
(2013) 04 NCDRC CK 0133

In the National Consumer Disputes Redressal Commission

ABDUL HAFEEZ

APPELLANT

Vs

STATE BANK OF HYDERABAD

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : 2013 0 NCDRC 218 : 2013 2 CPJ 285

Hon'ble Judges : K.S.CHAUDHARI J.

Final Decision : petitioner is dismissed

Judgement

1. THIS revision petition has been filed by the petitioner/complainant against the order dated 17.02.2012 passed by the A.P. State Consumer Disputes Redressal Commission, Hyderabad (in short, "the State Commission ") in Appeal No. 552 of 2009 - The State Bank of Hyderabad Vs. Sri Abdul Hafeez by which, while allowing appeal partly, order passed by learned District Forum was modified.

2. BRIEF facts of the case are that complainant/petitioner availed loan to the tune of Rs.10,500/- on 19.9.1989 from OP-respondent by depositing his title deeds and executed demand promissory note and also submitted personal guarantee. OP filed suit in the Court of Civil Judge (East and North), R.R. District at L.B. Nagar for recovery of amount and during pendency of litigation, complainant paid Rs.50,280/- in consequence of which, OP closed loan account on 12.11.1993 and issued passbook with an endorsement "Account closed " to the complainant. Complainant requested OP to return title deeds of the plot and the promissory note and agreement of guarantee, but as documents were not returned, complainant filed complaint alleging deficiency on the part OP. OP/ respondent contested complaint and submitted that OP filed documents before the Court of Junior Civil Judge and his documents could not be traced in the Court and were not returned to the OP. In spite of sincere efforts, documents could not be returned and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed the complaint and directed OP to pay compensation of Rs.2,00,000/-. OP filed appeal against the order of District forum and learned State Commission vide impugned order reduced amount of

compensation from Rs.2,00,000/- to Rs.1,00,000/-. Petitioner has filed this revision petition against the impugned order for enhancement of compensation. Heard learned Counsel for the petitioner at admission stage and perused record.

3. PETITIONER has filed revision petition along with application for condonation of delay of 119 days. Petitioner submitted that revision petition could not be filed in time due to the fact that petitioner is 65 years old and ailing person and unable to work without assistance and further submitted that due to paucity of funds, delay occurred.

4. AS per application for condonation of delay, petitioner is only 65 years old and has not placed any document regarding illness. In such circumstances, old age is not a tenable ground for condonation of delay. Further, it was submitted that due to paucity of funds, revision petition could not be filed. As per impugned order, petitioner is a retired Forest Range Officer and must be getting pension and in such circumstances, paucity of funds cannot be treated as satisfactory explanation for condonation of delay. As there is inordinate delay of 119 days, this delay cannot be condoned in the light of the following judgment passed by the Hon "ble Apex Court. In R.B. Ramlingam Vs. R.B. Bhavaneshwari 2009 (2) Scale 108, it has been 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. "

5. 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. "

6. HON "ble Supreme Court after exhaustively considering the case law on the aspect of condonation of delay observed 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. "

Hon "ble Apex Court in (2012) 3 SCC 563 - Post Master General and Ors. Vs. Living Media India Ltd. and Anr. 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.

7. HON "ble Apex Court in 2012 (2) CPC 3 (SC) - Anshul Aggarwal Vs. New Okhla Industrial Development Authority observed 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 ".

Thus, it becomes clear that there is no reasonable explanation at all for condonation of inordinate delay of 119 days. Revision petition is liable to be dismissed on the ground of delay alone.

8. AS far as merits of the case are concerned, record clearly reveals that documents were submitted by OP/respondent in the Court in suit for recovery of amount and the documents were missing from the Court and were not returned to the respondent, in such circumstances, respondent was not in a position to return documents to the petitioner. Even then, learned District Forum allowed compensation of Rs.2,00,000/- and learned State Commission modified it and upheld compensation of Rs.1,00,000/-, there is no justification for enhancement of compensation. Learned State Commission has observed as under: "16. The Supreme Court held that the compensation to be awarded is to be fair and reasonable. In "Charan Singh vs. Healing Touch Hospital and others " - 2000 SAR (Civil) 935, the Apex Court stressed the need of balancing between the compensation awarded recompensing the Consumer and the change it brings in the attitude of the service provider. The Court held - "While quantifying damages, consumer forums are required to make an attempt to serve ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time aims to bring about a qualitative change in the attitude of the service provider. Indeed calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application. While awarding compensation, a Consumer Forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of

a given case according to established judicial standards where the claimant is able to establish his charge ". Therefore, taking into consideration of the totality of the circumstances and the ratio laid in the aforementioned decision, we are of the opinion that the amount of Rs.2,00,000/- awarded by the District Forum towards compensation is of higher side and not commensurate with the degree of deficiency found on the part of the appellant bank in rendering service to the respondent. As such, the amount of Rs.2,00,000/- awarded is scaled down to Rs.1,00,000/- ".

In the light of the aforesaid discussion, I do not find any infirmity, illegality or jurisdictional error in the impugned order which calls for any interference and revision petition is liable to be dismissed at admission stage.

9. CONSEQUENTLY , revision petition filed by the petitioner is dismissed at admission stage with no order as to cost.