

SUPREME COURT OF INDIA

Before: Justice Madan B. Lokur and Justice R.K. Agrawal.

INDIAN MACHINERY COMPANY v. ANSAL HOUSING & CONSTRUCTION LTD.

CIVIL APPEAL NO.557 OF 2016 (Arising out of SLP(C) No.19618 of 2013)

27.01.2016

Consumer Protection Act, 1986 - Dismissed in default - Second complaint-Maintainable - Whether a second complaint to the District Forum under the Consumer Protection Act, 1986 is maintainable when the first complaint was dismissed for default or non- prosecution? Yes. - The rule of prohibition contained in Order 9 Rule 9(1) CPC cannot be extended to the proceedings before the District Forum or the State Commission. The fact that the case was not decided on merits and was dismissed in default of non-appearance of the complainant cannot be overlooked and, therefore, it would be permissible to file a second complaint explaining why the earlier complaint could not be pursued and was dismissed in default - CPC O. 9 R. 9(1). *New India Assurance Co. Ltd. Vs. R. Srinivasan [(2000) 3 SCC 242]*, relied.

ORDER

Leave granted.

We have heard learned counsel for the parties. The only question that has arisen in this appeal is whether a second complaint to the District Forum under the Consumer Protection Act, 1986 is maintainable when the first complaint was dismissed for default or non-prosecution.

The National Commission has taken the view in the impugned order that the second complaint would not be maintainable.

Our attention has been drawn to a decision of this Court in **New India Assurance Co. Ltd. v. R. Srinivasan [(2000) 3 SCC 242]** wherein this precise question had arisen as mentioned in paragraph 5 of this decision. It is mentioned in that paragraph that the only question is that in view of the dismissal of the first complaint filed by the respondent therein, a second complaint on the same facts and cause of action would not lie and it ought to have been dismissed as not maintainable.

While dealing with this issue, this Court held in paragraph 16 as follows:

“This Rule [Rule 9(6) of the Tamil Nadu Consumer Protection Rules, 1988] is in identical terms with sub-rule (8) of Rule 4 and sub-rule (8) of Rule 8. Under this sub-rule, the appeal filed before the State Commission against the order of the District Forum, can be dismissed in default or the State Commission may in its discretion dispose of it on merits. Similar

power has been given to the National Commission under Rule 15(6) of the Rules made by the Central Government under Section 30(1) of the Act. These Rules do not provide that if a complaint is dismissed in default by the District Forum under Rule 4(8) or by the State Commission under Rule 8(8) of the Rules, a second complaint would not lie. Thus, there is no provision parallel to the provision contained in Order 9 Rule 9(1) CPC which contains a prohibition that if a suit is dismissed in default of the plaintiff under Order 9 Rule 8, a second suit on the same cause of action would not lie. That being so, the rule of prohibition contained in Order 9 Rule 9(1) CPC cannot be extended to the proceedings before the District Forum or the State Commission. The fact that the case was not decided on merits and was dismissed in default of non-appearance of the complainant cannot be overlooked and, therefore, it would be permissible to file a second complaint explaining why the earlier complaint could not be pursued and was dismissed in default."

We have also not been shown any rule similar to Order IX, Rule 9(1) of the Code of Civil Procedure, 1908. That being so, and in view of the decision rendered by this Court, with which we have no reason to disagree, we are of the opinion that the second complaint filed by the appellant was maintainable on the facts of this case.

Under the circumstances, we set aside the order passed by the National Commission and remit the matter back to the National Commission for adjudicating the disputes on merits.

The appeal is disposed of in view of the above.