
(2013) 10 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

Dal Jeet Singh

APPELLANT

Vs

Shahid Khan Son Of Rafiq Ahmad Khan

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : 2013 0 NCDRC 763 : 2014 1 CPJ 15

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

Advocate : Soumajit Pani , H.S.SANDHU

Judgement

1. PRESENT revision petitions under Section 21(b) of the Consumer Protection Act, 1986 (for short, "Act ") have been filed by the Petitioner/Opposite party No.2 challenging impugned order dated 20.9.2011, passed by the State Consumer Disputes Redressal Commission, U.P.,Lucknow (for short, "State Commission ").

2. BRIEF facts are that Respondent No.1 to 3/Complainants filed complaint before District Consumer Disputes Redressal Forum, Pilibhit (For short, "District Forum ") seeking compensation of Rs.15,000/ - plus interest with cost of litigation against petitioner and respondents no.4 and 5/Opposite party No.1 and 3 on the allegations that complainants had purchased 3 FDRs of R.10,000/ - each in the name of their minor children and after maturity, petitioner and respondents no.4 and 5 have failed to pay the amount due. In spite of service, neither petitioner nor respondents no.4 and 5 appeared before the District Forum nor did they file any written reply and as such were proceeded ex parte.

3. DISTRICT Forum, vide its order dated 4.2.2006 allowed the complaint.

4. AGGRIEVED by the order of District Forum, petitioner and respondents filed appeals before the State Commission, which were dismissed vide impugned order. Hence, these petitions. Alongwith it, an application seeking condonation of delay has also been filed. However, in the entire application no period of delay has been mentioned.

5. WE have heard the learned counsel for the petitioner and gone through the

record.

6. THE only ground on which condonation of delay is sought read as under; "3. The petitioner got a paralytic stroke as result his left side of the body became paralyzed and he was admitted in a hospital for a month and thereafter he was bedridden for years together and was under constant medication and treatment. He was not in a position to speak, move and ride. When his health condition improve a little, he mustered courage to approach this Hon"ble commission for getting justice. "

Later on, petitioner filed additional affidavit in support of application for condonation of delay, in which he has taken the following pleas; "3. That the said appeals were dismissed ex parte on 20.09.2011 by the Ld. State Consumer Commission, Lucknow. 4. That as I was unwell and I suffered from posterior circulation stroke and my body was paralyzed and was bed ridden for years together. Hence, could not keep track of the appeals filed before the Ld. State Commission. 5. That in the month of January, 2012 my son enquired from the lawyer in Lucknow about the appeals pending before the Ld. State Commission, Lucknow and was told that the matter was pending. 6. That I was under bonafide impression that the matter was pending in Ld. State Commission, Lucknow and was shocked when I received a copy of the notice in Execution Petition No.33/2006 filed in Ld. District Forum, Piibhit, I further enquired from my lawyer in Lucknow which he affirmed and said that the same has been dismissed ex parte on 20.9.2011. 7. That I asked him to get the certified copy of the order which he applied only on 07.08.2012 and sent it to me in Pilibhit. 8. That after receiving the certified copy of the order I contacted my local lawyer who referred the matter to the present lawyer at Delhi. As the translation was to be done it took some time and was called by the present lawyer to Delhi in the month of October, 2012 to sign the Affidavit to file the Revision Petition. 9. That even though effectively there is no delay in filing the present Revision Petition from the date of knowledge, but calculating the same from the date of impugned order dated 20.09.2011, there is a delay of 298 days after excluding 90 days of allowable limitation period in filing the Revision Petition. "

7. ADMITTEDLY , petitioner was proceeded ex parte also before the District Forum. Thus, petitioner has no defence on merits in this case.

8. BE that as it may, petitioner did not appear even before the State Commission after filing the appeals and as such the same were heard in the absence of the petitioner, though counsel for respondents was present. State Commission in its impugned order has observed; "It is clear from the perusal of record that appellant did not present before this Commission for putting their case neither they appeared before the District Consumer Forum for defending them. It became clear after the perusal of impugned order of District Forum that Ld. Forum took into consideration the originals of FDR papers. No documents were filed on the record by the appellants which shows that these FDR were not issued by them. The application which was filed by appellant before the Ld. Forum for

quashing of Ex -parte order indicates that service of notice is complete upon them personally in spite of that no written objection were filed by them. During the hearing of said application copy of Partnership Deed was also produced before the Forum. It is to be noted that Sri Daljeet Singh/Appellant is Managing Director of M/s. Hindustan General Finance Company and M/s. Super Finance Company. It was also argued before the Ld. Forum that appellant company intentionally did not appear before the Ld. Forum for the purpose of grabbing the money of public. Keeping all the facts and circumstances in mind, specially seeing this that during argument of appeals, appellants were not present, it became apparent that the intention of Appellants is to grab money by not appearing before the Commission also. In such situation, Appellant Company is guilty of not only Commission of deficiency of service but for adopting unfair trade practice. After aforesaid discussion, we came to the conclusion that aforesaid both the appeals are liable to be dismissed. "

9. IN the grounds of revision taken before this Commission, petitioner has nowhere stated as to how and when he got the knowledge of State Commission 's order. The present revision petition is absolutely silent on this material point.

10. HON "ble Supreme Court in Anshul Aggarwal vs. New Okhla Industrial Development Authority -IV (2011) CPJ 63 (SC) has held that while deciding the application filed for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Act for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if the appeals and revisions which are highly belated are entertained. Relevant observations made by Apex Court read 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 fora ".

Apex Court had also observed in case "State of Nagaland Vs. Lipokao and others reported in 2005(2) RCR (Criminal) 414 that; "Proof of sufficient cause is a condition precedent for exercise of discretion by the court in condonation of delay ".

11. APEX Court also in "D. Gopinathan Pillai Vs. State of Kerala and another, reported in (2007) 2 SCC, 322, held; "When mandatory provision is not complied and the delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic ground only. "

12. UNDER the circumstances, reasons given in the application are taken as inadequate and insufficient to condone the long delay of 298 days. Ratio of the above mentioned cases fully applies to the facts and circumstances of the

present case. Therefore, grounds stated in the application cannot constitute sufficient cause so as to condone the delay of 298 days in filing these revision petitions. Consequently, application for condonation of delay stand dismissed. The only intention of the petitioner is just to deprive the complainant the fruits of award which was passed as early as on 4.2.2006. The petitioner has been successful in depriving the complainants, the fruits of award passed more than seven and a half years ago.

13. UNDER these circumstances, we do not find any infirmity, illegality or jurisdictional error in the order passed by the State Commission. The present revision petitions are most bogus and frivolous one and as such are liable to be dismissed with punitive cost. Accordingly, we dismiss both the revision petitions with cost of Rs.20,000/ - each, to be paid to the respondents no.1 and 2.

14. PETITIONER is directed to deposit the cost by way of demand draft of Rs.20,000/ - each in the name of respondents no.1 and 2 separately within four weeks with the District Forum. In case, petitioner fails to deposit the cost within the prescribed period, he shall be liable to pay interest @ 9% p.a., till realization.

15. COSTS awarded to the respondents shall be paid only after expiry of the period of appeal or revision preferred, if any.[]

16. PENDING application also stand dismissed. List for compliance on 29.11.2013.