
(2017) 01 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

Case No : 1705 of 2016

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

APPELLANT

Vs

SUNDENT INDIA & ORS.

RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Citation : 2017 1 CPR 100

Hon'ble Judges : K.S. Chaudhari

Advocate : Sunanda Nimisha

Final Decision : Appeal Dismissed

Judgement

1. This appeal has been filed by the appellant against the order dated 20 th September, 2016 passed by the Learned State Commission in Complaint No. 1102 of 2015 - Sundent India Vs. Bajaj Allianz General Insurance Co. Ltd. & Ors., by which opposite party no. 1 was proceeded ex-parte.

2. Brief facts of the case are that the complainant/respondent no. 1 filed complaint before State Commission against appellant/opposite party no. 1 along with two other opposite parties. Opposite party no. 1 filed Vakalatnama on 05-07-2016 but none appeared on 20 th September, 2016 and was proceeded ex-parte and on the same day right to file written statement of opposite party no. 1 was also closed as written statement was not filed within stipulated period, against which this appeal has been filed along with application for condonation of delay.

3. Heard learned counsel for the appellant and perused record.

4. Learned counsel for the appellant has filed application for condonation of delay in which it was mentioned that counsel for the appellant came to know about impugned order on 29-09-2016 as wrong date was noted and appeal was prepared in third week of October, 2016 which was sent to Regional Office for approval so delay of 62 days may be condoned. As appeal was ready to be filed in third week of October, 2016 but it has been filed on 20 th December, 2016 and

no reasonable explanation has been given for two months delay particularly when he was proceeded ex-part before State Commission and did not file written statement within stipulated period, in such circumstances, inordinate delay of 62 days in filing appeal cannot be condoned in the light of latest judgments of Hon''ble Apex Court in (1) (2010) 5 SCC 459-Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Anr. ; (2) (2012) 3 SCC 563-Office of the Chief Post Master General and Ors. Vs. Living Media India Ltd. and Anr .; and (3) 2012 (2) CPC 3 (SC)-Anshul Aggarwal Vs. New Okhla Industrial Development Authority (4) 2009 (2) Scale 108- R.B. Ramlingam Vs. R.B. Bhavaneshwari; and (5) AIR 1962 SC 361-Ram Lal & Ors. Vs. Rewa Coalfields Ltd .

5. Learned counsel for the appellant further submitted that on account of noting down wrong date appellant could not appear before State Commission so he was proceeded ex-parte, though written statement was ready so appeal be admitted.

6. Perusal of impugned order reveals that counsel for the appellant filed Vakalatnama before State Commission on 05-07-2016 and apprised that appellant had received copy of complaint. Written statement was to be filed maximum within 45 days but on 20 th September, 2016 neither opposite party no. 1 appeared nor filed written statement. In such circumstances, in the light of judgment of Hon''ble Apex Court in I (2016) CPJ 1 (SC) - New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd. , time for filing written statement could not have been extended by learned State Commission and learned State Commission rightly proceeded ex-parte against appellant as none appeared before State Commission on that day. By the same order right to file written statement by opposite party no. 2A was also closed.

7. Learned counsel for the appellant further submitted that appellant may be burdened with cost and written statement may be taken on record which is not permissible in the light of judgment of Hon''ble Apex court referred above. I do not find this case fit for admission and is liable to be dismissed in limine at admission stage.

8. Consequently appeal filed by the appellant is dismissed in limine.