

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL
COMMISSION**

Date of Institution:05.11.2024

Date of Hearing :06.03.2025

Date of Decision :27.03.2025

REVISIONPETITIONNO.58/2024

IN THE MATTER OF

PHONEPE PRIVATE LIMITED

REGISTERED OFFICE AT
SALARPURIA SOFTZONE,
FLOOR NOS. 4, 5, 6
WING A OF OFFICE 2 IN BLOCK A,
SURVEY NOS. 80/1, 81/1 AND 81/2,
VARTHUR HOBLI, BELLANDUR VILALE,
BANGALORE, KARNATAKA-560025

....REVISIONIST

(Through Prince Pawaiya, Advocate)

VERSUS

MR. S. B. TRIPATHI,
S/O LATE MR. SALIGRAM TIWARI,
R/O OM APARTMENTS,
SECTOR 14B, DWARKA,
NEW DELHI-110078

....RESPONDENT

CORAM:

HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)

HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Ms. Rashmi, counsel for the counsel for revisionist.
(Mob.7838300393 &
Email: advocaterashmi2011@gmail.com)
Respondent in person who himself is a practicing lawyer.
(Mob.9999002154& Email: shive@sbtripathiadvocate.com)

PER: HON'BLE MS. PINKI, MEMBER (JUDICIAL)

1. The present revision petition has been preferred by the Revisionist impugning the order dated 14.08.2024 passed by the District

Consumer Disputes Redressal Commission-VII (South-West District), Delhi in Consumer Complaint No. 179/2020 titled "S.B. Tripathi vs. Phonepe Pvt. Ltd., whereby the revisionist's application filed under Section 40 of the Consumer Protection Act to review order dated 18.04.2024 was dismissed. This revision petition is also impugning order dated 18.04.2024 as per prayer 'b'. It is pertinent to note that the subject below the title of the petition mentions only about order dated 14.08.2024 and not 18.04.2024.

2. Order dated 14.08.2024 has been reproduced as under for reference:

"The OP has filed an application under section 40 of Consumer Protection Act (hereinafter referred to as Act) with the averments that on 18.04.2024 the main counsel was busy in Civil Suit No.699/2023 titled as Neeraj Kumar Singh vs Smt. Swati Upadhyay before Karkardooma Court, New Delhi and deputed Ms. Pooja Gupta, Proxy Counsel to appear before this Commission but Commission has mistakenly failed to mark the presence of Ld. Proxy counsel and passed ex-parte order. The legal proposition is that parties cannot be proceeded ex-parte when applicant has duly appeared in the case. No prejudice will be caused to the complainant if ex-parte order is set aside. Hence, this application duly supported by an affidavit of Ms.Pooja Gupta Advocate.

The complainant submitted that he does not want to file the reply and will address oral arguments.

Heard and perused the record.

Section 40 of the Act says that the Commission can review the order if there is an error apparent on the face of record.

The application in question has to be decided by keeping in view Section 40 of the Act.

The perusal of the order sheet dated 18.04.2024 shows that the case was fixed for the filing of the evidence of the OP. Neither the OP nor any one on behalf of the OP was present

on that day despite the fact that case was called twice in a day i.e. even at 2.00 PM. The OP has proceeded ex-parte.

The presence of Ld. Proxy Counsel would have been marked in case she had appeared when the case was called out in the morning or thereafter when the case was called at 2.00 PM which shows that Ld. Proxy counsel has not appeared in the Commission even at 2.00 PM.

The order sheet nowhere shows that there is any error apparent on the face of record.

In view of our aforesaid discussion, the application is dismissed.”

3. Aggrieved by the aforesaid order of the District Commission, the Revisionist has approached this Commission contending that revisionist's counsel had been regularly appearing before the District Commission and on 18.04.2024, counsel for the revisionist sent his junior associate Ms. Puja Gupta to appear on his behalf for avoiding absence in the matter, she duly attended the proceedings with scanned copy of evidence alongwith proof of dispatch but the District Commission failed to mark appearance of the revisionist and passed *ex-parte* order. Pressing the aforesaid contentions, the Revisionist has prayed that the Impugned Orders dated 14.08.2024 and 18.04.2024 be set aside.
4. The Respondent, on the other hand, in his reply denied all the allegations of the respondent and submitted that there is no error in the impugned order. Further, it is submitted that revisionist has failed to file affidavit of evidence even after one year and five months and since 15.11.2022, matter was only listed for revisionist' evidence; if revisionist's counsel associate Ms. Puja Gupta had appeared before the District Commission on 18.04.2024, the District Commission must have marked her presence. It is therefore submitted that the Revision Petition is liable to be dismissed with exemplary costs.

5. Written submissions have been filed on behalf of the respondent. Revisionist has failed to file written submission despite order dated 31.01.2025.
6. We have carefully perused the material on record.
7. To deal with the present issue, we deem it appropriate to refer to **Section 47 (1)(b) of the Consumer Protection Act, 2019** reproduced hereunder as:

“(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.”

8. A perusal of the aforesaid statutory position makes it clear that the State Commission can entertain a revision petition in cases where the District Commission has acted extra-judicially or the District Commission has failed to exercise the jurisdiction vested in it by law or has acted in exercise of its jurisdiction illegally or with material irregularity. Reverting to the material on record, it is imperative to refer the order dated 18.04.2024 against which review application was filed.
9. Order dated 18.04.2024 reads as under:

*“Present: None for the complainant.
None for the OP.*

*It is now 11.30 AM.
Evidence by way of an affidavit not filed by the OP.
Presence of the OP be awaited till 2.00 PM.
Case be called out at 2.00 PM.*

*Case called out again at 2.00 PM.
Present: None for the complainant.
None for the OP.*

No one has appeared on behalf of the OP to file evidence by way of an affidavit despite repeated calls.

It appears that OP is no more interested to file evidence by way of an affidavit. Hence, OP is proceeded ex-parte.

Fixed for written arguments of the complainant on 13.08.2024.”

10. The order dated 18.04.2023 makes it clear that the revisionist/ opposite had neither filed evidence by way of affidavit nor appeared before the District Commission and till 02.00 PM, District Commission had waited for the appearance of the revisionist, thereafter, passed *ex parte* order.
11. It is submitted by the revisionist that Ms. Puja Gupta, associate of the counsel for the revisionist who had appeared before the District Commission with scanned copy of the evidence alongwith tracking report of dispatch evidence from Head Office, requested one more opportunity to file evidence and ready to pay the cost which was imposed on 19.01.2024. In order to prove her attendance, revisionist has filed Google navigation history and Rapido travel history by which she reached the District Commission. Affidavit of Ms. Puja Gupta, Advocate in support of averments made in the revision petition has not been filed.
12. *Per contra*, it is submitted by the respondent, if Ms. Puja Gupta who associated with revisionist's counsel had appeared before the District Commission, District Commission have must marked her attendance and given next date of hearing.
13. On perusal of record, we find that by the Google navigation history and rapido travel history filed by the revisionist cannot prove the attendance before the District Commission. The fact that Ms. Puja Gupta had reached the District Commission has not been proved by any document that she had appeared before the District Commission. The matter was kept pending before the

District Commission till 02.00 PM only for the presence of the revisionist/ opposite party who was directed for last one and half years to file their evidence by way of affidavit. Even, on 19.01.2024, cost of Rs.1,000/- was imposed upon the opposite party for further adjournment to file evidence.

14. Thus, we opine that District Commission has only exercised the jurisdiction vested in it and there is no material irregularity in the orders dated 18.04.2024 and 14.08.2024 passed by the District Commission.
15. The revisionist has liberty to argue their case before the District Commission as well as to file their written arguments on record before the District Commission.
16. Therefore, in light of the aforesaid discussion, we find no reason to interfere with the orders dated 18.04.2024 & 14.08.2024 passed by the District Consumer Disputes Redressal Commission-VII, District South-West, Dwarka, Delhi in Consumer Complaint No.179/2020. Consequently, the Revision Petition No.38/2024 stands dismissed with no order as to costs.
17. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
18. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
19. File be consigned to record room along with a copy of this Judgment.

JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)

PINKI
MEMBER (JUDICIAL)

Pronounced on 27.03.2025.