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The Divisional Manager and Others Vs. Rajkumar Soni

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Court : Chhattisgarh State Consumer Disputes Redressal Commission SCDRC Raipur

Decided On : Jan-09-2014

Judge : R.S. Sharma, President &Amp;amp; the Honourable Ms. Heena Thakkar, Member

Appeal No. : Appeal No. FA/13 of 517

Appellant : The Divisional Manager and Others

Respondent : Rajkumar Soni

Advocate for Def. : Shri. Manish Shrivastava

Advocate for Pet/Ap. : Shri. Manoj Prasad

Judgement :

Oral (Order)

1. This appeal is directed against the order dated 25.02.2013 passed District Consumer Disputes Redressal Forum, Raipur (C.G.) (henceforth œDistrict Forum") in Complaint Case No.1014/2011, whereby the complaint of the respondent / complainant, has been partly allowed.

2. The appellants/OPs have preferred this appeal against the impugned order dated 25.02.2013, passed by the District Forum and also filed application for

condonation of delay in filing the appeal.

3. We have heard learned counsel for both the parties on the application for condonation of delay and have also perused the record of the District Forum.

4. In Revision Petition No.1616 of 2011 - National Insurance Company Ltd. Vs. Shri P. Rangaswamy and anr., decided on 11.11.2013, Hon'ble National Commission held thus :

"8. In Ram Lal and others 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 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.".

9. In R.B. Ramlingam vs. R.B. Bhavaneshwari, 2009 (2) Scale 108, it has been observed thus ;

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.

10. Hon'ble Supreme Court after exhaustively considering the case law on the aspect of condonation of delay in Oriental Aroma Chemical Industries Ltd. vs. Gujarat Industrial Development Corporation reported in (2010) 5 SCC 459 as under ;

We 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 for 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.

11. Now, Apex Court in Anshul Agrawal vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC) has observed ;

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."

5. In Basavraj and Anr. V. The Spl. Land Acquisition Officer, 2013 AIR SCW 6510, Hon'ble Supreme Court observed thus:

"9.Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever

the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee andOrs., AIR 1964 SC 1336; Lala Matadin v. A.Narayanan, AIR 1970 SC 1953; Parimal v. Veena alias Bharti AIR 2011 SC 1150 : (2011 AIR SEW 1233); and Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, AIR 2012 SC 1629 : (2012 AIR SCW 2412.)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay

without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

6. In Ludhiana Improvement Trust vs. Ms. Harpreet Kaur, 2013 (4) CPR 848 (NC), Honble National Commission observed thus :-

œ11. Honble Apex Court in Post Master General and Ors. Vs. Living Media India Ltd. and Anr. (2012) 3 SCC 563, has not condoned delay in filing appeal even by Government department and further observed that condonation of delay is an exception and should not be used as an anticipated benefit for the Government departments.

Thus, it becomes clear that there is no reasonable explanation at all for condonation of inordinate delay of 62 days. In such circumstances, application for condonation of delay has been dismissed. As application for condonation of delay has been dismissed, revision petition being barred by limitation is also liable to be dismissed.?

7. Shri Manoj Prasad, learned counsel for the appellants/OPs prayed for condoning the delay in filing the appeal on the basis of grounds mentioned in the application for condonation of delay filed by the appellants and he seeks an opportunity to argue the matter on merits.

8. On the other hand, Shri Manish Shrivastava, learned counsel for the respondent/complainant, opposed the application for condonation of delay and prayed to reject the same.

9. In application filed by the appellants for the condonation of delay, the cause of delay of 156 days in filing the appeal, is mentioned as that after receipt of copy of the order of the District Forum, the same has been received in the office of the appellants on 01.03.2013 and on 02.03.2013 and 03.03.2013, there were holiday in the office of the appellants and therefore on 04.03.2013 the entire file of the case has been sent to the counsel for the appellants for obtaining his opinion, which was received by him on 06.03.2013, and on 07.03.2013 and 08.03.2013 the

counsel was busy in other matters and there were holidays on 09.03.2013 and 10.03.2013 therefore the counsel sent his opinion to Insurance Company on 11.03.2013. After receiving the opinion from the counsel, the matter has been sent by the appellants to the higher authorities for further action. On 25.03.2013, the appellants sent cheque of Rs.25,000/- to the counsel for making compliance of Second Proviso of Section 15 of the Consumer Protection Act, 1986 which was received by him on 26.03.2013, but as the counsel was out of station for recording evidence therefore the cheque was deposited on 30.03.2013 and thereafter the entire file of the case was annexed with other files and was kept in the office of the counsel. The delay of 156 has been occurred in filing appeal, which is bonafide.

10. It is now well settled that departmental and official procedural delays do not constitutes "sufficient ground". It must be borne in mind that Consumer Protection Act, 1986 lays down its own period of limitation. The Limitation Act, which prescribes the summary procedure and its provisions should be strictly followed. In the instant case, looking to the application filed by the appellant for condonation of delay and affidavit of Shri Ranjan Kumar Paul, the Divisional Manager of the Oriental Insurance Company Limited, Divisional Office No.3, Raipur (C.G.), filed in support of the application for condonation of delay, it appears that the reason assigned by the appellant regarding delay in filing the appeal in the application for condonation of delay, is not satisfactory and delay has not been explained properly.

11. The appeal is barred by limitation by 156 days, and no proper explanation has been given. Thus, on the facts of the case, the appeal filed by the appellant, is barred by limitation and no satisfactory explanation has been given by the appellant in application for condonation of delay. In the application, no sufficient ground, has been mentioned for condoning the delay in filing the appeal beyond the limitation, therefore, the appeal is hopelessly barred by time.

12. Thus, the application for condonation of delay filed by the appellants, is hereby rejected. Consequently, the appeal also stands dismissed.

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