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Court : National Consumer Disputes Redressal Commission NCDRC

Decided On : Mar-05-2012

Judge : V.B. GUPTA, PRESIDING MEMBER & THE HONOURABLE MR. VINAY KUMAR, MEMBER

Appeal No. : REVISION PETITION NO. 2965 OF 2011 WITH (IA No. 1 OF 2011, for Condonation of Delay) in Appeal No. 68 of 1997

Appellant : Umesh Prakash and Another

Respondent : State Bank of India Hazratganj Lucknow, Uttar Pradesh and Another

Judgement :

JUSTICE V.B. GUPTA, PRESIDING MEMBER

In this revision petition, there is challenge to order dated 5.8.2008, passed by Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow (for short State Commission), vide which appeal of the petitioner was partly allowed. Along with this petition, an application seeking condonation of delay of 1,159 days has also been filed.

2. Petitioners filed a consumer complaint before the District Forum, alleging deficiency on the ground that petitioner no.1 was not able to use his own deposit money for his business purpose which was lying with the respondents. Complaint of the petitioners was partly allowed by the District Forum.

3. Aggrieved by the order of District Forum, respondents/opposite parties filed an appeal before the State Commission, which partly allowed their appeal.

4. Dissatisfied with the order of the State Commission, petitioners have filed this revision petition.

5. It has been contended by learned counsel for the petitioners that they have been inquiring from their counsel about the matter but he was negligent and forgot to apply for the certified copy of the order. Thereafter, petitioners engaged another counsel. At the end of June, 2011, petitioners came to know that the matter has already been decided by the State Commission. There is no delay on the part of the petitioners. Thereafter, petitioners have filed this petition with application seeking condonation of delay. In support of it contention, learned counsel has relied upon following judgments ;

(i) Annappa @ Appanna Vs. Special Land Acquisition Officer, JT2009(1) SC 274 ;

(ii) Collector, Land Acquisition, Anantnag and Anr. Vs. Mst. Katiji and Ors., AIR 1987 SC 1353 ;

(iii) N.Balakrishnan Vs. M.Krishnamurthy, AIR 1998 SC 3222 ;

(iv) State of MP and Another Vs. Pradeep Kumar and Another, (2000) 7SCC 372 ;

(v) Ram Nath Sao @ Ram Nath Sahu and Ors. Vs. Gobardhan Sao and Ors., (2002) 3 SCC 195 and

6. Short question which arise for consideration is, as to whether there are sufficient grounds for condoning the delay in not filing the present revision petition within the period of limitation.

7. The grounds on which condonation of delay has been sought are reproduced as under ;

œ3. That the Appeal No.68/1997 was pending before the Honble State Commission since 1997 and in meanwhile the Applicant shifted to New Delhi in 2006 leaving the matter upon and relying on his counsel. But the petitioner being a responsible person always keeps on inquiring his counsel about the above said appeal and his counsel always assures the applicant that he is taking care of the matter and the matter is going on and it will be decided in our favour.

4. That the petitioner being a responsible person had not used to solely rely on the assurance of his counsel and from time to time he use to go to the State Commission, Lucknow to know the exact position of his matter. But after few year of his shifting, the petitioner so trapped in his day to day business that it hardly remain possible for him to go to Lucknow and inquire the matter from time to time and constrain to that he left with no other option except to rely solely on his counsel.

5. That in around the month of December, 2010, the petitioner from some unreliable source came to know that the abovementioned matter has already been decided by the Honble Commission but the petitioner had not given much importance to such source and again relied on the averments of his counsel but again in March, 2011 he heard the same thing from some other source and being thoughtful this time he decided to demand the day to day order of the Honble State Commission in the said appeal from his counsel on which his counsel said that he is not having all the order and he requires some time to get the same from the Commission and asked for one month. Again after one month, when he called his counsel, his counsel told that he forget to apply for the certified copy and again asked for another 15 days time but again after 15 days his counsel made disgraceful excuses and again demanded for some time.

6. That again being thoughtful the petitioner decided not to rely solely on his counsel and decided to hire the service of some other advocate and decided to go Lucknow and collect his file from his counsel and when he reached his counsels office in the middle of May, 2011, he was shocked as came to know that his file is missing from the office of his counsel and due to lack of time, he returned empty hand.

7. That this time, the petitioner decided to take the matter in his own hand and with a great heed he managed to go to Lucknow again at the end of June, 2011 where he came to know that the matter has already been decided by the State Commission.

8. That this time making no delay in time he hired the service of another advocate to get the certified copy of the said order and he received the said order on 13.7.2011 and after that he came to know the exact position of the appeal.

9. That after receiving the said order, the petitioner had not made any delay and filed the present revision petition before this Commission.?

8. As per petitioner own case, in the year 2006, he has shifted to New Delhi and thus he relied upon his counsel with regard to the pendency of the case. This averment made by the petitioner is absolutely false on the face of it and is also against the record.

9. As per memo of the parties petitioner has given its address, which is that of Farukhabad, U.P. It is nowhere stated in the entire application as what is the petitioners residential address now in Delhi.

10. Petitioner has tried to shift the entire blame for non-filing the appeal within time on the shoulder of his

earlier counsel. Nowhere in the application, name of that counsel has been mentioned nor it has been stated as to whether any action has been taken against the earlier counsel by the petitioner or not.

11. Petitioner has also deliberately in the entire application has nowhere stated as to what is unreliable source from which he came to know about the passing of the impugned order and on which date and which person informed him about the passing of the impugned order. Again, petitioner is absolutely silent on the point as to on which date he had applied for the certified copy of the impugned order and when the same was received by him. Petitioner has deliberately chosen not to file the certified copy of the impugned order till date and instead thereof he filed an application seeking exemption from filing of the certified copy.

12. Impugned order was passed as earlier as on 5.8.2008 but till date, no certified copy of the impugned order has been filed on record. So, on this ground alone the present revision petition is liable to be dismissed.

13. It is well settled that sufficient cause for non-appearance in each case, is a question of fact. There is no dispute about the principle of law which has been laid down in the judgments (supra) cited by learned counsel for the petitioners.

14. In Ram Lal and Ors. Vs. Rewa Coalfields Ltd., AIR 1962 Supreme Court 361, it has been observed;

It is, however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a discretionary jurisdiction vested in the Court by S.5. If sufficient cause is not proved nothing further has to be done; the application for condonation has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant.

15. In R.B. Ramlingam Vs. R.B. Bhavaneshwari, 2009 (2) Scale 108, the Apex Court has observed ;

We hold that in each and every case the Court has to examine whether delay in filing the special appeal leave petitions stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition.

16. Recently, Supreme Court in **Anshul Aggarwal vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC)** laid down that;

It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the consumer Foras.?

17. After going through the application for condonation of delay, we find that petitioners have made absolutely vague averments in the application. The reasons mentioned in the application, can by no stretch of imagination be said to be the sufficient cause.

19. Ex-facie, present application for condonation of delay is meritless and is without any legal basis. The same has been filed just to waste the precious time of this Commission. Accordingly, present revision petition is hopelessly barred by limitation and the same is hereby dismissed with punitive costs of Rs.25,000/-.

20. Petitioners are directed to deposit the costs by way of a demand draft for the sum of Rs.25,000/- in the name of Consumer Legal Aid Account within four weeks from today.

21. In case, petitioners fail to deposit the said costs, within the prescribed period, they shall also be liable to pay interest @ 9% p.a., till realization.

22. List the matter for compliance on 9.4.2012.

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