

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 215 OF 2021

(Against the Order dated 27/07/2019 in Complaint No. 40/2019 of the State Commission Orissa)

1. M/S. SREE SSM CONSTRUCTION PVT LTD

BY SIBA PRASAD MISHRA, PLOT NO. B-30, BDA, DUPLEX
BARAMUNDA, BHUBANESWAR, DIST.KHURDA

UDISHA-751008

.....Appellant(s)

Versus

1. JYOTIRANJAN MOHAPATRA

PLOT NO. 7798-4709/2011, GAJAPATI NAGAR, SAINIK
SCHOOL SAHEED NAGAR, BHUBANESWAR

KHURDA

UDISHA-751008

.....Respondent(s)

BEFORE:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, MEMBER

For the Appellant : Mr. Shakti K. Pattanaik, Advocate

For the Respondent : NEMO (served)

Dated : 11 Jan 2023

ORDER

1. This appeal has been filed in challenge to the Order dated 25.07.2019 of the State Commission in complaint no. 40 of 2019. It has been filed under section 19 of The Consumer Protection Act, 1986 (the old Act; since repealed). It is however being taken up under section 51(1) of The Consumer Protection Act, 2019 (the new Act; presently in force).

2. The appeal is listed for final hearing.

Learned counsel, Mr. Shakti K. Pattanaik, appears for the appellant (i.e. the 'opposite party' before the State Commission).

No one appears for the respondent (i.e. the 'complainant' before the State Commission).

We note that on 10.12.2021 a co-ordinate bench of this Commission had *inter alia* recorded the following:

10.12.2021

As per office report dated 25.10.202, notice was sent to the Respondent on 03.09.2021 for 27.10.2021 and the article has been delivered. Service is therefore sufficient. - - -

As such service on the complainant is complete.

We do not see any good reason to delay the hearing any further and deem it appropriate to decide the matter on its merits.

3. We have perused the record.

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

25.07.2019

Learned counsel for the complainant is present.

Notices were issued to OPs 1 and 2 on 21.6.2019. SRs are not back. Since 30 days have elapsed, notice against the OPs are held to be sufficient.

None appears on behalf of the OPs. So, OPs are set *ex parte*.

Heard on admission.

The Consumer Complaint is admitted.

Put up on 17.04.2020 for filing of evidence on affidavit, written notice of submission by the complainant and *ex parte* hearing.

4. It seems that despite service of notice the opposite party did not appear before the State Commission and as such the State Commission ordered that it be proceeded against *ex parte*.

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, we feel it 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 25.07.2019 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 simultaneously directed that the opposite party shall file its written version before the State Commission within 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 25.07.2019 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. It is clarified that if the opposite party yet again fails to appear before the State Commission on any date/s the State Commission shall be free to proceed *ex parte* against it in its wisdom.

The parties are directed to appear before the State Commission on 15.02.2023.

The complainant is not present or represented before this Commission today. As such, in the interest of justice, if, for whatever reason, the complainant does not appear before the State Commission on 15.02.2023, the State Commission shall issue notice to him and ensure its due service. In such contingency the steps for service of notice shall be taken by the opposite party.

7. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel within three days. It 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.

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

.....
DINESH SINGH
PRESIDING MEMBER

.....J
KARUNA NAND BAJPAYEE
MEMBER