

SILIGURI CIRCUIT BENCH
of
WEST BENGAL STATE CONSUMER DISPUTES REDRESSAL COMMISSION
2nd MILE, SEVOKE ROAD, SILIGURI
JALPAIGURI - 734001

First Appeal No. A/46/2023
(Date of Filing : 24 Apr 2023)
(Arisen out of Order Dated 23/03/2023 in Case No. CC/26/2022 of District Alipurduar)

1. THE DIVISIONAL RAILWAY MANAGER, SEALDAH &
 ANOTHER

SEALDAH DIVISION, DRM BUILDING, EASTERN
 RAILWAY, KAISER STREET, KOLKATA

KOLKATA-700014

WEST BENGAL

2. THE SR. DIVISIONAL COMMERCIAL MANAGER,

SEALDAH DIVISION, DRM BUILDING, EASTERN
 RAILWAY, KAISER STREET, KOLKATA.

KOLKATA-700014

WEST BENGAL

.....Appellant(s)

Versus

1. ARINDAM GOSWAMI

S/O MANTU GOSWAMI, ARABINDA NAGAR, WARD NO.
 1, P.O. ALIPURDUAR COURT, P.S ALIPURDUAR.

ALIPURDUAR-736122

WEST BENGAL

.....Respondent(s)

BEFORE:

HON'BLE MR. KUNDAN KUMAR KUMAI PRESIDING MEMBER
HON'BLE MR. SWAPAN KUMAR DAS MEMBER

PRESENT:

Dated : 30 Nov 2023

Final Order / Judgement

MR. KUNDAN KUMAR KUMAI

This is an appeal u/s 15 of the Consumer Protection Act, 1986, preferred against the order no. 07 dated 23/03/2023 in Consumer Case no. CC/26/2022, passed by the Ld. DCDRC, Alipurduar.

Brief fact of the Appellant's case is that, the Respondent/Complainant had gone to Durgapur for medical check-up and had purchased a ticket from IRCTC on 22/09/2022, for returning to Alipurduar from Rampurhat on 23/09/2023, being train no. 13173. For this reason, he boarded Agnibina Express with PNR no. 6409418124 from Durgapur, reaching Bardhaman at 7:09 AM on 23/09/2022 and proceeded to Rampurhat Station by vehicle. On reaching Rampurhat Station, he came to know from the Railway enquiry counter, that the train being no. 13173, had been diverted and would run through Nabadwip section. The Respondent/Complainant requested the Station Master of Rampurhat Station, to arrange a reservation in any other train to go to Alipurduar, but the said Station Master, expressed his inability to do so. The Respondent/Complainant then went to the ticket counter of Rampurhat Station to get a refund of

the fare collected by IRCTC. But they refused to do so, on the ground, that the fare had been collected by IRCTC and the said train had been under operation of Sealdeah Division. As the Appellant failed to intimate any diversion of the train no.13173 on journey date on 23/09/2022, he could somehow manage a ticket in Teesta-Torsha Express and arrived in Alipurduar on 24/09/2022. The Respondent/Complainant claimed the refund on-line, but the same was repudiated with the remarks "the said train is not diverted". Finding no alternative, the Respondent/Complainant filed a Complaint before the Ld. DCDRC, Alipurduar along with necessary prayers.

The Appellant contested the Case by filing a written version wherein they mentioned that the Plasser Quick Relaying System work, related to track maintenance on off-line between Tilbhita and Kotalpukur in Rampurhat Gumani Section of Howrah Division of Eastern Railway, had been taken up and the said train had been diverted from Dum Dum Jn. /Naihati-Bandel-New Farakka. The matter had been released in several newspapers and the same was published to Press Release and Paper Notification with intent to make the intending passengers aware. Additional information in this regard was also propagated through Eastern Railway's Social Media handles like Face Book, Instagram, Twitter, etc. That apart the on-line Ticket Deposit Receipt (TDR) was dealt by the train destination zone i.e., North-East Frontier Railway and the train no. 13173 terminated at Agartala Station under the North-East Frontier Railway and the DRM, Alipurduar under the N.F. Railway, DRM (Commercial), Lunding Division are also essential parties. It was also prayed that the Case be dismissed.

But as the written version was not filed within the stipulated 45 (forty-five) days, the same had not been accepted and the matter had been fixed for ex-parte hearing against the Appellant vide the impugned order.

Being aggrieved by the above order, the Appellant had preferred this instant appeal on the ground that the Ld. Commission had erred in law and facts while passing the impugned order.

Decisions with Reasons

Ld. Advocate for the Appellant has pointed out at the time of final hearing, that the refund amount of Rs.715/- (Rupees seven hundred fifteen) only, had already been returned and therefore the Appellant was interested to contest the Case for which the impugned order for ex-parte hearing, needed to be set aside. He has relied in the judgement passed by the Supreme Court of India in New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage on 04/3/2020 in Civil Appeal no. 10941 – 10942 of 2013.

Ld. Advocate for the Respondent, on the other hand, had argued at the time of final hearing, stating that the appeal had been erroneously filed by u/s 15 of the Consumer Protection Act, 1986 instead of section 41 of the Consumer Protection Act, 2019. He has also relied in the judgement passed by the Supreme Court of India in New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage on 04/3/2020 in Civil Appeal no. 10941 – 10942 of 2013.

It is a fact that the instant appeal had been filed under the provisions of section 15 of the Consumer Protection Act, 1986 even though the Case appealed against had been governed by the provisions of the Consumer Protection Act, 2019. Under the circumstance, the instant appeal ought to have been filed u/s 41 of the Consumer Protection Act, 2019. But it is also settled law that mere error in quoting the section does not invalidate the substance of the dispute.

It is also a fact that the judgement passed by the Hon'ble Supreme Court of India in New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage on 04/3/2020 in Civil Appeal no. 10941 – 10942 of 2013, has settled the law as far as the powers of the Commission is concerned while extending the limitation period for filing written version. Hence, this judgement does not come to the rescue of the Appellant.

Now, the question that arises is whether the impugned order can be set aside in appeal or not. It is a fact that there is no express provision in the Consumer Protection Act & Rules thereunder, for setting aside an ex-parte order. But, at the same time, there is no conclusive bar as well. Under the circumstance, when the Appellant is keen to contest the matter before the Ld. Lower Commission, the matter needed to be remanded to the Ld. Lower Commission for a full trial after setting aside the impugned order. As a result, the instant appeal succeeds.

It is therefore

ORDERED

That the instant appeal be and the same is allowed on contest with cost of Rs.2000/- (Rupees two thousand) only to be payable to the Respondent.

The impugned order is hereby set aside and the Ld. Commission below is directed to conduct the full trial after treating the written version as accepted.

Copy of the order be sent to the parties, free of cost.

Copy of the order be sent to the Ld. D.C.D.R.C., Alipurduar, for necessary action.

**[HON'BLE MR. KUNDAN KUMAR KUMAR]
PRESIDING MEMBER**

**[HON'BLE MR. SWAPAN KUMAR DAS]
MEMBER**