

INDIAN MACHINERY COMPANY

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v.

M/S. ANSAL HOUSING & CONSTRUCTION LTD.

(Civil Appeal No. 557 of 2016)

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JANUARY 27, 2016

[MADAN B. LOKUR AND R.K. AGRAWAL, JJ.]

*Consumer Protection Act, 1986: Whether second complaint to the District Forum under the Act is maintainable when the first complaint was dismissed for default or non-prosecution – It was held in R. Srinivasan case that the case not decided on merits and dismissed in default of non appearance of the complainant cannot be overlooked and therefore it would be permissible to file a second complaint explaining why the earlier complaint could not be pursued and was dismissed in default – There is no rule similar to Order IX r.9(1) – In view of decision rendered in R. Srinivasan case, second complaint filed by appellant was maintainable on the facts of this case – Matter remitted to National Commission for adjudicating the dispute on merits – Code of Civil Procedure, 1908 – Or.IX r.9(1).*

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*New India Assurance Co. Ltd. v. R. Srinivasan (2000) 3 SCC 242 – relied on.*

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**Case Law Reference**

(2000) 3 SCC 242      relied on      Para 5

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 557 of 2016.

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From the Judgment and Order dated 24.05.2013 of the National Consumer Disputes Redressal Commission New Delhi in Revision Petition No. 1931 of 2013.

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Amarendra Saran, Sr. Adv., Shaad Anwar, Subhash Chandra Jain, Advs. for the Appellant.

Bhargava V. Desai, Kapil Kher, Ms. Saumya Mehrotra, Advs. for the Respondent.

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A The following order of the Court was delivered

**ORDER**

1. Leave granted.

2. We have heard learned counsel for the parties.

B 3. The only question that has arisen in this appeal is whether a second complaint to the District Forum under the Consumer Protection Act, 1986 is maintainable when the first complaint was dismissed for default or non-prosecution.

C 4. The National Commission has taken the view in the impugned order that the second complaint would not be maintainable.

D 5. Our attention has been drawn to a decision of this Court in New India Assurance Co. Ltd. Vs. R. Srinivasan [(2000) 3 SCC 242] wherein this precise question had arisen as mentioned in paragraph 5 of this decision. It is mentioned in that paragraph that the only question is that in view of the dismissal of the first complaint filed by the respondent therein, a second complaint on the same facts and cause of action would not lie and it ought to have been dismissed as not maintainable.

6. While dealing with this issue, this Court held in paragraph 16 as follows:

E “This Rule [Rule 9(6) of the Tamil Nadu Consumer Protection Rules, 1988] is in identical terms with sub-rule (8) of Rule 4 and sub-rule (8) of Rule 8. Under this sub-rule, the appeal filed before the State Commission against the order of the District Forum, can be dismissed in default or the State Commission may in its discretion dispose of it on merits. Similar power has been given to the National Commission under Rule 15(6) of the Rules made by the Central Government under Section 30(1) of the Act. These Rules do not provide that if a complaint is dismissed in default by the District Forum under Rule 4(8) or by the State Commission under Rule 8(8) of the Rules, a second complaint would not lie. Thus, there is no provision parallel to the provision contained in Order 9 Rule 9(1) CPC which contains a prohibition that if a suit is dismissed in default of the plaintiff under Order 9 Rule 8, a second suit on the same cause of action would not lie. That being so, the rule of prohibition contained in Order 9 Rule 9(1) CPC cannot

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INDIAN MACHINERY COMPANY v. M/S. ANSAL HOUSING & 491  
CONSTRUCTION LTD.

be extended to the proceedings before the District Forum or the State Commission. The fact that the case was not decided on merits and was dismissed in default of non-appearance of the complainant cannot be overlooked and, therefore, it would be permissible to file a second complaint explaining why the earlier complaint could not be pursued and was dismissed in default.”

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7. We have also not been shown any rule similar to Order IX, Rule 9(1) of the Code of Civil Procedure, 1908. That being so, and in view of the decision rendered by this Court, with which we have no reason to disagree, we are of the opinion that the second complaint filed by the appellant was maintainable on the facts of this case.

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8. Under the circumstances, we set aside the order passed by the National Commission and remit the matter back to the National Commission for adjudicating the disputes on merits.

9. The appeal is disposed of in view of the above.

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Devika Gujral

Appeal disposed of.