

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**MISCELLANEOUS APPLICATION NO. 540 OF 2023  
IN  
RP/86/2018**

1. MUKESH DUREJA

S/O. SH. K.K. DEREJA, R/O. Z-17, NAVEEN SHADARA,  
NEW DELHI  
DELHI

.....Appellants(s)

Versus

1. PRINCIPAL OFFICER, M/S. JAIN ELECTRONICS &  
ANR.

1157A/3, EAST ROHTASH NAGAR, HANUMAN ROAD,  
SHAHADARA  
NEW DELHI  
DELHI

.....Respondent(s)

**BEFORE:**

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

FOR THE APPELLANT :

OR THE APPLICANT / PETITIONER: MR. VIPIN BHASKER,  
ADVOCATE

**Dated : 02 November 2023**

**ORDER**

**M.A. No. 540 of 2023 (Recalling or Order).**

1. Heard the learned counsel for the applicant / petitioner on the miscellaneous application being M.A. No. 540 of 2023.
2. Learned counsel has tried to explain the circumstances resulting for the non-appearance on behalf of the applicant / petitioner on the date fixed before this Commission as a result of which the petition was dismissed in default.
3. In view of the above submissions made by the learned counsel for the applicant / petitioner and the ground taken in the application for restoration, it appears appropriate to allow the application. Accordingly, the Order dated 08.08.2023 passed by this Commission thus stands recalled and the present petition stands restored to its original number.

**REVISION PETITION No. 86 of 2018**

4. This Revision Petition has been filed under Section 21(b) of The Consumer Protection Act, 1986 in challenge to the Order dated 24.10.2017 passed by the State Commission in Appeal No.557 of 2016 arising out of the Order dated 29.09.2015 of the District Commission in the complaint no. 604 of 2015.

5. Heard the learned counsel for the petitioner and perused the record including *inter alia* the Order dated 29.09.2015 passed by the District Commission, the Order dated 24.10.2017 passed by the State Commission and the memo of petition.
6. It appears that the complaint was filed in the District Commission but the same was dismissed in *limini* holding it to be not maintainable.
7. In order to do better appreciation of the matter, the Order dated 29.09.2015 passed by the District Commission may be quoted herein below:

Case No. 604/15

Dated: 29/09/2015

Only an affidavit has been filed by the petitioner after giving opportunity. No where mention in the affidavit about defect of the A.C. and what is problem therein. Only writing sound or saying not fit. It is not verified by any written document. No Job Sheet has been filed alongwith the complaint Prima facie this complaint is not maintainable, hence dismissed.

8. It further transpires that feeling aggrieved by the District Commission's Order, an appeal was filed in the State Commission but the same was also dismissed and the District Commission's Order was confirmed. It may be apt to quote the Order dated 24.01.2017 passed by the State Commission, which reads as follows:

**24.10.2017**

Item No. 5

FA-557/16

Present : None for the Appellant.

None for the Respondent.

The appellant has not filed affidavit for showing service of Dasti notice to respondent.

Perusal of the file reveals that the appeal is against order dated 29.09.2015 passed by District Forum at the stage of admission. The complaint was dismissed on the ground that the same did not disclose for. Merely the writing that AC was defective did not make out any prima-facie case for summoning the respondent. There is no infirmity in the impugned order. The appeal is dismissed.

File be consigned to Record Room.

9. Learned counsel has submitted during the course of arguments that ingredients of the deficiency of service were well borne out from the contents of the complaint. Learned counsel has taken the Bench through the entire complaint pointing out as to how the grievances of the complainant have been narrated. He has emphasised that full details

regarding the complainant's grievances have been given in the complaint i.e the details of purchase of air conditioner, as to how it was not working well; as to how it was producing unwarranted sounds; as to how complaint to customer care was lodged; as to how further development regarding low cooling effect took place, as to how the complaint was again made; as to how it was addressed by the respondents and as to how it again re-occurred. Learned counsel has further elaborated the entire complaint and details of the complainant's grievances enumerated therein. Submission is that the dismissal of the complaint by the District Commission in a summary manner like, which is not only against the facts contained in the complaint, but is also leaving the complainant remediless. Further submission is that even the State Commission has failed to exercise its jurisdiction and correct the District Commission's Order. Argument is that the complaint must be restored and the Orders of the fora below deserve to be set aside.

The Bench has perused the record in the light of the submissions made by the learned counsel for the petitioner at the Bar.

**10.** The complaint is a part of the record and it is not needed to quote the entire complaint all over again. Suffice it to observe that the complaint did contain full ingredients which, if proved and found true, would amount to deficiency of service on the part of the respondents. The finding of the District Commission which has been confirmed by the State Commission about the non-maintainability of the complaint, fly's in the face of contents of the complaint, and is quite inconsistent in the nature and grievance expressed in the complaint. The opportunity ought to have been given to the complainant to adduce evidence in accordance with law and prove his case. It appears that the fora below have not rightly exercised their jurisdiction and arrived at findings not borne out from with the record.

**11.** Without making any observation about the ultimate merits of the case, lest, the same may cause any prejudice to either side and colour the vision of the fora below, in the light of the submissions made by the learned counsel for the petitioner and in view of the totality of the facts and circumstances of the case, this Bench feels it expedient to give a further opportunity of hearing to the petitioner to appear and contest its case before the State Commission on merits. The impugned Order dated 24.10.2017 is hence set aside and the present revision petition is allowed and the same is remitted back to the District Commission with the request to decide the same on merits after affording opportunity of hearing to the both sides.

**12.** The parties are directed to appear before the District Commission on 08.12.2023.

It may also be mentioned that any observations if any made in this Order shall not be construed to the prejudice by either side as they have been made in the context of the present petition only. The District Commission shall proceed without being by any observation made by this Commission as they have no baring upon the truthfulness of the contents of the complaint, which have got to be adjudicated upon in its due course in accordance with law.

**13.** The principal onus of informing the respondents about this instant Order shall be of the petitioner / complainant, he shall do so within three weeks from today, without fail, and file proof thereof before the District Commission on or before the next date of hearing before it.

**14.** However, if for whatever reason, the respondents do not appear before the District Commission on the date of hearing, the District Commission shall issue notice for requiring their presence in order to proceed in accordance with law in the matter, as directed by this Commission. The District Commission in such a situation may also direct the petitioner / complainant to take adequate steps in order to facilitate service on the respondents.

**15.** The Registry is requested to send a copy each of this Order to the parties in the petition and to the learned counsel for the petitioner as well as to the fora below within three days from today. The stenographer is requested to upload this Order on the website of this Commission within three days.

.....J  
**KARUNA NAND BAJPAYEE**  
**PRESIDING MEMBER**