

(2012) 11 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

Asha Hargen Yadav

APPELLANT

Vs

Balabhai Nanavati Hospital

RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Citation : 2012 0 NCDRC 834

Hon'ble Judges : J.M.MALIK , VINAY KUMAR J.

Final Decision : Revision Petition dismissed

Judgement

1. THE State Commission dismissed the appeal on the ground that it was barred by .121 days. It is also surprising to note that the alarm bells should have rung and the revision petition should have been filed within the period of limitation but unfortunately the same was further delayed by 77 days.

2. FIRST of all, we turn to the application for condonation of delay filed before the State Commission. The version set up by the petitioner is that she met with an accident on 11.09.2010. The petitioner contacted her advocate and requested to appear on 06.12.2010 before the State Commission, seek quantum enhancement and modification of the order passed by the District Forum dated 29.06.2010. Her advocate informed her that she would have to file an appeal Thereafter, the appeal was preferred before the State Commission which was delayed by 121 days. The petitioner did not adduce any evidence to show that she had met with an accident. She herself admits that she had received the copy of the impugned order on 05.08.2010. There is no cogent or plausible evidence to prove her allegations. We have also perused her application for condonation of delay in filing this revision petition. The delay was explained in paras no. 2 and 3 of the application which are reproduced as follows: - "2. it is most humbly submitted that the all the necessary papers in the present petition were received at the office of the advocate for Petitioner in the month of April, however, unfortunately, the papers received in the above matter got mixed up with other files of disposed off cases. The advocate for Petitioners made his best efforts to locate the matter, however, it was not located. "3. It is submitted that, on

01.08.2012 fortunately, the papers were found at the office of the Advocate in disposed off matters and immediately, thereafter the petition is being filed. There is delay of 78 days in filing the Revision Petition and the same is not intentional but is due to circumstances beyond the control of the Petitioner. "

3. ALL these facts hardly constitute sufficient cause as per Section 5 of the Limitation Act. Such like stories can be created at any time. A Litigant must be vigilant after her case stands dismissed as barred by time by the State Commission. She should not have lost any time to file the revision petition immediately. The plea raised in the application are vague, evasive and lead us nowhere. When the Advocate was aware of the fate of his first appeal, he should have left no stone unturned to file the revision petition immediately by reconstructing the record. In this case, the mistake lies with the Advocate who appears to have created this false ground in order to save the limitation.

4. ALL these views are emboldened by following authorities: - "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. "

In recent judgment passed by this Commission in case Mahindra Holidays and Resorts India Ltd. v. Vasant Kumar H. Khandelwal and Anr. Revision Petition No. 1848 of 2012, decided on 21.05.2012 by the bench headed by Hon"ble Mr. Justice Ashok Bhan which has got almost the similar facts, the delay of 104 days was not condoned.

5. IN a recent authority by the Apex Court in case reported as Office of the Chief Post Master General and Ors. v. Living Media India Ltd. and Anr., I (2012) CLT 338 (SC)=II (2012) SLT 312=2012 STPL (Web) 132 (SC), similar view was taken.

6. IN Balwant Singh (Dead) v. Jagdish Singh and Ors., V (2010) SLT 790=III (2010) CLT 201 (SC), Decided on 08.07.2010 in Civil Appeal No. 1166/2006, the apex court was pleased to observe that: - "The party should show that besides acting bona fide, it had taken g// possible steps within its power and control and had approached the Court without any unnecessary delay The test is whether or not a cause is sufficient to see whether it could-have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005].

In the result, the revision petition is without merit and the same is, therefore, dismissed. Revision Petition dismissed.