

Jyotsana Arvindkumar Shah and Others

Vs

Bombay Hospital Trust

Civil Appeals Nos. 314-315 of 1999

(K. Venkatawswami, R. P. Sethi JJ)

22.01.1999

ORDER

1. Leave granted.

2. These appeals are preferred against the common order dated 30-4-1997 of the Consumer Disputes Redressal Commission, Maharashtra State, Mumbai (for short "the State Commission") in Miscellaneous Applications Nos. 15 and 31 of 1996 (Execution) in Complaint No. 20 of 1992, which was affirmed by the National Consumer Disputes Redressal Commission, New Delhi (for short the National Commission) by declining to entertain Revision Petitions Nos. 670 and 671 of 1997 filed before it.

3. The appellants preferred Complaint No. 20 of 1992 against the respondent claiming a compensation of Rs. 7 lakhs with interest at the rate of 12% p.a. alleging that the husband of the first appellant and father of Appellants 2 and 3 died in the respondent's Hospital on account of carelessness and negligence while treating the deceased in the Hospital. A notice dated 1-2-1992 was served on the respondent calling upon it to file its defence within thirty days from the date of receipt of notice and failing to do so, would result in an ex parte decision. On receipt of the notice, the respondent's advocate sent a letter to the Registrar of the State Commission requesting for extension of time for filing reply up to 24-3-1992. However, on 12-3-1992, which date the respondent was directed to appear, no one appeared before the State Commission. It appears that further to the letter requesting adjournment, the respondent's advocate has forwarded the written statement in defence of the complaint made by the appellants. That was received in the Office of the State Commission on 26-3-1992. On 12-3-1992, the State Commission recorded a statement noticing the absence of the respondent and also failure to file any defence on behalf of the respondent. The State Commission proposed to proceed ex parte and directed the appellants to file their affidavit by 9-4-1992. On 9-4-1992, again no one appeared on behalf of the respondent and the State Commission proceeded ex parte and passed a reasoned order on merits awarding compensation of Rs. 7 lakhs with interest at the rate of 12% p.a. from 27-1-1992 to the appellants.

4. The respondent, instead of preferring an appeal, chose to file a writ petition before the Bombay High Court challenging the validity of the Consumer Protection Act, 1986. The High Court ultimately dismissed the writ petition on 19-12-1995 with an observation that the respondent could approach the appellate authority or to make an appropriate application before the State Commission for setting aside the ex parte order, if permissible under the law. Armed with the abovesaid order of the High Court, the respondent filed Miscellaneous Application No. 15 of 1996 before the State Commission for setting aside the ex parte order dated 10-6-1992. The appellants also filed Miscellaneous Application No. 31 of 1996 for execution and compliance with the order of the State

Commission.

5. The two miscellaneous applications came up for hearing before the State Commission. Though the State Commission has noticed the service of notice on the respondent and also the contention put forward on behalf of the complainants (appellants) that the State Commission has no jurisdiction to set aside the reasoned order dated 10-6-1992, though passed ex parte, it passed the impugned order setting aside the ex parte order dated 10-6-1992. The revisions filed against the common order dated 10-6-1992 were not entertained by the National Commission.

6. It is under these circumstances, the present appeals came to be filed.

7. We heard learned counsel on both sides for quite some time. When we asked the learned counsel appearing for the respondent to point out the provision in the Act which enables the State Commission to set aside the reasoned order passed, though ex parte, he could not lay his hands on any of the provisions in the Act. As a matter of fact, before the State Commission the appellants brought to its notice the two orders, one passed by the Bihar State Commission in Chief Manager, UCO Bank v. Ram Govind Agarwal ((1996) 1 CPR 351 (Bihar State Commn.)) and the other passed by the National Commission in Director, Forest Research Institute v. Sunshine Enterprises ((1997) 1 CPR 42 (National Commn.)) holding that the redressal agencies have no power to recall or review their ex parte order. The State Commission had distinguished the abovesaid orders on the ground that in those two cases the opponents had not only not appeared but also failed to put in their written statements. In other words, in the case on hand, according to the State Commission, the opponent (respondent) having filed the written statements, the failure to consider the same by the State Commission before passing the order would be a valid ground for setting aside the ex parte order. The State Commission, however, fell into an error in not bearing in mind that the Act under which it is functioning has not provided it with any jurisdiction to set aside the ex parte reasoned order. It is also seen from the order of the State Commission that it was influenced by the concluding portion of the judgment of the Bombay High Court to the effect that the respondent (writ petitioner) could approach the appellate authority or make an appropriate application before, the State Commission for setting aside the ex parte order, if permissible under the law. Here, again, the State Commission failed to appreciate that the observation of the High Court would help the respondent, if permissible under the law. If the law does not permit the respondent to move the application for setting aside the ex parte order, which appears to be the position, the order of the State Commission setting aside the ex parte order cannot be sustained. As stated earlier, there is no dispute that there is no provision in the Act enabling the State Commission to set aside an ex parte order.

8. The National Commission, as noticed earlier, dismissed the revisions in limine without going into the merits.

9. As it is clear from the above discussion that the order of the State Commission setting aside the ex parte order was one without jurisdiction, we cannot sustain the same. Accordingly, the order dated 10-6-1992 of the State Commission as confirmed by the National Commission is set aside and Miscellaneous Application No. 15 of 1996 stands dismissed. Miscellaneous Application No. 31 of 1996 is restored to the file of the Consumer Disputes Redressal Commission, Maharashtra State, Mumbai for disposal in accordance with law. The appeals are allowed accordingly with no order as to costs.