

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO
WRIT PETITION No.11491 OF 2013

ORDER: (per the Hon'ble Dr. Justice B.Siva Sankara Rao)

The writ petitioner, whose first appeal FA No.831 of 2012 was dismissed by the Circuit Bench of the Andhra Pradesh State Consumer Disputes Redressal Commission at Vijayawada (for short, 'State Commission') is now seeking certiorari to quash the said judgment dated 14.03.2013.

2) The facts on record show that the writ petitioner who was the respondent in C.C. No.49 of 2012 aggrieved by the order of the Consumer District Forum, Vijayawada, filed the appeal before the State Commission vide F.A. No.831 of 2012 in which interim stay of order of the District Forum was also granted on 18.11.2012 subject to deposit of half of the amount awarded and he has complied with the same.

3) The foremost contention of the learned counsel for the petitioner is that the State Commission passed the impugned appeal order without giving an opportunity of being heard the appellant/writ petitioner and he has got a good case in proving that there is no deficiency on the part of the appellant. For the said contention, learned counsel for the petitioner submits in support of the averments in the writ petition that initially the appeal before the State Commission which was admitted on 18.10.2012 by ordering notice, adjourned to 20.11.2012 and from 20.11.2012 it was posted to 15.02.2013. As per the writ petitioner-appellant, the State Commission informed on 15.02.2013 that the case is posted

before the Circuit Bench to be conducted at Vijayawada and the date and venue will be informed to the appellant. A perusal of the State Commission docket proceedings shows that registered post notice of respondents returned of no such addressee is a sufficient service. The docket order dated 15.02.2013 shows further that “none appears, notice sent to respondents held sufficient. For hearing post on 08.03.2013.” Thus what he stated of State Commission informed him on 15.02.2013 of the case be posted before Circuit Bench and date and venue will be informed is not correct. The docket proceedings of a Court or Tribunal are sacrosanct and cannot be questioned in any other forum even before appellate Court but for if at all to approach the same Court with no lapse of time to rectify for any mistake, for otherwise attain finality. The appeal docket order dated 08.03.2013 no doubt shows “post before Circuit Bench, Vijayawada on 13.03.2013. Inform the parties.” Learned counsel for the writ petitioner therefrom states that the appellant received a notice only on 15.03.2013 from the

1st respondent/State Commission informing therein that the appeal was posted for hearing on 13.03.2013 at Circuit Bench of the State Commission at Governorpet, Vijayawada; said notice was dispatched by the office of the 1st respondent only on 11.03.2012 and the same having been received by him on 15.03.2013 when went to the office of the Circuit Bench at Vijayawada, he was informed there of the Circuit Bench was completed. He no doubt says that on 15.03.2013, he immediately contacted his counsel at Hyderabad who stated that the matter was reserved for orders, however to his surprise, on 05.04.2013 he received a copy of the order in F.A. No.831 of 2012 passed on 14.03.2013 dismissing the appeal and prayed to allow the writ petition by setting aside the

order of the State Commission.

4) Learned Government Pleader appearing on behalf of the 1st respondent contended that the appeal before the State Commission was made over to the Additional Bench on 20.11.2012 and posted for hearing to 15.02.2013 on which date none appeared before the State Commission and again posted to 08.03.2013 for hearing. He further contended that on 08.03.2013 the State Commission ordered to post on 13.03.2013 before the Circuit Bench, after intimation, at Vijayawada and on 13.03.2013 called the appeal before the Circuit Bench and there also none appears and then posted the appeal for orders to 14.03.2013 and the State Commission did not reserve for orders as alleged. The learned Government Pleader further contended that on 14.03.2013 the State Commission pronounced the orders dismissing the appeal on merits and prayed to dismiss the writ petition with costs, for remedy if any to dispute the order on merits is by revision before National Commission and not by writ petition.

5) Heard. Perused the material on record.

6) The State Commission's docket order dated 08.03.2013 as referred supra shows, while ordering to post before Circuit Bench, Vijayawada, on 13.03.2013; further ordered to inform the parties. Thus by virtue of the docket order the parties have to be informed well in advance to appear on the date of hearing fixed on 13.03.2013. The writ petitioner (appellant) claims that he was not served with the notice of hearing fixed on 13.03.2013 of the matter, then for none appeared, the matter was posted for orders on 14.03.2013 (mentions as if reserved for orders, but docket shows only posted for orders to 14.03.2013). It is very clear therefrom of notice of hearing date 13.03.2013 not served before that date as

he received the notice only on 15.03.2013. There is nothing at least to show the Advocate was informed to say that is a sufficient compliance. Thus when there is a direction on 08.03.2013 to intimate the parties of hearing on 13.03.2013 and there is no compliance by intimation before dated 13.03.2013, the order dated 14.03.2013 without verification of intimated to the parties or not, in observing as none appeared, posted for orders on 14.03.2013 is untenable and the pronouncement of orders on 14.03.2013 consequently thereby liable to be set aside. Though, there is an efficacious appeal or revision remedy before the National Commission, for the exceptional circumstances made out as referred supra, for non-service of notice of date and venue of hearing at Circuit Bench, Vijayawada, to appear; despite ordered the writ petition can be entertained to set aside the impugned order.

7) Accordingly and in the result, the writ petition is allowed by setting aside the order dated 14.03.2013 and restored the appeal to the file of the State Commission with a direction to fix date of hearing and intimate in advance to the parties or their counsel for their appearance and therefrom to decide the appeal on merits. There shall be no order as to costs. Consequently, miscellaneous petitions in the writ petition pending, if any, shall stand closed.

SANJAY KUMAR, J

Dr.B.SIVA SANKARA RAO, J

11-08-2016

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