

(2013) 07 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

Canadian Institute For International Studies And World Wide Immigration Consultancy Services Ltd. (Wwics) APPELLANT

Vs

Ekta Sharma RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 07 NCDRC CK 0002

Hon'ble Judges : J.

Final Decision : Petition dismissed

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 by the petitioner against the impugned order dated 19.03.2013 passed by the Delhi State Consumer Disputes Redressal Commission (for short "the State Commission") by which FA No. 39/2012 filed by the petitioner against the order dated 04.08.2011 passed by District Forum was dismissed on the ground that there was a delay of 135 days in filing the said appeal. Brief facts of the case are that the respondent Ekta Sharma filed a consumer complaint number 703/2006 before the District Forum, saying that she had taken admission in the "Bachelor of Nursing" degree course being run by the petitioners with effect from 1.11.2004, and that she deposited the necessary fee amounting to Rs. 2,82,000/- with the petitioners, out of which Rs. 2,44,000/- had been raised as loan from the Bank. She was told later on that she was not eligible for the said course. The District Forum in their order dated 4.08.2011 directed the petitioners/OPs to refund 50% of the fee/charges paid/deposited by the complainant within one month of the receipt of the order. An appeal filed by the petitioners/OPs against this order, was dismissed vide impugned order by the State Commission, saying that the same had been filed after a delay of 135 days. It is against this order that the present revision petition has been filed.

2. AT the time of admission hearing before us, learned counsel for the petitioner stated that the order passed by the District Forum was dated 04.08.2011, but they had shifted their working place from Mohali, Punjab to New Delhi in the year

2010 by virtue of letter dated 17.7.2010. The order, in question, had been received by them on 2.12.2011 and the appeal was filed before the State Commission on 17.01.2012. They had explained the reasons for delay but the State Commission wrongly relied upon some orders quoted in the body of the impugned order. We have examined the material on record and given a thoughtful consideration to the arguments advanced before us.

3. THE complaint, in question, was moved before the District Forum in the year 2006 and it was decided by the District Forum vide order dated 4.08.2011. In case, the petitioners had moved their place of work in the year 2010, it was their bound duty to inform the court about their new place of work. The District Forum, therefore, cannot be put to blame that they sent the copy of the order, in question, to a wrong address. Moreover the case has been contested by the petitioners before the District Forum and they are supposed to be in the knowledge of the order passed by the District Forum. The State Commission have rightly observed in their order that it was a contested case and the petitioners were regularly appearing before the District Forum. It is clear, therefore, that the petitioners have not been able to give any cogent and convincing explanation for the delay in filing the appeal. As per their own version, they received copy of the order on 2.12.2011 but the appeal was filed on 17.1.2012, i.e., after another period of one and a half month, for which they have not been able to give any explanation.

4. IT has been observed by the Hon"ble Apex Court in many cases, decided recently that unless there is a convincing explanation about the delay in filing the case, the same could not be condoned. Reference may be given to the orders passed by the Apex Court in R.B. Ramlingam Vs. R.B. Bhavaneshwari : 2009 (2) Scale 108, it has been observed: We hold that in each and every case the Court has to examine whether delay in filing the special appeal 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.

In Ram Lal and Ors. Vs. Rewa Coalfields Ltd., : AIR 1962 SC 361, it has been observed: It is, however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a discretionary jurisdiction vested in the Court by S. 5. If sufficient cause is not proved nothing further has to be done; the application for condonation has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant.

5. HON "ble Supreme Court after exhaustively considering the case law on the aspect of condonation of delay observed in Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation reported in : (2010) 5 SCC 459 as under; We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

6. HON "ble Apex Court in : (2012) 3 SCC 563 - Post Master General & Ors. Vs. Living Media India Ltd. and Anr. has not condoned delay in filing appeal even by Government department and further observed that condonation of delay is an exception and should not be used as an anticipated benefit for the Government departments. Hon"ble Apex Court in, 2012 (2) CPC 3 (SC) - Ansul Aggarwal Vs. New Okhla Industrial Development Authority observed 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.

Based on the above discussion, this revision petition is ordered to be dismissed at admission stage and the order passed by the State Commission upheld.