(2013) 03 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

Ali Baramy APPELLANT

Vs

Country Vacations International Holiday Club RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Citation : 2013 0 NCDRC 187

Hon'ble Judges : V.B.GUPTA , R.GUPTA J.

Advocate : JAIMON ANDREWS

Judgement

1. THE present revision petition has been filed against the impugned judgment and order dated 22.02.2012 passed by the Kerala State Consumer Disputes Redressal Commission (Thiruvananthapuram) (''the State Commission '') in appeal no. 641 of 2011. The petitioner has averred in his complaint that the executives of the respondents Company approached him and "induced him " by saying that there are various schemes offered by the Club. The petitioner being a heavy traveller purchased a Life Membership of Holiday Club with Country Vacation International Holiday Club on 15.11.2008 by paying Rs.75,000/-. The respondent had promised that they would issue Membership Card within 30 days. The petitioner waited for the card till 30th December 2008 and when he did not receive the same he made many attempts to contact for the same with the executives of the Club and the Customer Care Centre. However, he still did not receive the card. The above acts of the respondents amount to defective service, unfair trade practice and cheating causing him financial loss, mental agony and loss of reputation. The petitioner had purchased the membership in view of the forthcoming school vacations in April 2008 and was planning a trip to Mumbai during the vacation. Due to non-receipt of the card the petitioner had to pay the cost of the guest house and cause huge monetary loss. He had to pay the room rent of Rs.20,000/-.

2. THE respondent admitted that he joined the Club membership of the respondent by paying an amount of Rs.75,000/- on 15.11.2008 for a period of five years. It is stated by the respondent that nowhere was it mentioned that

issuance of the membership card is subjected to a time frame of 30 days "as the time is not the essence ". The processing of point certificate takes more time and hence, it was not made a criteria for the members enjoying the facilities provided by the members on enrolling them in the membership with the respondent Club. It was specifically provided in clause 4 of the agreement that provisions of the agreement shall remain in full force and effect even pending issue of point certificates (membership certificate). They further denied that he was put to any loss because he could not make use of the facility when he travelled to Mumbai. The respondent has held that facilities were never included in Mumbai. The petitioner filed a consumer complaint no. 146 of 2010 before the District Consumer Disputes Redressal Forum, Kozhikode (in short, ''the District Forum '') with the prayer that the respondents should be asked to return Rs.75,000/- paid for the membership with 10% interest, pay Rs.25,000/- as compensation and Rs.20,000/- spent by the complainant for his stay at Mumbai. The District Forum were of the opinion that the complainant was entitled to get back Rs.75,000/-. However, regarding the trip to Mumbai as the Mumbai destination was not included in the scheme of the respondents, the petitioner was not entitled to get back the money he had spent towards that trip. In the result, "the complaint was partly allowed by the District Forum and the respondents were directed to return Rs.75,000/- paid for the membership along with a compensation of Rs.5,000/- and cost of Rs.1,000/- within one month on receipt of the copy of the order, failing which the petitioner is entitled for an interest @ 10% per annum of Rs.75,000/- from the date of the order till realisation ". Aggrieved by the order of the District Forum the respondent filed an appeal no. 641 of 2011 before the State Commission. The State Commission came to the conclusion that "the act of the respondent resorting to a place beyond the agreement and claiming expenses will not fasten any liability upon the appellants. The lower Forum also found that the complainant is not entitled to get back the money spent towards the trip to Mumbai. Further the purchase agreement being an irrecoverable contract for a specific period it is binding on the parties. Hence, we have no hesitation to set aside the impugned order of the lower Forum.

3. THE State Commission allowed the appeal and set aside the order of the District Forum. Hence, this present revision petition.

4. THE revision petition has been filed with a delay of 49 days. The grounds for condonation of delay reads as under: "It is submitted that immediately after the receipt of the certified copy of the impugned order, the petitioner contacted the local counsel for the purpose of challenging the impugned order before the Hon ''ble National Commission. The local counsel in turn contacted the counsel at Delhi and sought the possibility of filing a revision petition. After getting the opinion of the counsel at Delhi the petitioner took immediate steps for filing the revision petition. After preparing the revision petition the draft copy along with the affidavit were sent by the counsel at Delhi to the petitioner, who is in Kerala, for the purpose of signature and verification. It is submitted that it was in the above circumstances the delay of _____ days in filing the revision petition

happened ".

In the affidavit for condonation of delay it has been stated as under: "That the impugned order was passed by the Hon ''ble Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram on 22.02.2012. But the order was communicated from the office of the Hon ''ble State Commission only on 01.03.2012. This can be seen in the impugned order itself. The said order was received by the complainant only on 28.03.2012. The postal seal of the cover of the copy of the order is produced along with this affidavit and the same shall conclusively prove this aspect. The revision petitioner filed the above matter before this Hon ''ble Commission on 14.08.2012. Therefore, it is respectfully submitted that there is a delay of 49 days in filing the above revision petition ".

5. WE have heard the argument on the application for condonation of delay advanced by the learned counsel for the petitioner and gone through the records. The impugned order dated 22.02.2012 of the State Commission as per the petitioner, was communicated only on 01.03.2012 and received by them only on 28.03.2012. They have attached a copy of the envelope which is not readable. Even if we accept that they had received the order on 28.03.2012, there is a delay of 49 days. There is no justification or detailed explanation given for the delay of 49 days either in their application for condonation of delay or in their affidavit. No dates have been mentioned after the receipt of the order dated 28.03.2012. No names of the counsels have also been mentioned.

6. THE apex court in the case of In Anshul Aggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC), it has been held 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 ".

Accordingly, we find that there is no ''sufficient cause '' to condone the delay of 49 days in filing the present revision petition. The application for condonation of delay is without any merit as well as having no legal basis and is not maintainable. Consequently, the present revision petition being time barred by limitation and is dismissed with cost of Rs.10,000/-. (Rupees ten thousand only) Petitioner is directed to deposit the cost by way of demand draft in the name of ''Consumer Welfare Fund '' as per Rule 10 A of Consumer Protection Rules, 1987, within four weeks from today. In case the petitioner fails to deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation. List on 6th May 2013 for compliance.