

**SANJAY SHAW VS. SMT. PRATIMA SAHA &
ORS.**

(Through Video Conference)

Ms. Juin Dutta Chakraborty

Mr. Dipankar Pal

..for the petitioner

Mr. Subhasish Chakraborty

..for the opposite parties

The petitioner has preferred this revisional application challenging an order dated January 27, 2021 passed by the learned District Consumer Disputes Redressal Commission in C.C./08/2019 rejecting the application of the opposite party no.2 in the said proceeding for recalling of the order dated October 5, 2020. The learned Consumer Forum held that the learned District Forum did not have any power to recall its own order and therefore the recalling application was rejected.

Aggrieved, the petitioner has filed this revisional application alleging that the learned Consumer Forum ought to have extended the time to file the written statement as the summons had not been served on the petitioner and the paper publication was done in a bengali newspaper which could not be considered as good substituted service in view of the fact that the petitioner not being a bengali was not aware of such publication therein and thus did not have notice of the suit.

In the order dated October 5, 2020, the learned Forum considered the contentions of the petitioner and the learned Forum upon considering the

facts came to a conclusion that the paper publication was made on December 5, 2012, opposite parties appeared on February 6, 2020 by filing vokalatnama and prayed for time for filing written version and the next date was fixed on March 18, 2020 for filing written version by the opposite parties. On March 18, 2020, one Asoke Kumar Bose, the Managing Director of opposite party no.1 filed written version but the other opposite parties did not take steps. The learned Commission further held that as the written version by the opposite party no.1 was filed after a lapse of 104 days from the publication of the written version in the newspaper, the Forum did not have any jurisdiction to extend the time for filing the written version beyond 45 days as per the statute. Thus, the learned Forum rejected the written version filed by the opposite party no.1. The specific observation of the learned Forum was that the opposite party nos. 2&3 did not take any steps.

The proceeding has been fixed for ex parte hearing and the complainant was directed to file evidence.

It is the contention of the petitioner that the publication in the newspaper could not be taken into consideration as the starting period for computing the period within which the written version should be filed. The publication was made in a bengali newspaper and the petitioner was not aware of the proceedings.

The observation of the learned Court below that the opposite party no.1 filed the written version on March 18, 2020, that is, after a lapse of 104 days and as such could not be accepted by the learned Forum is as per the provisions of the statute.

In the paper publication, it was mentioned that the opposite parties in the proceeding before the learned Forum should enter appearance within 30 days

from the date of publication, that is, December 5, 2019. The opposite parties entered appearance on February 6, 2020. The written version of the opposite party no.1 was filed on March 18, 2020. Thus, the learned Tribunal held that the written version was filed beyond 45 days from the date of publication in the newspaper and rejected the written version filed by the opposite party no.1.

The learned Advocate appearing on behalf of the complainant submits that there is no gross irregularity or violation of principles of natural justice and an application under Article 227 of the Constitution of India would not lie against the order of the forum. The remedy of the petitioner would be to approach the learned State Commission.

In my opinion, the order is well reasoned. It is neither without jurisdiction or passed in violation of the principles of natural justice. There is also no apparent mis-application of law. Thus the application under Article 227 of the Constitution of India cannot be entertained in view of the existence of an alternative remedy.

The contention of the petitioner that the publication in a bengali newspaper would not amount to good and sufficient notice and the written version filed after 104 days ought to be accepted would require re-appreciation of the facts and law. This Court is not sitting as a Court of appeal and cannot appreciate the facts, which have recorded by the learned Forum.

Under such circumstances, this revisional application is disposed of with liberty to the petitioner to approach the learned State Commission in accordance with law. The learned Commission shall dispose of the application, if filed by the petitioner, in accordance with law and independently without being influenced by any observation made hereinabove. This Court has not gone into the merits of the case.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

(Shampa Sarkar,J.)