

2022 LiveLaw (SC) 211

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HEMANT GUPTA; V. RAMASUBRAMANIAN, JJ.
CIVIL APPEAL NO. 6943 OF 2021; FEBRUARY 21, 2022

BHARMAPUTRA BIOCHEM PRIVATE LIMITED
VERSUS
NEW INDIA ASSURANCE COMPANY & ANR.

Consumer Protection Act, 1986 - If the NCDRC is of the opinion that the Surveyor was an unnecessary party or the pleadings are contradictory, it should have struck down the said party. The striking of surveyor from the array of parties would not make the complaint disjointed, as it was duty of the NCDRC to strike of an unnecessary party. (Para 3)

For Appellant(s) Mr. Sandeep Bajaj, Adv. Mr. Soayib Qureshi, AOR

For Respondent(s) Mr. J. P. N. Shahi, Adv. Mr. Rameshwar Prasad Goyal, AOR

ORDER

The challenge in the present appeal is to an order passed by the National Consumer Disputes Redressal Commission [for short, "NCDRC"] on 27.09.2021 whereby the complaint was returned unadjudicated with liberty to the appellant to file fresh complaint within 30 days, while granting liberty to make the insurance company alone the 'sole opposite party and to seek for findings of 'deficiency in service' and/ or 'unfair trade practice' and relief in the form of compensation etc. against it.

The NCDRC returned inter-alia the following finding: -

"8. We agree that a complaint ought not be defeated by reason of misjoinder of parties alone. In the present case however we find that the contents and articulation of the complaint is such that the insurance co. and its surveyor & loss assessor have been inextricably conjoined together, the material distinction that the complainant co. is a 'consumer' of the insurance co. alone, and not of its surveyor & loss assessor also, has been completely lost, the difference between the performance of service by the insurance co. and the role and responsibility of its surveyor & loss assessor has not been maintained. In the wake of such confounding overlappings, a mechanical deletion of the opposite party no. 2 surveyor & loss assessor from the array of the parties would make the complaint disjointed and askew, as may occasion to cause embarrassment to its adjudication on merit."

We find that the approach of the NCDRC is erroneous as if the NCDRC was of the opinion that the Surveyor was an unnecessary party or the pleadings are contradictory, it should have struck down the said party. The striking of surveyor from

the array of parties would not make the complaint disjoined, as it was duty of the NCDRC to strike of an unnecessary party.

The complaint cannot be returned unadjudicated with liberty to file fresh complaint. The complaint can be filed within the period of limitation. Once the period of limitation has expired, the appellant cannot file the second complaint.

Even otherwise, we find that the appellant has impleaded Surveyor and the loss assessor for the reason that there are allegations against the Surveyor in the complaint. Therefore, as a part of principles of natural justice, if there are allegations against the Surveyor and the loss assessor, an opportunity should have been given to such person to rebut the allegations. The surveyor was not impleaded to claim compensation but as a proper party in view of the allegations leveled against it. Therefore, in the facts and circumstances of the case, we find that the Surveyor and the loss assessor was in fact the necessary party. However, it is upon the Surveyor to appear or not to appear before the NCDRC.

The learned counsel for the appellant states that the notices were issued to the Surveyor on the last known address but the notice could not be served as the firm had shifted its office.

It is open to the appellant to serve the Surveyor by substituted service in a newspaper and thereafter, the NCDRC shall proceed and decide the matter on merits.

Consequently, we set aside the order passed by the NCDRC dated 27.09.2021 and remit the matter for fresh decision in accordance with law.

In view of above, the appeal is disposed of.

Pending interlocutory application(s), if any, is/are disposed of.

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