

Sai Creations and Others Vs. K. Bhandari and Another

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Court : Union Territory Consumer Disputes Redressal Commission SCDRC UT Chandigarh

Decided On : Mar-03-2014

Judge : The Honourable Justice Sham Sunder (Retd.), President, the Honourable Mr. Dev Raj, Member & the Honourable Mrs. Padma Pandey, Member

Appeal No. : First Appeal No. 60 of 2014

Appellant : Sai Creations and Others

Respondent : K. Bhandari and Another

Judgement :

Sham Sunder (Retd.), President:

1. This appeal is directed against the order dated 30.04.2013, passed by the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (hereinafter to be called as the District Forum only), vide which, it accepted the complaint, filed by the complainant (now respondent No.1) and directed the Opposite Parties (now one of which is appellant/Opposite Party No.2) as under:-

œ8. In view of the above discussion, the present complaint is allowed and the opposite parties are directed as under :-

i) to refund the amount of Rs.1,01,060/- charged by them vide retail invoice (C-1) for doing the job;

ii) to pay Rs.50,000/- as compensation for mental agony and harassment; and

iii) to pay Rs.7,000/- as costs of litigation.

9. This order be complied with by the opposite parties, within 45 days from the date of receipt of its certified copy, failing which the amounts at Sr.No.(i) and (ii) above shall carry interest @18% per annum from the date of this order till actual payment, besides payment of litigation costs.?

2. The facts, in brief, are that, in order to get the seepage and leakage, on the roof of office and terrace plugged, the complainant hired the services of Opposite Party No.2, which prepared an estimate for doing the job. It was stated that the amount of Rs.1,01,060/- was settled for doing the repair work of seepage. It was further stated that, in order to plug the seepage and leakage of the roof, sheets were laid, on the already laid tiles, whereas, tiles were removed from the roof of the ground floor, and sheets were laid. It was further stated that Opposite Party No.2 told the complainant that the job of reaffixing of the tiles was required to be got done, by him, on payment of extra charges, to which he agreed. It was further stated that subsequently, Opposite Party No.2 completed the job of water proofing of the roofs and also of laying tiles, on the roof of the terrace, on 26.12.2010. It was further stated that a bill (C-1) was raised, and the entire amount of the same was paid by the complainant. It was further stated that Opposite Party No.2, extended warranty of 25 years, for the work done, and promised that, in case, there was any leakage or seepage of the area, it would plug the same free of cost. It was further stated that the complainant paid another sum of Rs.75,000/-, for relaying the tiles removed by Opposite Party No.2, for the purpose of doing the job of water proofing. It was further stated that, in the monsoon season, after the first rain, the roofs of the office and terrace again started leaking and there was seepage. It was further stated that the complainant tried to contact the Opposite Parties, but despite making several calls to Opposite Party No.2, it did not pay any heed. It was further stated that with each successive spell of rain, the problem of seepage and leakage aggravated and dampness, on various parts of the roof, became evident. It was further stated that the complainant sent email messages, and also served legal notice, upon the Opposite Parties, but to no avail. It was further stated

that the aforesaid acts of the Opposite Parties, amounted to deficiency, in rendering service, as also indulgence into unfair trade practice. When the grievance of the complainant, was not redressed, left with no alternative, a complaint under Section 12 of the Consumer Protection Act, 1986 (hereinafter to be called as the Act only), was filed, directing the Opposite Parties, to refund the amounts of Rs.1,01,060/-, Rs.75,000/-, for the tile work got done by him; Rs.1,50,000/- to get the POP done again; Rs.1,00,000/-, as compensation for mental agony and physical harassment; and Rs.22,000/- as costs of litigation,

3. Initially, Sh. Munish Sharma, Advocate, appeared on behalf of Opposite Party No.1, and the case was adjourned for filing its reply and evidence. However, on 22.04.2013, neither anybody appeared, on behalf of Opposite Party No.1, nor the reply and evidence, on its behalf, was filed. As such, Opposite Party No.1, was proceeded against exparte, by the District Forum.

4. Opposite Party No.2, refused to accept the service of notice. Refusal was considered to be a good service. None appeared on behalf of Opposite Party No.2, as a result whereof, it was proceeded against exparte by the District Forum.

5. After hearing the Counsel for the complainant, and, on going through the evidence and record, the District Forum accepted the complaint, in the manner, referred to, in the opening paragraph of the instant order.

6. Feeling aggrieved, the instant appeal, has been filed by the appellant/Opposite Party No.2.

7. Alongwith the appeal, an application for condonation of delay of 262, as per the applicant/ appellant (as per the office report 252 days), in filing the same (appeal), has been moved. In the application, it was stated by the applicant/appellant, that instead of filing the complaint against it, through its Sole Proprietor Mrs. Anu Bhatia, the complainant had wrongly sued it through Sh.Atul Bhatia. It was further stated that, even the second address of the applicant/appellant/ Opposite Party No.2, was incorrect, as a result whereof, it (applicant/ appellant), was not aware of the proceedings, against it, in the District Forum. It was further stated that, it was only on 29.01.2014, when Sh. Atul Bhatia, came to know, through his friend, about

some pending execution against him, that, he immediately rushed to the District Forum. It was further stated that the date fixed in the execution, before the District Forum, was 13.02.2014. It was further stated that, on account of the reasons, aforesaid, the delay of 262 (as per the office report 252 days), in filing the appeal occurred. It was further stated that the delay, in filing the appeal, was neither intentional, nor deliberate. Accordingly, the prayer, referred to above, was made.

8. We have heard the Counsel for the applicant/appellant, on the application, for condonation of delay, as also, in the main appeal, at the preliminary stage, and have gone through the record of the case, carefully.

9. The question, that arises for consideration, is, as to whether, there is sufficient cause for condonation of delay of 262, as per the applicants/appellants (as per the office report 252 days), in filing the appeal, under Section 15 of the Act. It was held in *Smt.Tara Wanti Vs State of Haryana through the Collector, Kurukshetra* AIR 1995 Punjab and Haryana 32, a case decided by a Full Bench of the Punjab and Haryana High Court, that sufficient cause, within the meaning of Section 5 of the Limitation Act, must be a cause, which is beyond the control of the party, invoking the aid of the Section, and the test to be applied, would be to see, as to whether, it was a bona-fide cause, in as much as, nothing could be considered to be bonafide, which is not done, with due care and attention. In *New Bank of India Vs. M/s Marvels (India)*: 93 (2001) DLT 558, Delhi High Court, it was held as under:-

œNo doubt the words œsufficient cause? should receive liberal construction so as to advance substantial justice. However, when it is found that the applicants were most negligent in defending the case and their non-action and want of bonafides are clearly imputable, the Court would not help such a party. After all œsufficient cause? is an elastic expression for which no hard and fast guide-lines can be given and Court has to decide on the facts of each case as to whether, the defendant who has suffered ex-parte decree has been able to satisfactorily show sufficient cause for non- appearance and in examining this aspect, cumulative effect of all the relevant factors is to be seen.?

10. In *Oriental Insurance Co. Ltd. vs. Kailash Devi and Ors.* AIR 19107 Punjab and Haryana 45, it was held as under:-

œThere is no denying the fact that the expression sufficient cause should normally be construed liberally so as to advance substantial justice, but that would be in a case where no negligence or inaction or want of bonafides is imputable to the applicant. The discretion to condone the delay is to be exercised judicially i.e. one is not to be swayed by sympathy or benevolence.?

11. In R.B. Ramalingam Vs. R.B. Bhuvaneswari, 2009 (2) Scale 108, the Supreme Court observed as under:-

œWe hold that in each and every case the Court has to examine whether delay in filing the Special 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?.

12. In Balwant Singh Vs. Jagdish Singh and Ors, V (2010) SLT 790=III (2010) CLT 201 (SC), it was held as under:-

œThe party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005]?

13. In Mahant Bikram Dass Chela Vs. Financial Commissioner and others, AIR 1977, S.C. 2221, it was held as under:-

œSection 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigation who is not vigilant about his rights must explain every days delay?

14. In Ansul Aggarwal Vs. New Okhla Industrial Development Authority, 2012 (2) CPC 3 (SC) it was held as under:-

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?

15. A bare reading of the first proviso, engrafted to Section 15 of the Act, makes it clear, that the material part of the language thereof is pari-materia to Section 5 of the Limitation Act, 1963. The stand taken by the applicant/appellant, in the application, that since the complaint was wrongly filed by the complainant, against it, through Sh.Atul Bhatia, as its Sole Proprietor, instead Mrs. Anu Bhatia, as also, its second address, was incorrect, it (applicant/appellant), was not aware of the proceedings against it, in the District Forum, and it was only, on 29.01.2014, that Sh.Atul Bhatia, came to know, about some pending execution against him, the delay of 262 (as per the office report 252 days) occurred, does not merit acceptance, for the reasons to be recorded hereinafter. It may be stated here, that, on the one hand, the applicant/appellant stated that before 29.01.2014, it was not aware of the proceedings against it, in the District Forum, as also about the order impugned passed against it, whereas, on the other hand, its (applicant/appellant) Counsel, himself, alongwith the appeal, has placed on record, certified copy of the impugned order dated 30.04.2013 Annexure A-1, passed by it (District Forum), showing its despatch on 06.05.2013. It means that within a few days, from 06.05.2013, this certified copy was received by the applicant/appellant, and that was why, its Counsel submitted the same, alongwith the appeal. Otherwise also, perusal of the first address of Opposite Party No.1, mentioned in the head-note of the complaint, clearly goes to show that it was the same address, as had been mentioned by the applicant/appellant, in the head-note of the instant appeal. Otherwise also, mere mention of æthrough Sole Proprietor Atul Bhatia?, instead of æthrough Sole Proprietor Mrs. Anu Bhatia?, on any notice/envelope, did not amount to wrong address, of a proprietorship concern, if the same had been sent, bearing its correct name/title, number and Sector, and, as such, the applicant/appellant, could not be heard to say that certified copy of the order impugned, was not received by it, due to the wrong address, especially when Atul

Bhatia, is the husband of Mrs. Anu Bhatia, as is evident from the affidavit, sworn by her, at page 7 of the appeal file. As far as the second address of the applicant/appellant is concerned, it may be stated here, that since, it has been held above, that the certified copy of the order impugned was received by the applicant/appellant, at its first address, after a few days, from its dispatch, on 06.05.2013, it was not required of it (applicant/appellant), to wait for its second copy, to take any action on the same. If the applicant/appellant was aggrieved of the order impugned, it was required of it, to file appeal, within 30 days, from the date the same was received, as prescribed under Section 15 of the Act, whereas, on the other hand, it (applicant/appellant), just slept over the matter, and, ultimately, woke up from its deep slumber, on 20.02.2014, and filed the appeal. It appears that the applicant/appellant, sat on the order impugned, for a long time, and, finally, filed the appeal, when it came to know that the complainant/respondent had initiated proceedings, under Section 27 of the Act, against it, in the District Forum, for compliance of the same (order impugned). Since, the instant appeal, has been filed, after a long delay of 262 days, without furnishing any plausible explanation, it could be said that the applicant/appellant was not diligent in pursuing the matter. As stated above, the prescribed period of limitation, as envisaged by Section 15 of the Act, for filing an appeal is 30 days, from the date of receipt of a copy of the order. The applicant/appellant did not act, with due diligence, resulting into delay of 262 (as per the office report 252 days), in filing the appeal, which is more than eight times, beyond the prescribed period of limitation. The cause, set up by the applicant/appellant, in the application, for condonation of delay, does not merit acceptance. The mere fact that the applicant/appellant, acted in a leisure mood, without envisaging the consequences, which could ensue, on account of non-filing of an appeal, within the period prescribed, under Section 15 of the Act, does not mean that it could be shown undue indulgence. The delay, in filing the appeal was, thus, intentional, willful and deliberate. Since, no sufficient cause is constituted, from the averments, contained in the application, the delay of 262, (as per the office report 252 days), cannot be condoned. The principle of law, laid down, in the aforesaid cases, is fully applicable to the facts of the instant case. The application is, thus, liable to be dismissed.

16. The next question, that arises, for consideration, is, as to whether, even if, sufficient cause is shown, it is obligatory, on the Commission, to condone the delay. The answer to this question, is in the negative. In *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361, it was held as under:-

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.?

17. It is evident, from the principle of law, laid down in *Ram Lal and Ors.s case* (supra), that even 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, requires the Commission, to take into consideration, all the relevant factors, and it is, at this stage that diligence of the party(s) or its/their bonafides, may fall for consideration. In the instant case, as stated above, it was obligatory, on the applicant/appellant, to take immediate steps to ensure that the appeal was filed within the prescribed period, as envisaged by Section 15 of the Act. However, the applicant/appellant, just slept over the matter, and did not take the requisite steps to file the appeal, in time. It was, thus, a case of complete lack of bonafides and inaction, on the part of the applicant/appellant. The principle of law, laid down in *Ram Lal and Others case*(supra) is fully applicable to the instant case. This is, therefore, not a fit case, in which this Commission, should exercise its discretion, in favour of the applicant/appellant, in condoning the delay.

18. The next question, that arises for consideration, is, as to whether, this Commission can decide the appeal, on merits, especially, when it has come to the

conclusion, that there is no sufficient cause, for condonation of delay of 262, as per the applicant/appellant (as per the office report 252 days), in filing the same (appeal). The answer to this question, is in the negative, as provided by the Apex Court in State Bank of India Vs B.S. Agricultural Industries (I) II (2009) CPJ 29 (SC). The question before the Apex Court, was with regard to the condonation of delay, in filing the complaint, in the first instance, beyond the period of two years, as envisaged by Section 24A of the Act. The Apex Court was pleased to observe as under ;

œSection 24A of the Act, 1986 prescribes limitation period for admission of a complaint by the Consumer Fora thus:

œ24 A. Limitation period”(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in Sub-section (1), a complaint may be entertained after the period specified in Sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.?

It would be seen from the aforesaid provision that it is peremptory in nature and requires Consumer Forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The Consumer Forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. The expression, shall not admit a complaint occurring in Section 24A is sort of a legislative command to the Consumer Forum to examine on its own whether the complaint has been filed within limitation period prescribed thereunder. As a matter of law, the Consumer Forum must deal with the complaint on merits only if the complaint has been filed

within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the Consumer Forum to take notice of Section 24A and give effect to it. If the complaint is barred by time and yet, the Consumer Forum decides the complaint on merits, the Forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside.?

19. The principle of law, laid down, by the Apex Court in State Bank of Indias case (supra), is equally applicable to the filing of an appeal, under Section 15 of the Act. In case, this Commission, decides the appeal, on merits, after coming to the conclusion, that it is barred by time, it would amount to committing an illegality, in view of the principle of law, laid down in State Bank of Indias case (supra).

20. For the reasons, recorded above, the application for condonation of delay of 262, (as per the office report 252 days), being devoid of merit, must fail, and the same is dismissed. Consequently, the appeal, under Section 15 of the Act, is also dismissed, being barred by time, at the preliminary stage, with no order as to costs.

21. Certified copies of this order, be sent to the parties, free of charge.

22. The file be consigned to Record Room, after completion.

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