aside. The matter is remanded to the District Consumer


Ba/n



Forum, Kushinagar for fresh trial and disposal of the complaint in accordance with law after hearing both the parties.

Bhanwar Singh  
(JUSTICE BHANWAR SINGH)  
PRESIDENT

  
(SYED ALI AZHAR RIZVI)  
MEMBER

  
(RAM PAL SINGH)  
MEMBER

Asif