

(2013) 05 NCDRC CK 0132

In the National Consumer Disputes Redressal Commission

City Life Developers Agarwal Golden Chambers

APPELLANT

Vs

Vencillous Fernandes

RESPONDENT

Date of Decision : 03-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 327 : 2013 3 CPJ 272

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : Vimal Khanna , S.B.PRABHAVALKAR

Judgement

1. THIS revision petition has been filed by the Petitioner/Opposite party against the impugned order dated 19.7.2012 passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (in short, "the State Commission ") in Appeal No. A/12/161 - City Life Developers Vs. Mr. Vencillous Fernandes & Anr. by which, appeal filed by the petitioner was dismissed as barred by limitation.

2. BRIEF facts of the case are that complainants/respondents filed complaint against the OP/Petitioner and learned District Forum vide order dated 12.12.2011, while allowing complaint directed OP to give possession of flat after receiving payment of Rs.7,94,563/- from the complainant. Appeal filed by the petitioner was dismissed by learned State Commission vide impugned order on the ground that appeal was barred by limitation and no application for condonation of delay was filed against which, this revision petition has been filed. Heard learned Counsel for the parties at admission stage and perused record.

3. LEARNED Counsel for the petitioner submitted that learned State Commission has committed error in dismissing appeal, as petitioner was ready to file application for condonation of delay of six days; hence, revision petition be allowed and matter may be remanded back to the State Commission for disposal on merits. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law, which does not call for any interference; hence, revision petition be dismissed.

4. PERUSAL of record reveals that appeal was filed with delay of six days. No

application for condonation of delay was filed. During the course of arguments before the learned State Commission, petitioner 's Counsel sought permission to file application for condonation of delay, but permission was not given on the assumption that application for condonation of delay can be filed along with appeal only and not subsequently. Application for condonation of delay is normally filed by the party with Memo of Appeal, but there is no bar in filing such application even after filing appeal when fact of delay is brought to the notice of appellant by the Registry while examining defects or on raising objection by respondent or on suggestion of court hearing the appeal. Learned State Commission ought to have allowed petitioner to file application for condonation of delay and only after considering application for condonation of delay, appeal should have been decided.

5. CONSEQUENTLY , we allow the revision petition and order passed by learned State Commission in Appeal No. A/12/161 is set aside and petitioner is permitted to file application for condonation of delay with the State Commission and learned State Commission shall decide application for condonation of delay in accordance with law and proceed with the appeal. There shall be no order as to costs.

6. PARTIES are directed to appear before the State Commission on 29th May, 2013.