

M/S. RAJ SELECTIONS V. NEW INDIA ASSURANCE CO. LTD. & ANR.

1. M/S. RAJ SELECTIONS
C/O. 5637 (MF) NAI SARAK
DELHI 110006

.....Appellant(s)

Versus

1. NEW INDIA ASSURANCE CO. LTD. & ANR.
3-10/11 , ASAF ALI ROAD LAXMAN HOUSE
NEW DELHI 110002
2. STATE BANK OF INDIA
SME- CCC, A/C RAJ SELECTIONS, 1850 SECOND FLOOR
MAIN ROAD CHANDNI CHOWK
DELHI 110006

.....Respondent(s)

Case No: FIRST APPEAL NO. 852 OF 2019

Date of Judgement: 10 Jan 2023

Judges:

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, PRESIDING MEMBER

For the Appellant : Ms. Aruna Mehta, Advocate

For the Respondent : For the Respondent No.1: Mr. C. K. Gola,
Advocate for

Mr. Abhishek Kumar, Advocate

For the Respondent No.2: Mr. Ravi Agrawal, Advocate

Facts :

Appellant (Complainant) had filed a consumer complaint related to insurance claim repudiation before the State Commission. State Commission dismissed the complaint for non-prosecution as complainant was absent on multiple hearing dates. Appellant has filed appeal against the dismissal order.

Arguments by Parties:

Appellant:

Default in appearing was not deliberate. Has a good case on merits and wants opportunity to present case. Will suffer irreparable loss if complaint not restored.

Respondents:

No objection to case being remanded back for decision on merits.

Elaborate Opinion by NCDRC:

Notes that complainant was absent on previous hearing dates too leading to dismissal. However, in interest of justice and to provide opportunity, matter deserves to be adjudicated on merits. Refrains from examining facts in detail since matter is yet to be heard on merits. Sets aside State Commission's dismissal order. Directs parties to appear before State Commission for fresh adjudication as per law. Appellant directed to prosecute complaint diligently.

Order:

Appeal allowed. State Commission order set aside. Complaint restored and parties directed to appear before State Commission on specified date. State Commission to decide complaint on merits as per law.

Sections referred:

Section 19 of Consumer Protection Act 1986

This summarizes the key details and arguments related to the

case under specific headings. Please let me know if you need any clarification.

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Court

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Full Text of Judgment:

1. This appeal has been filed under Section 19 of The Consumer Protection Act, 1986 in challenge to the Order dated 18.02.2019 of the State Commission in complaint no. 76 of 2011. Heard the learned counsel and perused the material on record including inter alia the impugned Order dated 18.02.2019 of the State Commission and the memorandum of appeal.

2. Vide its Order of 18.02.2019 the State Commission has dismissed the complaint for want of prosecution in the absence of the complainant. The said Order is reproduced below for reference:

18.02.2019

The case is called twice. No one on behalf of the complainant appears even in the second call. This is the last case on the board. On careful perusal of the proceedings it is noticed that the complainant was not present even on the last occasion i.e. on 10.08.2018. It appears that the complainant is not interested in pursuing his complaint. Accordingly the same is dismissed in default and for non-prosecution. File be consigned to record.

3. The matter relates to repudiation of an insurance claim. Learned counsel for the appellant – complainant submits that the default was not deliberate. The complainant has a good case on merit. He wants opportunity to present its case before the State Commission and will dutifully conduct its complaint before the State Commission with diligence. Submission is that the complainant will prejudicially suffer irreparably if the complaint is not restored and it may eventually lead to complete miscarriage of justice leaving the complainant

remediless and helpless.

4. Learned counsel for the respondents do not have any objection in remanding the case back to the State Commission for a decision on merits.

5. That being as it may, but having objectively and impartially considered the nature of the dispute and the overall facts and circumstances as are being borne out by the record, it is deemed to be just and conscionable that opportunity be provided to the appellant – complainant for getting the matter adjudicated on merit before the State Commission.

This Commission is consciously refraining from detailing the facts or critiquing the matter since the dispute is as yet to be adjudicated on merit and it does not wish to in any manner colour the vision of the forum below.

6. The Order dated 18.02.2019 of the State Commission is set aside and the complaint is restored to its original number before the State Commission.

The appellant – complainant is sternly advised to conduct its case properly with due diligence before the State Commission.

The appellant – complainant and the respondents no. 1 & no. 2 – opposite parties no. 1 & no. 2 are directed to appear before the State Commission on 13.02.2023.

The State Commission is requested to adjudicate the complaint, as per the procedure, on merit, in accordance with the law.

7. The Registry is requested to send a copy each of this Order to all parties and to their learned counsel within three days. It is further requested to most immediately send a copy of this Order to the State Commission by the fastest mode available. The stenographer is requested to upload this Order on the website of this Commission immediately.