

**(2013) 12 NCDRC CK 0012**

**In the National Consumer Disputes Redressal Commission**

AMARJYOTHI HOUSE BUILDING COOPERATIVE SOCIETY  
LIMITED

APPELLANT

Vs

V.S. Pradeep, S. Shivananda And V.S. Manjunath

RESPONDENT

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**Date of Decision :** 16-12-2013

**Acts Referred:**

**Citation :** 2013 0 NCDRC 886 : 2014 1 CPJ 438

**Hon'ble Judges :** V.B.GUPTA , Rekha Gupta J.

**Final Decision :** Petition dismissed

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**Judgement**

1. PETITIONER/opposite party being aggrieved by common order dated 3.8.2010, passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (for short, "State Commission") in Appeal Nos. 2477, 2478 and 2479 of 2010 has filed the present revision petitions. Respondents/Complainants had filed consumer complaints against the petitioner on the ground that they were enrolled as a member of PETITIONER -Society and remitted certain amount to the society seeking allotment of site a Sarakki Layout. Thereafter, respondents had paid various amounts to the petitioner during the period from 30.7.1984 to 28.10.1988. In spite of receiving the amount from the respondents, petitioner has not allotted the promised sites. It has been further alleged that petitioner has allotted sites to certain junior members by taking extra commission. Thus, it is the case of the respondents that petitioner is avoiding allotment of site in the name of respondents, which clearly amounts to deficiency in service on the part of the petitioner.

2. PETITIONER in its written version has admitted that respondents are the members of the society. However, it is pleaded that the complaints are barred by limitation. Further, it was pleaded that a large track of land was acquired by Karnataka State Government following procedures laid down under the Land Acquisition Act. But later, High Court of Karnataka declared the entire acquisition proceedings as illegal and quashed the entire acquisition proceedings. The petitioner filed an appeal before the Supreme Court which was rejected. It has

been further alleged by the petitioner that amount collected from the members was utilized for the payment of compensation to the landlords. Thus, petitioner has spent all the money. The lands are not available nor the funds available. Thus, petitioner is also not in a position to allot or execute the Sale Deeds in favour of the respondents since no land is available for the formation of the sites.

3. DISTRICT Forum vide order dated 25.5.2010, allowed the complaint and passed the following order: It is held that there is deficiency of service from the opposite party. The opposite party is hereby directed to refund the respective amount to the respective Complainant along with an interest at 12% p.a. from the respective date of payment, till realization. The opposite party shall also pay a sum of Rs. 4,00,000 (Rupees four lakh only) each as compensation and a sum of Rs. 5,000 (Rupees five thousand only) each as costs of these litigations. The Opposite Party is granted 30 days time from this date to comply this order.

4. AGGRIEVED by the order of District Forum, petitioner filed appeals before the State Commission, which dismissed the same. Hence, these petitions. Along with these petitions, applications seeking condonation of delay of 129 days have also been filed.

5. WE have heard the learned Counsel for the parties and have gone through the record.

6. THE main ground on which condonation of delay has been sought is that: After passing of the order by the State Commission, petitioner challenged it before Karnataka High Court by filing Writ Petition No. 29632 -34 of 2010. The Karnataka High Court held that, writ petitions were not maintainable in case of existence of alternate and efficacious remedy. Thereafter, High Court of Karnataka vide order dated 22.2.2011, permitted the petitioner to withdraw the writ petition with liberty to avail the alternative remedy as provided under the Consumer Protection Act, 1986.

It has been contended by the learned Counsel for the petitioner that since petitioner was pursuing a wrong remedy before the Karnataka High Court, in view of Section 14 of Limitation Act, 1963 (for short, "Limitation Act"), the time spent in pursuing the remedy before the Karnataka High Court should be excluded since petitioner was under bona fide belief that writ petition against the impugned order is maintainable. Hence, there are sufficient grounds for condoning the delay.

7. ON the other hand, it has been contended by learned Counsel for the respondents, that petitioner had been knowingly pursuing a wrong remedy. Thus, a valuable right has accrued in favour of the respondents which cannot be taken away. So, there is no sufficient cause for condoning the delay.

8. RELEVANT provision of Section 14 of Limitation Act, read as under: S. 14. Exclusion of time of proceeding bona fide in Court without jurisdiction - -

(1) In computing the period of limitation for any suit the time during which the

plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) xxx xxx xxx xxx

Apex Court while interpreting Section 14 of the Limitation Act, in *Ghasi Ram and Ors. v. Chait Ram Saini and Ors.*, (1998) SLT 293 : III (1998) CLT 88 (SC) : (1998) 6 SCC 200, has held: 5. A perusal of the aforesaid provision would show that in order to get the benefit of Sub -section (1) of Section 14 of the Act, the party seeking its benefit must fulfill the following four conditions:

(1) The plaintiff who filed the suit had been prosecuting another civil proceeding with due diligence.

(2) The earlier proceeding resorted to by the plaintiff was based on the same cause of action.

(3) The former proceeding was prosecuted by the plaintiff in good faith in a Court.

(4) The Court, due to the defect of jurisdiction or other cause of a like nature, was unable to entertain such proceeding.

9. THUS , it is well settled that the real purpose of Section 14 of the Limitation Act, is to extend the period of limitation prescribed by adding the period during which the suit or other proceeding has been prosecuted with due diligence and in good faith in a Court which either on account of defect of jurisdiction or other cause of a like nature, was unable to entertain it.

10. THIS section does not help a person who is guilty of negligence, laches or inaction. The test of good faith is real and bona fide belief of the plaintiff that he could institute the proceedings in the Court where he first instituted it. The question material for the purposes of Section 14 of the Limitation Act is, whether given due care and attention, the plaintiff could have acted otherwise than he did. The burden of proving his case within the section lies on the plaintiff. Where he fails to satisfy this initial burden, the burden does not shift to the defendant to show the contrary.

11. IN *Suppiah Chettiar v. Chinnathurai*, AIR 1957 Madras 216, where a proceeding under the workmen's Compensation Act was withdrawn voluntarily by an applicant with the permission of the Commissioner and subsequently a civil

suit was brought, it was held that; Section 14 of the Limitation Act could not be invoked to save the suit from the bar of limitation.

12. IN the present case, it is not that the petitioner was ignorant of the remedy which was sought by it before the Karnataka High Court, as in the application for condonation of delay, petitioner itself admitted that after receipt of the intimation about passing of the impugned order dismissing its appeals, petitioner discussed with his Advocate and decided to file writ petition before the High Court for quashing of the impugned order. Under these circumstances, petitioner cannot get benefit of Section 14 of the Limitation Act. Further, in the entire application for condonation of delay, it has nowhere been stated by the petitioner that, it was under some bona fide mistake while pursuing the writ petition in the High Court. It is well settled that "sufficient cause" for condoning the delay in each case is a question of fact.

13. NOW , Apex Court in Anshul Aggarwal v. 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.

14. FURTHER , it would be pertinent to refer to a judgment of Hon"ble Supreme Court in M/s. Advance Scientific Equipment Ltd. and Anr. v. West Bengal Pharma and Photochemical Development Corporation Ltd., Reported in 2011 (DLT Soft) 1 (SC), (Appeal (Civil) Nos. 17068 - 17069/2010, decided on 9 July 2010) wherein it observed inter alia, as under: .....we are further of the view that the petitioners" venture of filing petition under Article 227 of the Constitution was clearly an abuse of the process of the Court and the High Court ought not to have entertained the petition even for a single day because an effective alternative remedy was available to the petitioner under Section 23 of the Act and the orders passed by the State Commission did not suffer from lack of jurisdiction.

Thus, we do not find any sufficient ground for condoning the delay and applications for condonation of delay stand dismissed.

15. EVEN on merits, petitioner has no case at all as petitioner itself in its written statement has categorically stated: The Society for reasons stated above is not in a position to allot or execute the sale deed in favour of the complainant since no lands are available for formation of sites.

16. THUS , as per petitioner"s own case, if it is not in a position to allot or execute sale deed in favour of the complainants as no lands are available for formation of sites, then we fail to understand as to under what legal authority, petitioner is retaining the hard -earned money of the respondents, received by it

more than 25 years ago. The conduct of the petitioner society is admittedly deplorable. Under these circumstances, we hold that present revision petitions are most bogus and frivolous one and have been filed just to harass the respondents. To a large extent petitioner society has succeeded in depriving the respondents, the fruits of the award which was passed many years ago. Therefore, we hold that present revision petitions are not maintainable being barred by limitation, Even otherwise, these petitions are not sustainable on merits also.

17. CONSEQUENTLY , we dismiss the present revision petitions with cost of Rs. 10,000 (Rupees ten thousand only) in each case.

18. PETITIONER is directed to deposit the cost by way of demand draft in the name "Consumer Legal Aid Account" of this Commission, within six weeks from today. In case, petitioner fails to deposit the cost within the prescribed period, then it shall be liable to pay interest @ 9% p.a., till realization.

19. PENDING applications, if any, stand disposed of. List for compliance on 31.1.2014.