

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 5650 of 1998

M/S. SHAKUMBHRI EXPORTS Appellant (s)

VERSUS

M/S. LEIF HOEGH & CO. & ORS.Respondent (s)

(With appln.(s) for exemption from filing c/c of the impugned judgement)

Date : 10/02/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE DR. JUSTICE AR. LAKSHMANANFor Appellant (s)Mr. R.F. Nariman,Sr.Adv.
Mr. Aarohi Bhalla,Adv.
Mr. S. Bhatnagar,Adv.
Ms. Sujata Kurdukar,Adv.For Respondent (s)Mr. Ravindra Nath,Adv.
Mr. Rajeev Kumar,Adv.
Ms. Geeta Rani,Adv.
for M/s. Rajinder Narain & Co.,Advs.UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties from 2.00 p.m. to 2.50 p.m.

Exemption allowed.

The civil appeal is allowed.

No costs.

[T.I. Rajput] [Kanwal Singh]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5650 OF 1998

M/s. Shakumbhri Exports ...Appellant(s)

Versus

M/s. Leif Hoegh & Co. & Ors. ...Respondent(s)

O R D E R

The National Consumer Disputes Redressal Commission [for brevity, 'the National Commission'] disposed of the complaint filed by the appellant by the following order:

"Having considered all aspects of the case, we are of the view that the Complainant's remedy lies in a Civil Court. This is not a dispute which can be decided by this Commission. Hence, the Original Petition is dismissed."

The appellant filed a complaint on 18th November, 1995 before the National Commission seeking direction to the respondents to pay a sum of Rs.55,71,687.68p as compensation, including the price of the goods with interest, and cost of litigation on account of deficiency of service on the part of the respondents. The respondents resisted the complaint raising various grounds, including
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that the National Commission had no jurisdiction to entertain the complaint; the appellant is not a consumer; having regard to the allegations made in the complaint, the National Commission could not expeditiously dispose of the complaint; and that the claim made by the complainant is untenable.

Mr. R.F. Nariman, learned senior counsel appearing for the appellant, contended that the appellant has got a good case on merits and the dispute could be decided without requiring much evidence inasmuch as the dispute could be examined and decided on the correspondence made between the parties and the documents. The learned counsel also submitted that between the same parties on similar controversy, a subsequent complaint filed in the year 1996 was entertained in Original Petition No. 121 of 1996. Further, the National Commission did not record reasons in the impugned order to say as to why that dispute could not be decided by the National Commission and for what reasons, the appellant should be driven to civil court.

In opposition, the learned counsel for the respondents made submissions supporting the impugned order. According to the learned counsel, though the impugned order is not an elaborate one, it certainly indicates that having regard to the nature of the dispute, the National Commission felt that this dispute could be properly decided by the civil court and it is not a dispute which could be decided by it. He added that when the appellant is not a consumer, examining the other contentions raised by the complainant may not arise. Merely because the National Commission has not given elaborate reasons, that itself may not be a good ground to disturb the order, if otherwise that order can be supported and sustained. The learned counsel made few more submissions touching the merits of the contentions behalf.

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As is evident from the impugned order, extracted above, the National Commission, without even stating, however briefly, as to the contents of the complaint, contentions raised on behalf of the respondents and the reasons as to why it was not a dispute which could be decided by it, dismissed the original petition. Further, no reasons are recorded for dismissal of the complaint, except what is stated in the impugned order.

In the view we propose to take, we consider it unnecessary to examine the rival contentions on merits. The appeal is filed under Section 23 of the Consumer Protection Act, 1986 against the order made by the National Commission. The National Commission has made the order, in the original proceedings, on a complaint filed by the appellant. It is well settled that whenever an order is appealable, such order, if not to be an elaborate one, should indicate briefly the facts, the contentions raised and the reasons to decide the case one way or the other. We have no hesitation in holding that the impugned order does not state facts in brief at least and does not indicate as to whether the contentions urged on either side were kept in view. All that it states is that having considered all aspects of the case, the National Commission was of the view that the appellant's remedy lies in the civil court. Why the Commission was not i

n a position to decide the case is also not indicated. Prima facie, having regard to the facts and circumstances of the case, it is difficult for us to say at once that it is a case to be decided by the civil court and not by the National Commission. We make it clear that we are not expressing any opinion as to whether it is a dispute to be decided by the National Commission itself or ultimately it is a case which has to be decided by the civil

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court. It is for the National Commission to examine the respective contentions on all issues, including the question of jurisdiction and whether the appellant is a 'consumer' or not. We are satisfied that the National Commission should have examined the contentions and then passed a reasoned order. This being the position, we find it difficult to sustain the impugned order. Consequently, it is set aside. The original complaint is remitted to the National Commission for fresh disposal in accordance with law, in the light of what is stated above. All the contentions of the parties are left open to be urged before the National Commission. At this stage, we are told that the complaint was filed in the year 1995 and having regard to the age of the case, the National Commission may be directed to dispose of the complaint at the earliest. Taking note of this submission, we request and expect that the National Commission would dispose of the complaint as expeditiously as possible.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[Dr. AR. LAKSHMANAN]
New Delhi,
February 10, 2004.