(2013) 09 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

Dak Adhishak Head Post Office Sirmour Chowk Rewa — APPELLANT

Vs

Shubhangi Chaurasia — RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : 2013 0 NCDRC 664 : 2013 4 CPR 257

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : JASWINDER SINGH , ABHIK KUMAR , S.S.RAY

Judgement

1. REVISION petition no. 158 of 2011 has been filed by the petitioners/ Opposite parties under section 21 (b) of the Consumer Protection Act, 1986 against the order dated 07.08.2010 passed by the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal (''the State Commission '') in appeal no. 991 of 2009.

2. THE respondent/ complainant had filed complaint of misappropriation of the amount deposited by him in the name of his daughter Shubhangi Chaurasiya under the savings scheme of the recurring deposit account with the office of petitioner no. 1/ opposite party no. 1 by which the petitioner no.1 and 2/ opposite party no. 1 and 2 were responsible for the deposited amount and even then due to the sheer negligence of the petitioner no. 1 and 2, their authorised agents, i.e., respondent no.2 and 3/ opposite party no. 3 and 4 had misappropriated the deposited amount. Thereby it has been deficiency of service by the petitioner. The petitioner in the written statement, accepted that respondent no. 1 had opened a recurring account no. 2233159 with their post office on 28.04.2000 for Rs.3,000/- per month and from the above account, their authorised agents - respondent no. 2 and 3 had made fraudulent withdrawals by forging signature of respondent no. 1 and had withdrawn Rs.33,000/- on 01.02.2002 and again Rs.74,427.50 was withdrawn on 07.07.2003.

3. THE District Consumer Disputes Redressal Forum, Rewa (Madhya Pradesh) (''the District Forum '') vide order dated 13.04.2009 had accepted the complaint and ordered as follows: "Non-applicant no. 1 and 2 are being ordered that they

should pay the complainant Rs.1,02,000/- the amount deposited in the concerned account, along with the interest of 6% per annum from the date of the deposit till the date of the final payment within 30 days of this order. The non-applicant no. 1 and 2 would also pay Rs.5,000/- to the complainant for the mental pain that he had bore ". Aggrieved by the order of the District Forum the petitioner filed an appeal before the State Commission. The State Commission while observing that "the facts are not in dispute. To recapitulate the account was opened in minor ''s name through the agent, respondent no. 2 - Meena Achara and later Rs.33,000/- were withdrawn on 01.03.2002 and Rs.74,427.50 on 07.07.2003 to put fina lid on the account. We have referred to the rules, which require many safeguards but none of the safeguards was observed. The post office was grossly remiss in its duty to ensure that where the savings are of the minor, there are specific provisions in the rule for withdrawal, which were grossly breached. Under these circumstances, the post office cannot escape its liability under the specious plea that only the agent is liable. At this stage it is no clear whether both the husband and wife were involved or only one of them was involved in withdrawing the amount fraudulently ".

4. UNDER these circumstances, the State Commission came to the conclusion that "the District Forum has rightly held the postal authorities liable in the matter. However, having awarded the amount with interest @ 6% we find that it was unnecessary to saddle the appellants with compensation of Rs.5,000/-. The compensation is thus, set aside. With the above modification only as regards compensation of Rs.5,000/- this appeal is disposed of ".

5. HENCE , the present revision petition.

6. ALONG with the revision petition, the petitioners have filed an application for condonation of delay of 59 days, but as per the office report, there is a delay of 61 days. As per the application the reasons given to explain the delay are that: theimpugned order was passed on 07.08.2010. The copy of the impugned order was received in the office of the petitioner on 25.08.2010 through the Government counsel. On 26.08.2010, the appellant forwarded the impugned order to the office of the Chief Post Master General, Bhopal, M P for their advice. Further, on 28.09.2010, the office of the CPMG Bhopal forwarded their case papers to the office of the Director General, Department of Posts for observing the necessary formalities and was seeking further necessary action to file the revision petition.

On 19.10.2010, the Director General (Posts), New Delhi referred the matter back to the CPMG Bhopal for seeking legal opinion from Branch Secretariat Mumbai. On 02.11.2010, the case had been referred to the Branch Secretariat, Mumbai for their opinion. On 12.11.2010, the Branch Secretariat sent its legal opinion and advised filing of revision petition before the National Commission.

7. ON 22.11.2010, the legal opinion received from the Branch Secretariat, Mumbai is forwarded to the DG (Posts) New Delhi. Subsequently on 25.11.2010,

the DG (Posts) New Delhi referred the matter to the Deputy Legal Advisor, Ministry of Law and Justice for appointment of Government Counsel.

8. ON 09.12.2010, the Ministry of Law, Litigation Section, Delhi High Court appointed a counsel to file the petition. The letter of nomination dated 09.12.2010 was received in the office of the petitioner on 21.12.2010. Thereafter, the counsel was contacted and briefed on 29.12.2010. The counsel desired certain other papers which were subsequently supplied to him. Thereafter, the counsel prepared the revision petition along with application and the same was signed by the competent officer. We have heard the learned counsel for the parties and have gone through the records of the case carefully.

9. IT is seen that while the impugned order was forwarded to the office of the Chief Post Master General, Bhopal, Madhya Pradesh, for their advice, on 26.08.2010, the office of the CPMG Bhopal forwarded the case papers to the office of Director General, Department of Posts after one month on 28.09.2010. The Director General (Posts) New Delhi sent the matter back to the CPMG Bhopal on 19.10.2010 for seeking legal opinion from the Branch Secretariat, Mumbai. There is no mention as to which office Branch Secretariat was being consulted. Besides the case was then referred to the Branch Secretariat on 02.11.2010 again after a considerable gap.

10. HENCE , though the impugned order dated 07.08.2010 was received by the counsel for the petitioner on 16.08.2010 and the revision petition was filed only on 14.01.2011. The application fails to give day to day cause for the delay of 61 days. The petitioners are supposed to explain the day-to-day delay, but the needful has not been done. The petitioners have failed to provide ''sufficient cause '' for the delay 61 days. This view is further supported by the following authorities:

11. THE apex court in the case of In AnshulAggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC), it has been held that: "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 ".

12. IN BalwantSingh Vs. Jagdish Singh and Ors., (Civil Appeal no. 1166 of 2006), decided by the Apex Court on 08.07.2010 it was held: "The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005] ".

In Ram Lal and Ors. Vs. Rewa Coalfields Ltd., AIR 1962 Supreme Court 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. "

13. SIMILARLY , in Oriental Insurance Co. Ltd. vs. Kailash Devi and Ors. AIR 1994 Punjab and Haryana 45, it has been laid down that; "There is no denying the fact that the expression sufficient cause should normally be construed liberally so as to advance substantial justice but that would be in a case where no negligence or inaction or want of bona fide is imputable to the applicant. The discretion to condone the delay is to be exercised judicially i.e. one of is not to be swayed by sympathy or benevolence. "

14. 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. "

Recently, Hon ''ble Supreme Court in Post Master General and others vs. Living Media India Ltd. and another (2012) 3 Supreme Court Cases 563 has held; "After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and Government Undertaking, this Court observed as under; "It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy. Public interest undoubtedly is a paramount consideration in exercising the courts'' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation /resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest. "

15. THE Court further observed; "It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

16. IN our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/ years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

17. IN view of our conclusion on Issue (a), there is no need to go into the merits of Issues (b) and (c). The question of law raised is left open to be decided in an appropriate case.

18. IN the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs ". Observations made by Apex Court in the authoritative pronouncements discussed above are fully attracted to the facts and circumstances of the case.

Even, after getting two adverse findings, petitioners have chosen not to settle the claim of the respondent but have dragged him to the highest Fora under the Act.

19. IT is not that every order passed by Fora below is to be challenged by a litigant even when the same are based on sound reasoning.

20. IT is a well-known fact that Courts across the country are saddled with large number of cases. Public Sector Undertakings indulgences further burden them. Time and again, Courts have been expressing their displeasure at the Government/Public Sector Undertakings compulsive litigation habit but a solution to this alarming trend is a distant dream. The judiciary is now imposing costs upon Government/Public Sector Undertaking not only when it pursue cases which can be avoided but also when it forces the public to do so. Public Sector Undertakings spent more money on contesting cases than the amount they might have to pay to the claimant. In addition thereto, precious time, effort and other resources go down the drain in vain. Public Sector Undertakings are possibly an apt example of being penny wise, pound-foolish. Rise in frivolous litigation is also due to the fact that Public Sector Undertakings though having large number of legal personnel under their employment, do not examine the cases properly and force poor litigants to approach the Court.

The present case is fully covered under the case laws cited above Supra.

21. ACCORDINGLY , we find that there is no ''sufficient cause '' to condone the delay of 61 days in filing the present revision petition. The application for condonation of delay is without any merit as well as having no legal basis and is not maintainable. Consequently, the present revision petition being time barred by limitation and is dismissed with cost of Rs.5,000/- (Rupees five thousand only). Petitioner is directed to deposit the cost by way of demand draft in the name of ''Consumer Legal Aid Account of this Commission '' within four weeks from today. In case the petitioner fails to deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation.

22. LIST on 22nd November, 2013 for compliance.

