

SUPREME COURT OF INDIA

Mohinder Gupta

Vs.

Frontier Construction Company

C.A.Nos.3327-3328 of 2002

(D.K. Jain and R.M. Lodha JJ.)

25.03.2009

ORDER

1. These appeals are directed against orders dated 28th August, 2001 and 21st November, 2001, passed by the National Consumer Disputes Redressal Commission, New Delhi, hereinafter referred to as the "Commission" respectively in Original Petition No. 146 of 1994 and Misc. Petition No. 56 of 2001. By the first order, the Commission has dismissed the complaint filed by the appellant herein for non- prosecution and by the latter order, the application filed for recall of the said order has also been dismissed.

2. We have heard learned counsel for the appellant. Despite service of notice, no one has appeared on behalf of respondents No. 1 and 2. Respondent No. 3 was deleted from array of parties vide order dated 11th January, 2007.

3. It appears that the complaint filed some time in the year, 1994, could not be taken up for disposal because of difficulty in service of notice on respondents No. 1 to 3. Ultimately, respondent No. 3 could be served by publication. When the matter came up for consideration before the Commission on August 28, 2001, a request for adjournment was made by counsel for the complainant on the ground that he had been engaged recently and was not fully prepared to argue the case. The request was turned down by the Commission on the ground that the matter had been pending for the last seven years without any progress and there was frequent change of counsel. While dealing with application for recall of the said order, the Commission, without attaching an importance to the negligence on the part of the counsel, held that the negligence so pleaded was a mere excuse to somehow seek an adjournment. Nevertheless, the Commission did observe that negligence on the part of a lawyer may amount to deficiency in service on his part, but it could not be treated as a sufficient ground for recall of the said order.

4. It is true that it cannot be laid down as an absolute rule that change of an Advocate at any stage of the proceedings in Court is a valid ground for adjournment of hearing yet in certain situations the Court may, in the interest of justice, entertain such a prayer, the underlying

object being that an innocent litigant may not suffer injustice because of the default of his chosen Advocate.

5. Depending on the facts and circumstances of the case, it is always open to the Court to set aside a dismissal order, notwithstanding the negligence of his Counsel.

6. Having bestowed our anxious consideration to the facts of the instant case and bearing in mind the fact that a lot of time had been consumed in service of notice on the respondents and that there was substantial delay on the part of respondents No. 1 and 2 in filing their written statements, we feel that it was a fit case where the prayer made by counsel for the appellant for adjournment of the case could be acceded to.

7. Accordingly, we allow the appeals, set aside the impugned orders and remit the matter back to the Commission for disposal on merits.

8. Since the complaint was filed as far back as in the year, 1994, we would request the Commission to expedite the disposal of the matter.