

(2016) 06 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Case No : 1687-1709 of 2016

BHAGIRATH COLD STORAGE

APPELLANT

Vs

HARINARAYAN & ORS.

RESPONDENT

Date of Decision : 17-06-2016

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : 2016 3 CPR 193

Hon'ble Judges : M. Shreesha, Anup K Thakur

Advocate : AMANDEEP MEHRA

Judgement

1. Challenge in these Revision Petitions, under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act"), is to order dated 16.10.2015 in Appeal Nos. 1486, 1488-1491, 1493-1495, 1497-1509 & 1511-1512 of 2014 passed by the State Consumer Disputes Redressal Commission, M.P. (for short "the State Commission"). By its impugned order, the State Commission dismissed the Appeals preferred by the Opposite Party by way of a common order, on the ground that they were barred by limitation.

2. As these Revision Petitions deal with common facts and common cause of action, they are being disposed of by a common order. Revision Petition No. 1687 of 2016 has been taken as a lead case.

3. The brief facts as set out in the Complaint are that the Complainant had kept 29 bags of potato seeds on 7.3.2011 and 52 bags on 10.3.2011 in the cold storage of the Opposite Party totalling to 81 bags for safe custody. It is averred that each bag had 60 kgs. Of potatoes and on 20.10.2011, when the Complainant had approached the Opposite Party all the potatoes were found rotten with water and sprouts coming out of them. The Complainant got issued a legal notice to the Opposite Party seeking damages for the rotten potatoes. Hence, the Complaint before the District Forum seeking direction to the Opposite Party for payment of Rs. 1400/- per bag together with compensation and costs.

4. The Opposite Party filed written version before the District Forum admitting safe keeping of all the potatoes in the cold storage, but contended that the Complainant did not store potatoes of good quality. The Complainant had not got the potatoes tested by the Horticulture Scientist to ascertain the quality of the potatoes. A reply to the Complainant's notice was given on 4.11.2011 stating that the potatoes can be got examined by any specialist and the Complainant was directed to collect the potatoes within 5 days of the receipt of the notice. It is pleaded that the Complainant did not take back the potatoes within the time limit and instead had filed this Complaint to harass the Opposite Party. In the month of September, 2011, the price of potatoes was Rs. 16/- per quintal and the Opposite Party sold the potatoes in the market @ Rs. 30/- per bag. It is averred that the Opposite Party had given information to all the consumers for leaving their potatoes and also gave a public notice in the daily Newspaper Akshar Vishwa. The rent was not paid by the Complainant and the Complainant had violated the terms and conditions which are listed on the reverse of the deposit receipt. It is averred that the traders may not have lifted the potatoes due to the fall in their price as compared to the previous years and therefore, there is no deficiency on their behalf.

5. The District Forum based on the evidence adduced, allowed the Complaint directing the Opposite Party to pay Rs. 60,750/- @ Rs. 12.50 per kilo of the potatoes for the stored 81 bags of potato each bag having 60 kgs. of potatoes. An interest @8% p.a. was also awarded on the aforesaid amount from the date of filing of the Complaint together with Rs. 5,000/- as damages and costs of Rs. 2,000/-.

6. Aggrieved by the said Order, the Opposite Party preferred Appeals no. FA Nos. 1486, 1488, 1489, 1490, 1491, 1493, 1494, 1495, 1497, 1498, 1499, 1500, 1501 to 1509 & 1511 & 1512 of 2014 before the State Commission with the delay of one year and two months. The State Commission dismissed the Appeals on the grounds of delay.

7. The State Commission discussed the Applications for condonation of delay at length. It is averred by the Appellant/Opposite Party that the impugned orders were passed by the Forum on 25.10.2013 but their certified copies (free of cost) were supplied to him only on 1.7.2014 and therefore, the Appeals were filed on 25.7.2014.

8. The State Commission perused the record of the District Forum in detail and observed that the impugned order was passed on 25.10.2013 and on the same day, the records were ordered to be consigned to the record room and in such circumstances, it is not possible to supply the order copy free of cost on 1.7.2014.

9. The learned counsel for the Revision Petitioners vehemently contended that there was no inordinate delay in filing the Petitions and relied on the following judgements of the Hon'ble Supreme Court: The Hon'ble Apex Court in the

matter of Tukaram Kana Joshi and Ors. through Power of Attorney Holder vs. M.I.D.C. and Ors. Reported in (2013) 1 SCC 353, held as under:

" The Court is required to exercise juridical discretion. The said discretion is dependent on facts and circumstances of the case. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc."

The Hon'ble Apex Court in the matter of Manoharan vs. Sivarajan & Ors. Reported in (2000) 9 SCC 94, held as follows:

"The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented process approach rather than the technical detention of sufficient case for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of pragmatic approach in justice oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause".

10. The facts and circumstances in the instant case are different as the State Commission had recorded that there were manipulation of records and citing of false statements in the application seeking for condonation of delay of one year and 2 months.

11. It is recorded by the State Commission that the endorsement of receipt of copy has been made at the bottom of the page of the District Forum order sheet on which 25.10.2013 has been clearly recorded. It is also observed that the endorsement of sending of free of cost copies by registered post has also been recorded separately in the order sheets. The State Commission clearly noted that the copies of the orders were sent to the Opposite Party in the month of November, 2013 by despatch nos. 234, 233, 237, 236, 241, 242, 247, 256, 245, 249, 252, 250, 248,

254, 251, 239, 244, 253, 255, 231, 243, 240 and 229. Based on all the evidence and the material on record, the State Commission had rightly come to the conclusion that free of cost copies were received by the Applicant/Opposite Party in the month of November, 2013 itself and that they did not prefer to file Appeals till 24.7.2014 and had manipulated the records and made false statements. As there were no substantial reasons given by the Appellant/Opposite Party seeking condonation of delay, the State Commission had rightly dismissed them on the grounds of delay.

12. It is pertinent to note that these Revision Petitions have also been filed within a delay of 71 days and the reasons given are as under: "3. That, the impugned order of the State Commission petitioner has supplied to the counsel of the petitioner on 26.10.2015 and petitioner counsel before the State Commission has informed to the petitioner regarding the order on 5.11.2015 but the petitioner

has not been contacted to his counsel due to Diwali festival celebration. After the festival season when the applicant contacts to his counsel on 15.11.2015, the counsel was out of station due to which the petitioner could not procure relevant documents for filing the present petition. After this the petitioner faced serious health issues due to which he was in the hospital for a long time.

5. That, the petitioner due to his bad medical problem and financial crises was not in position to bear the cost and expenses in that circumstances the petitioner has contacted present counsel, he contact Faridabad to his present counsel on 24.03.2016 and the present counsel ready to file the appeal and after preparing appal there were some documents which were required to be filed before this Hon"ble Forum, so the considerable time was taken to procure these documents from Shajapur and Bhopal. Further more time was used to translate the entire document from Hindi to English. This appeal has filed by his counsel in the above mentioned circumstances the delay in filing of the appeal has been occurred due to financial crises and other unforeseen reason which was beyond in the control of the applicant due to all this reason the delay in filing of appeal before this nation forum may kindly be order to be condon in the fact and circumstances of the applicant case" .

13. The afore-mentioned reasons do not justify the delay of 71 days. There is absolutely no substantial reason given for the delay between 15.11.2015 and 24.3.2016. We rely on the judgment of the Hon"ble Supreme Court in Anshul Aggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC). The Hon"ble Apex Court held as under: "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".

It must be mentioned here that the authority in the case of Anshul Aggarwal v. New Okhla Industrial Development Authority (supra) pertains to the Consumer Protection Act.

14. In R.B. Ramalingam Vs. R.B. Bhuvaneswari, 2009 (2) Scale 108 , the Supreme Court observed as under:- "We hold that in each and every case the Court has to examine whether delay in filing the Special Leave Petitions stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition".

15. For all the afore-mentioned reasons stated in paras 11 & 12, we do not find it a fit case to condone the delay of 71 days.

16. Even otherwise on merits, it is observed that the District Forum had discussed in detail that the potatoes had become rotten in the cold storage of the

Opposite Party and the Complainant had initially issued a legal notice in October, 2011 when he had found that the entire potatoes had rotted in the cold storage.

17. It has been rightly observed by the Fora below that the bags had contained potatoes seeds meant to be sown in the next seasons, therefore, the low price is of no concern and rightly concluded that the Opposite Party was deficient in not returning the potatoes on a demand made by the Complainant. We observed from the record that the District Forum had rightly calculated the price per kilo of potatoes and has awarded reasonable damages of Rs. 12.50 per kilo taking into consideration the auction rate of potatoes between the months of October to December, 2011 which was Rs. 15/- per kilo. The interest awarded is also reasonable @ 8% p.a.

18. We do not see any error apparent on the face of record in the impugned order and finding of both the Fora below to exercise our limited revisional jurisdiction as laid down by the Hon''ble Apex Court in Rubi (Chandra) Dutta vs. United India Insurance Co. Ltd. II (2010) CPJ 19 (SC).

19. Hence, these Revision Petitions are dismissed both on delay and merits. No order as to costs.