

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)
No(s).28583/2008

(From the judgement and order dated 04/11/2008 in RP No.
745/2006 of The NATIONAL CONSUMERS DISPUTES REDRESS.AL
COMMISSION, NEW DELHI)

HARESH RAJALDAS MAKHIJA
Petitioner(s)

VERSUS

RAVI VASWANI
Respondent(s)

(With appln(s) for permission to file additional documents and
prayer for interim relief and office report)

Date: 04/12/2009 This Petition was called on for hearing
today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s)
Mr. K.V. Viswanathan, Sr. Adv.
Mr. Vipin Nair, Adv.
Mr. P.B. Suresh, Adv.
Mr. Vivek Sharma, Adv.
M/S. Temple Law Firm,Adv.

For Respondent(s)
Mr. Mohd. Wasay Khan, Adv.
Mr. Amarpal, Adv.
Mr. Bharat J. Joshi, Adv.
Mr. G. Ramakrishna Prasad,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

Appeal is allowed in terms of the signed order.

(Kavita Arora)
Sr. P.A.

(Kusum Gulati)
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. ___8158___ OF 2009
(Arising out of SLP (C) No. 28583 of 2008)

Haresh Rajaldas Makhija

...Appellant

Versus

Ravi Vaswani

...Respondent

ORDER

1. Leave granted.

2. The only question which needs consideration in this appeal is whether District Consumer Disputes Redressal Forum, Thane (for short, 'the District Forum') was legally correct and justified in passing ex parte order against the appellant and whether State Consumer Disputes Redressal Commission, Maharashtra (for short, 'the State Commission') and National Consumer Disputes Redressal Commission, New Delhi (for short, 'the National Commission') erred in dismissing the appeal and revision preferred by the appellant against the order of the District Forum.

3. The respondent filed a complaint against the appellant under Section 12 of the Consumer Protection Act, 1986 (for short, 'the Act') alleging deficiency of service on account of construction of building without obtaining permission from the municipal authorities and approval of building plan and prayed for issue of a direction to the opposite party in the complaint (appellant herein) to pay rupees two lakhs fifty six thousand in lieu of the amount deposited by him along with compensation and costs.

4. In his complaint, the respondent pleaded that he had booked flat No.102 on the first floor of the building named 'Satya Sai Maa Palace', which was to be constructed by the appellant and paid rupees two lakhs towards price of the flat. He further pleaded that the appellant had assured him that construction would be made after obtaining necessary permission from Ulhasnagar Municipal Corporation and

getting the building plan approved but without obtaining the necessary permission and without approval of the building plan, the latter constructed the building. The respondent claimed that this action of the appellant amounted to deficiency of service and, therefore, he was entitled to refund of rupees two lakhs along with compensation of rupees fifty thousand, costs and expenses amounting to rupees six thousand.

5. Notice of the complaint sent to the appellant by registered post A.D. at the address given in the complaint was returned unclaimed. Notwithstanding this, the District Forum disposed of the complaint by assuming that the service was complete and directed refund of rupees one lakh fifty thousand to the respondent along with interest at the rate of 9% per annum from the date of payment, compensation of rupees fifty thousand and costs of rupees five thousand. The District Forum further directed that if the amount is not paid within three months from the date of receipt of the order, the appellant shall have to pay interest at the rate of 12% per annum from the date of order i.e. 1.11.2004.

6. The appellant challenged the aforementioned order by filing an appeal under Section 15 of the Act. In para 4(iv) of the memo of appeal, the appellant averred as under:

"The Appellant would like to submit that the order of the Hon'ble District Forum is unilateral and arbitrary and has been passed without giving the Appellant a due opportunity to defend his case as the Appellant was not aware about the said proceedings as he was not served properly. Further the fact that the Respondent has not done proper service to the Appellant is evident from the important fact, which is stated as under:-

Firstly, the address of the Appellant as mentioned in the title of the Complainant is incorrect and confusing and the same is evident from the Agreement of the Appellant which states the address of Appellant as Nandini Palace, Flat No.M-1, Mezzanine Floor, Block No. C-856/1711, Opposite Statute of Subhashchander Bose, Near Netaji Chowk, Ulhasnagar-421005 whereas the Respondent has maliciously given the address of the Appellant as Nandini Palace, Opp: Netaji High School, Ulhasnagar-421005, Distt: Thane. The Respondent has deliberately not given the complete address of the Appellant by not providing the details as to flat no and block no, therefore the said notice has remained unclaimed and was returned back to the Hon'ble Forum."

7. The State Commission dismissed the appeal by observing that "not claimed" envelope was a good cause for a Forum to proceed ex parte order against the appellant because all the documents exchanged between the parties in the complaint was on the same address. The National Commission approved the observations made by the State Commission on the issue of service of notice upon the appellant and dismissed the revision petition filed by him.

8. We have heard learned counsel for the parties and carefully scrutinized the records. Admittedly, the notice of the complaint sent to the appellant at the address mentioned in the complaint had been returned with the remark "not claimed". The District Forum proceeded to decide the complaint ex parte by assuming that the notice has been duly served on the opposite party. This view of the District Forum was approved by the State Commission and National Commission.

9. In our view, even though the object of the Act is to ensure expeditious adjudication of complaints filed by the consumers and the Consumer Foras established under the Act are expected to act in furtherance of the object of the legislation, they cannot decide the complaints etc. without ensuring compliance of the basics of the natural justice. Like any other quasi judicial body/authority, the Consumer Foras are bound to comply with the rule of audi alteram partem. Since the notice sent to the appellant was returned with the postal remark "not claimed", the District Forum could not have presumed the service of notice and proceeded ex parte. By no stretch of imagination, the said remark given by the postman could be treated as the appellant's refusal to accept the notice.

10. In view of the above conclusion, we do not consider it necessary to delve into merits of the complaint filed by the respondent and reasons assigned by the District Forum for directing the appellant to refund rupees one lakh fifty six thousand along with compensation of rupees fifty thousand and costs etc., of rupees six thousand.

11. Before concluding, we may advert to the judgment of a three-Judge Bench of this court in Salem Advocate Bar Association v. Union of India (2005) 6 SCC 344. In that case, the Court considered various issues relating to interpretation of the Code of Civil Procedure, as amended by Act No.22 of 2002, including the one service of notice through courier. The Court adverted to the apprehension expressed by some of the counsel that service by such mode may not be in conformity with the existing statute and observed:

"Order 5 Rule 9, inter alia, permits service of summons by party or through courier. Order 5 Rule 9(3) and Order 5 Rule 9-A permit service of summons by courier or by the plaintiff. Order 5 Rule 9(5) requires the court to declare that the summons had been duly served on the defendant on the contingencies mentioned in the provision. It is in the nature of deemed service. The apprehension expressed is that service outside the normal procedure is likely to lead to false reports of service and passing of ex parte decrees. It is further urged that the courier's report about the

defendant's refusal to accept service is also likely to lead to serious malpractice and abuse.

While considering the submissions of learned counsel, it has to be borne in mind that the problem in respect of service of summons has been one of the major causes of delay in the due progress of the case. It is common knowledge that defendants have been avoiding to accept summons. There have been serious problems in process serving agencies in various courts. There can, thus, be no valid objection in giving opportunity to the plaintiff to serve the summons on the defendant or get it served through courier. There is, however, a danger of false reports of service. It is required to be adequately guarded against. The courts shall have to be very careful while dealing with a case where orders for deemed service are required to be made on the basis of endorsement of such service or refusal. The High Courts can make appropriate rules and regulations or issue practice directions to ensure that such provisions of service are not abused so as to obtain false endorsements. In this regard, the High Courts can consider making a provision for filing of affidavit setting out details of events at the time of refusal of service. For instance, it can be provided that the affidavit of the person effecting service shall state as to who all were present at that time and also that the affidavit shall be in the language known to the deponent. It can also be provided that if an affidavit or any endorsement as to service is found to be false, the deponent can be summarily tried and punished for perjury and the courier company can be blacklisted. The guidelines as to the relevant details to be given can be issued by the High Courts. The High Courts, it is hoped, would issue as expeditiously as possible, requisite guidelines to the trial courts by framing appropriate rules, orders, regulations or practice directions."

In our view, similar mechanism can be adopted by the consumer forums for ensuring service of notice of the complaint etc. on the opposite party/respondent.

12. In the result, the appeal is allowed. The orders of the District Forum, State Commission and National Commission are set aside and the matter is remitted to the District Forum for fresh adjudication of the complaint filed by the respondent. The parties are directed to appear before the District Forum on 1.2.2010. The appellant herein (opposite party before the District Forum) should file written statement within one month from the date of appearance. The District Forum should make an endeavour to dispose of the complaint within a period of four months after filing of the written statement.

.....J.

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(G.S. Singhvi)

.....J.

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(Asok Kumar Ganguly)

New Delhi
December 04, 2009