

UNITED INDIA INSURANCE CO. LTD. V. M/S. SHARWASTI AGROTECH (P) LTD.

1. UNITED INDIA INSURANCE CO. LTD.
8TH FLOOR, KANCHANJUNGA BUILDING, 18
BARAKHAMBA ROAD, CONNAUGHT PLACE.
NEW DELHI-110001

.....Appellant(s)

Versus

1. M/S. SHARWASTI AGROTECH (P) LTD.
PSIDC ROAD NO. 8, NADARGANJ.
LUCKNOW.
U.P.

.....Respondent(s)

Case No: FIRST APPEAL NO. 422 OF 2020

Date of Judgement: 06 Jan 2023

Judges:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

For the Appellant : Ms. Suman Bagga, Advocate

For the Respondent : Mr. Harshit Aggarwal, Advocate with Mr.
Purshottam, Advocate

Facts:

It is an insurance claim dispute between M/s Sharwasti Agrotech Pvt. Ltd. (Complainant) and United India Insurance Co. Ltd. (Opposite Party). Complainant filed consumer complaint no. 206/2017 before State Commission Uttar

Pradesh. On 04.08.2017, State Commission noted non-appearance of Opposite Party and ordered ex-parte proceedings. Opposite Party has filed the present First Appeal with delay of 60 days against said order.

Arguments by Opposite Party/Appellant:

Appeal filed with self-admitted delay of 60 days seeking condonation of delay. Appeal challenges State Commission's interlocutory order directing ex-parte proceedings.

Arguments by Complainant/Respondent:

No specific arguments advanced.

Court's Observations and Decision:

Delay in filing appeal condoned considering reasons mentioned in condonation application. Matter should be decided on merits rather than dismiss appeal on limitation grounds. Principles of natural justice warrant providing one opportunity to Opposite Party to contest case. State Commission's impugned order dated 04.08.2017 set aside subject to cost of Rs. 25,000/- to be paid within 30 days. Opposite Party directed to file written statement within 30 days else right will extinguish. State Commission to proceed with case as per law. Failure to comply will result in revival of State Commission's impugned order. Opposite Party advised to conduct case properly before State Commission.

Relevant Provisions and Cases:

No specific provisions or case laws referred.

Conclusion:

First Appeal allowed in part with above directions. Parties directed to appear before State Commission on 23.02.2023 for further proceedings.

Full Text of Judgment:

1. This appeal has been filed under section 19 of The Consumer Protection Act, 1986 essentially in challenge to the Order dated 04.08.2017 of the State Commission in complaint no. 206 of 2017.

2. Heard the learned counsel for the appellant (i.e. the opposite party before the State Commission) and for the respondent (i.e. the complainant before the State Commission). Also perused the record including inter alia the State Commission's impugned Order dated 04.08.2017 and the memorandum of appeal.

3. The appeal has been filed with self-admitted delay of 60 days. However, in the interest of justice, and considering the reasons mentioned in the application for condonation of delay, as also in order to decide the matter on merit rather than to dismiss it on the threshold of limitation, the delay in filing the appeal is condoned.

4. The appeal principally impugns an interlocutory order of the State Commission vide which the opposite party was ordered to be proceeded against ex parte. The said Order is reproduced below for reference:

04.08.2017

Case called out. None responds. Notice was issued to the OP on 16.6.2017 which has not been received back unserved as per the office report. Therefore, service is deemed sufficient on the OP and now the case is to proceed ex parte.

Fixed 29.12.2017 for ex parte evidence.

5. Though not expressing any opinion about the merits of the case, but considering the nature of the dispute and the overall facts and circumstances in their totality, and also keeping in perspective the first principles of natural justice, it is felt to be just and appropriate that one

opportunity may be provided to the opposite party to contest its case subject to suitable terms / cost.

6. As such the Order dated 04.08.2017 of the State Commission to the extent it relates to proceeding ex parte against the opposite party is set aside subject to cost of Rs. 25,000/- to be paid by the opposite party to the complainant within 30 days from today without fail. It is concomitantly directed that the opposite party shall file its written version before the State Commission within the same period of 30 days from today failing which its right to file written version shall obliterate. The State Commission is requested to proceed further with the adjudication of the case in the normal wont as per the law. If the cost imposed is not paid within the stipulated period the State Commission's Order of 04.08.2017 shall stand as it stood and the State Commission shall so proceed further. The opposite party is sternly advised to conduct its case properly before the State Commission.

7. The parties are directed to appear before the State Commission on 23.02.2023.

8. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel within 03 days. The Registry is also requested to forthwith communicate 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.

9. 'Dasti', in addition, to facilitate timely compliance.