

(2004) 02 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 458 of 2001

Alson Automobiles Private Ltd.

APPELLANT

Vs

State Consumer Protection Commission and Alson
Automobiles

RESPONDENT

Date of Decision : 20-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Jammu and Kashmir Consumer Protection Act, 1987 — Section 13

Citation : (2004) 2 JKJ 34

Hon'ble Judges : Bashir-Ud-Din, J

Bench : Single Bench

Advocate : I. Sofi, for the Appellant; M.A. Wani, Dy. AG, for the Respondent

Final Decision : Dismissed

Judgement

Sayed Bashir-Ud-Din, J.—This writ petition is directed against order dated 25.7.2001 passed by State Commission under Consumer

Protection Act, 1987 dismissing the petitioner's application for condonation of delay for filing appeal against an order of Divisional forum under the

Act and consequently dismissed the appeal.

2. Respondent No. 2 filed a consumer complaint before Divisional forum at Srinagar regarding a BPL CTV set purchased by him from the

opposite party writ petitioner. On contest the Divisional forum allowed the complaint by ordering the opposite party to provide alternate to the

consumer respondent No. 2 with compensation of Rs. 5000A. This order was passed on 1.7.2000.

3. Against this order the aggrieved party writ petitioner did not file appeal within prescribed period of time and instead the appeal was filed 56

days beyond the prescribed time period provided for such appeal. Alongside petitioner filed an application seeking condonation of delay the

appellate forum of State Commission considered the matter and found that no cause is made out to condone the delay. The explanation put-forth

did not satisfy the commission so the application as also the appeal was dismissed.

4. Sections 13 of J&K Consumer Protection Act 1987 provides:-

Any person aggrieved by an order made by the Divisional Forum may prefer an appeal against such order to the State Commission within a

period of thirty days from the date of the order in such forum and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient

cause for not filing it within that period.

5. Ordinarily appeal against Divisional forum is to be filed before State Commission within a period of 30 days from the date of the order. The

State Commission in its discretion is allowed to entertain the appeal after 30 days if the commission appellate forum is satisfied that there was

sufficient cause for not filing the appeal within the said 30 days period.

6. On going through the record including the impugned order it is seen that the Commission has recorded reasons for not being satisfied of the

cause and explanation for delay. The appellate forum has also found that the plea taken by the counsel at the time of arguments is not born out by

contents of the application for condonation of delay and the award under appeal was announced in presence of the parties. The plea of applicant

that he left the station for some time hence the reason for not filing the appeal within time is not believed by the Commission for reasons recorded

thereto. The Commission in terms has come to the conclusion that the applicant has not taken due care and caution to file the appeal within time as

he had the opportunity and occasion to do so. The Commission is not satisfied about the sufficiency of cause for not filing the appeal within the

time.

7. The court is not sitting in appeal against the order of the State Commission appellate forum. The appellate forum has the powers and jurisdiction

to decide the matter one way or the other. If the Commission has on

consideration of the matter after hearing the counsel for the parties and perusal of record come to a definite conclusion that the satisfaction of the Commission as to sufficiency of cause for not filing appeal within time does not arise from record, this Court in exercise of writ jurisdiction cannot step-in to correct a decisional error when having regard to the totality of facts and circumstances no injustice is caused or miscarriage of justice or violation of any law or rules is made out. The impugned order is passed in exercise of discretion vested by the statute in the forum within the parameters of law.

8. In the above view of the matter, writ petition is dismissed at this pre-admission hearing stage. Send back the record alongwith copy of this order.