

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW

REVISION NO. 13 OF 2016

(Against the order dated 30-06-2015 in Misc. Case No.
29/2015 of the District Consumer Forum, Varanasi)

01. Durga Prasad Gupta
02. Smt. Sanju Devi
Both R/o H. No.2/507K-1
Sikrole
District Varanasi

...Revisionists

Vs.

Dr. Ram Murti Singh
Adhithala Trimurti Hospital
Cardiac Care Centre
Situating H.No. S-2/344 Gilat Bazar
District Varanasi

...Opposite party

BEFORE:

HON'BLE MR. JUSTICE AKHTER HUSAIN KHAN, PRESIDENT
HON'BLE MRS. BAL KUMARI, MEMBER

For the Revisionist : Sri Satyendra Singh holding brief for
Sri V P Sharma, Advocate.

For the Opposite Party : Sri R K Rai, Advocate.

Dated : 19-08-2016

JUDGMENT

PER MR. JUSTICE A. H. KHAN, PRESIDENT

Present revision has been filed under Section 17(1)(b) of the Consumer Protection Act 1986 against order dated 30-06-2015 passed by District Consumer Forum, Varanasi in Misc. Case No. 29/2015 Durga Prasad V/s Dr. Ram Murti Singh whereby District Consumer Forum has issued notice to opposite party for hearing on maintainability of complaint filed by the complainant now revisionist.

Learned Counsel Sri Satyendra Singh appeared for revisionist.

Learned Counsel Sri R K Rai appeared for opposite party.

We have heard learned Counsel for the parties and perused record.

It has been contended by learned Counsel for the revisionist that impugned order passed by District Consumer Forum is against provisions of Sections 12 and 13 of the Consumer Protection Act 1986.

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Learned Counsel for opposite party who is opposite party of complaint also has opposed revision.

It has been contended by learned Counsel for the opposite party that the impugned order is in accordance with law. Vide impugned order, the District Consumer Forum has not decided the maintainability of complaint finally. It has simply issued notice to opposite party of complaint for hearing on maintainability of the complaint.

We have considered the submissions made by learned Counsel for the parties.

Section 12 of the Consumer Protection Act 1986 provides manner in which complaint shall be made. Sub section-1 of Section-12 contains provisions as to who may present complaint. Sub section-3 of Section-12 provides that on receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected.

First proviso of sub-section 3 says that a complaint shall not be rejected under this sub-section unless an opportunity of being heard has been given to the complainant.

Second proviso of sub-section 3 says that admissibility of the complaint shall ordinarily be decided within 21 days from the date on which the complaint was received.

Section 13(1) of the Consumer Protection Act 1986 provides that the District Forum shall, on admission of a complaint, if it relates to any goods, refer a copy of the admitted complaint, within 21 days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum.

Similarly sub-section 13(2) of the Act says that the District Forum shall, if the complaint admitted by it under Section 12 relates to goods in respect of which the procedure specified in sub-section 1 cannot be followed, or if the complaint relates to any services refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be

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granted by the District Forum.

A reading of sub-sections 01 and 02 of Section-13 of the Consumer Protection Act shows that notice shall be issued to opposite party on admission of complaint only whereas sub-section 3 of Section-12 of the Consumer Protection Act provides that on receipt of complaint the District Forum may by order allow the complaint to be proceeded with or rejected. It means the District Consumer Forum shall decide maintainability of complaint under the Act on the basis of averments made in complaint as well as annexures and evidence filed with complaint. At this stage, maintainability of complaint as well as jurisdiction of District Consumer Forum shall be decided on the basis of averments made in complaint and annexures and evidence annexed therewith only. At this juncture, notice to opposite party is not warranted by law.

After having gone through the provisions of the Consumer Protection Act, we are of the view that the impugned order passed by District Consumer Forum whereby District Consumer Forum has issued notice before admission of complaint to opposite party for hearing on maintainability of complaint is against established procedure of law.

In view of above, present revision is allowed and the impugned order dated 30-06-2015 passed by District Consumer Forum, Varanasi in above Misc. Case is set aside with direction to the District Consumer Forum to pass appropriate order under Section 12(3) of the Consumer Protection Act 1986 on the basis of averments made in complaint as well as evidence and annexures submitted therewith and if the complaint is admitted for proceeding further then the District Consumer Forum shall issue notice to opposite party as provided in sub-sections 1 and 2 of Section-13 of the Consumer Protection Act 1986.

Let copy of this order be made available to the parties within 15 days positively as per rules.

A. H. Khan
 (JUSTICE A H KHAN) 19/8/2016
 PRESIDENT
Bal Kumari
 (SMT. BAL KUMARI) 19/8/2016
 MEMBER