

Arun Dev Builders Vs. Shiv Raj Kumar

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Jan-13-2014

Judge : The Honourable Mr. N.P. Kaushik, Member (Judicial) & the Honourable Ms. Salma Moor, Member

Appeal No. : First Appeal No. 782 of 2013

Appellant : Arun Dev Builders

Respondent : Shiv Raj Kumar

Advocate for Def. : Shri. Rajesh Kumar

Advocate for Pet/Ap. : Shri. Mukul Kumar

Judgement :

SALMA NOOR, MEMBER:

1. This appeal by the OP of the case No.336/2011 is directed against the order dated 18.1.2013 of the CDRF-IV, Nand Nagar, Delhi whereby the complaint of the respondent was allowed and the OP/Appellant was directed to refund Rs.1,63,000/- together with 9% interest from the date of deposit till its final payment.2. The appeal is accompanied by an application for condonation of delay in filing the appeal

3. We have heard Shri Mukul Kumar, Counsel for the Appellant and Shri Rajesh Kumar, Counsel for the respondent and perused the record.

4. It is very poorly drafted application. No period of delay sought to be condoned is mentioned in the condonation application.? As per our calculation there is a delay of 100 days.

5. The submission of the Counsel for the appellant is that arguments were heard in his presence and the order was reserved without fixing a date for order and he came to know about the order only on 4.7.2013 when Sh. Mukul Kumar, who was appearing in some other cases in the same Forum inquired about the present case.?? It was a contested case and moreover when appellants counsel was regularly visiting the Forum, it was his duty to find out the fate of the case. It is difficult to believe that appellant being a builder can be so negligent that he could not tried to find out the fate of the case for about six months. It is well settled that appellant should be vigilant about his own cases and law does not come to help those who are themselves negligent.? Therefore no sufficient explanation has come forth to condone the delay.

6. The Law of limitation calls for explanation for each day delay after expiry of period of limitation, an explanation for delay has to be rational, reasonable and realistic and to be acceptable.

7. In R.B. Ramlingam Vs. R.B.Bhavaneshwari, 2009(2) Scale 108, it has been observed:

œWe hold that in each and every case the Court has to examine whether delay in filing the special appeal leave petition stands properly examined.? 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.

8. Honble Supreme Court after exhaustive considering the case law on the aspect of condonation of delay observed in Orient Aroma Chemical Industries Ltd. vs. Gujarat Industrial Development Corporation reported in (2010) 5 SCC 459 as under:-

œWe have considered the respective submissions.? The law of limitation is founded on public policy.? The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay.? The idea is that every legal remedy must be kept alive for a period fixed by the legislature.? To put it differently, the law of limitation prescribes a period within which legal remedy can be availed to redress of the legal injury.? At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time

The expression œsufficient cause? employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice.? Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate “ Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987)2 SCC 107, N. Balakrishnan vs. M. Krishnamurthy (1998) 7 SCC 123 and 10 Vedabai v. Shantaram Baburao Patil (2001) 9 SCC 106?.

9. ?Apex Court in Anshul Aggarwal vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC) has observed:

œIt is also opposite 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?.

10. The law of the Supreme Court followed by National Commission and this Commission in this regard is well settled.? Reference can be made to few of such cases cited below:

(i) Delhi Development Authority vs. Gurinder Kaur Kohli-III 2010 CPJ 248 (NC)

(ii) HUDA vs Krishna Devi “ III 2010 CPJ 202 (NC)

(iii) HUDA vs Randhir Singh“ III 2010 CPJ 202 (NC)

(iv) Narayana I.I.T. Academy vs. R.K. Sharma “III 2010 191 (DSCDRC)

9. Hence, the request for condoning the delay is turned down and the application for the purpose moved by the appellant is rejected.

10. Consequently we dismiss the appeal on the ground of its being time barred.

11. FDR, if any, deposited by the appellant be released after completing due formalities.

12. Copy of this order be provided to the parties free of cost and a copy of this order be also sent to concerned District Forum and thereafter, file be consigned to record room.

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