
(2015) 04 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

D J De Souza

APPELLANT

Vs

Champaneria

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Citation : 2015 2 CPR 614

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Final Decision : Petition dismissed

Judgement

1. COUNSEL for the respondent has filed an application for substitution of Arkray Healthcare Pvt. Ltd. in place of Span Diagnostics Ltd. It is averred that after the filing of the present Revision Petition a Business Purchase Agreement dated 24.01.2014 was executed between Arkray Healthcare Pvt. Ltd. and the Respondent Company. Respondent Company has transferred by way of slump sale all it's debts, borrowings, obligations and liabilities, both present and future in respect of it's business of In -Vitro Diagnostic Undertaking on a going concern basis to Arkray Healthcare Pvt. Ltd. with effect from 5th March, 2015. It is prayed that Arkray Healthcare Pvt. Ltd. be substituted in place of the respondent. We have heard the counsel for the respondent and the complainant/petitioner in person. It is hereby ordered that instead of substitution Arkray Healthcare Pvt. Ltd. be also added as a party in this case.

2. WE have heard the complainant in person and counsel for the respondent on the merits of this Revision Petition. The State Commission vide its order dated 17.09.2013 declined to condone the delay of 11 days because the complainant failed to prove the sufficient cause for condonation of the said delay. The State Commission quoted one judgment reported in (2013 1 CCC 525) wherein it was held that delay of shortest range may be un -condonable for want of acceptable explanation whereas in certain other cases, the delay of a long range is condonable, if the explanation is satisfactory. The complainant had received the copy of the District Forum's order on 26.04.2013. He filed the complaint by post, which was received in the Commission on 07.06.2013. The complainant

contended that he was facing health problems, namely, pain in his left knee for which he sought medical help from Dr. Bandekar, Orthopaedic specialist and Dr. Mohit Mody from Wockhardt Nusi Hospital and he was advised physiotherapy and ordered to have rest for the affected knee joint and as such was not in a position to file the appeal before this Commission by 26.05.2013. The State Commission dismissed the appeal on the ground that it was barred by time. It was observed that the petitioner had failed to produce the medical certificate.

3. THEREAFTER , he filed the review petition, which was dismissed on 20.11.2013. Again the filing of this Revision Petition was delayed by two days. Petitioner contended that he was not well. Revision Petition was silent about the above said two days. The complainant, who appeared in the Commission himself has filed the medical certificates. It shows that he was not well for few days. There could be some suppression of facts. The things were not brought to the Court properly but it must be borne in mind that the petitioner is contesting the case himself without the aid of any advocate. Counsel for the respondent/OP has argued that the delay should not be condoned in view of the judgment in the case titled as Ram Lal and Others v. Rewa Coalfields Ltd., 1962 AIR(SC) 361.

4. WE are of the considered view that there is a short delay, which is liable to be condoned in view of the peculiar facts and circumstances of the case. The Apex Court condoned 9 days" delay and desired that in such like cases, the Commission should exercise the suo -moto power in condoning the delay in Special Leave to Appeal (Civil) No. 12199 of 2013 titled as "Santosh Goyal Vs. Union of India and Ors." Decided on 18.03.2013.

5. CONSEQUENTLY , we accept the Revision Petition, set aside the order passed by the State Commission and grant another opportunity to the petitioner to contest his case on merits.

6. PARTIES are directed to appear before the State Commission on 15.05.2015 at 10 -30 A.M. sharp. The amended memo of parties be filed by the respondent/OP, before the State Commission on the date fixed.