
(2012) 10 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

Debasish Banerjee

APPELLANT

Vs

State of West Bengal , Soma Das , District Consumer
Disputes Redressal Forum , President, Dcdrf , Member,
Dcdrf , Amrendra Kumar Dass , Shrishankar Prasad Ghosh

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Citation : 2012 0 NCDRC 616

Hon'ble Judges : J.M.Malik , Vinay Kumar J.

Advocate : Ritu Raj Choudhary , Shrishankar Prasad Ghosh

Judgement

1. THE parties entered into an agreement wherein Debasish Banerjee, petitioner/ opposite party agreed to construct the residential house of Amarendra Kumar Das on 14.01.2006. It was stipulated that the complainant would pay a sum of Rs.10,03,608/- and OP would take up the work on 23.01.2006. The complainant paid a sum of Rs.10,00,000/- but the progress of the work was very slow. The OP had promised to complete the work by 15.09.2006 as stipulated in the contract. Again, two months " time was extended, but the OP failed to do the needful. The complainant engaged Saroj Kumar Das, Consultant, Civil Engineer, SJDA to assess the costs of construction of his building. He opined that the costs of total construction was Rs.4,68,240.36 plus depreciation value in the sum of Rs.30,000/-. The complainant stood cheated. There was deficiency in service, so he filed the complaint.

2. THE defence set up by the OP was that the instant dispute was of civil nature. He had filed money civil suit before the learned Single Judge, which was still pending. The criminal case was also pending against him regarding this dispute. The complainant did not pay the money in time. The complainant was a defaulter. The complainant paid a sum of Rs.8,50,000/- only and was yet to pay a sum of Rs.1,53,600/-. The OP has already incurred a sum of Rs.80,000/- from his own pocket to keep the work in running condition. The complainant did not co-operate and did not allow the labour mason to enter into the premises. The

learned District Forum, vide its order dated 15.07.2008, allowed the complaint and directed the OP to pay Rs.5,14,935.64. It also awarded a sum of Rs.10,000/- as compensation and Rs.2,000/- as litigation charges, in default, the complainant was directed to pay interest @ 9% p.a.

Aggrieved by that order, the OP preferred appeal before the State Commission, on 29.04.2009. The learned State Commission dismissed the appeal as time barred. Aggrieved by that order, the present revision petition has been filed.

3. WE have heard the learned counsel for the petitioner on the application for condonation of delay. He vehemently argued that the petitioner could not approach this Commission due to unavoidable circumstances. He was wrongly advised to file a Writ Petition before the Hon "ble High Court. He also went behind the bars and remained there for considerable time. Thereafter, he remained sick due to viral Hepatitis and was advised absolute bed rest by his Doctor. He further argued that the petitioner is ready to pay costs to the complainant and an opportunity of being heard must be granted in his favour. All these arguments lack conviction. We are not satisfied with the explanation given by the petitioner. There was delay of more than eight months " in filing the appeal before the State Commission. Moreover, these proceedings before the Hon "ble High Court, Kolkatta, were not pursued diligently. The following order was passed by the Hon "ble High Court, Kolkotta: "05.02.09 (570) (d.c.) W.P. 25543(W) 2008 Mr. Debjit Kundu ... for respondents. The respondents are represented. None appears in support of the petition. Let this matter go out of the list with liberty to mention after six weeks. The pendency of the writ petition will not preclude the respondents from proceeding with matters elsewhere or taking other steps in such regard ".

4. THE petitioner even did not go to the Hon "ble High Court to seek redressal of his grievance. The Hon "ble High Court did not condone the delay for the proceedings pending before it. On the contrary, it observed that the pendency of the writ petition will not preclude the respondents, i.e., the complainant from proceeding with matters elsewhere or taking over steps in such regard. Moreover, the law is clear. There is no need to approach the Hon "ble High Court. This action was taken in order to delay the case unnecessarily. The record reveals that the order was announced by the District Forum on 15.07.2008, its copy was received on 16.07.2008, First Appeal was filed on 29.04.2009. There was eight months " delay. The Writ Petition was filed before the Hon "ble High Court of Kolkatta on 23.09.2008, which was dismissed in default on 05.02.2009. The record further reveals that the petitioner remained in the civil prison from 17.10.2008 to 28.11.2008. He has failed to explain the "day- to-day " delay, for the reasons best known to him. Even if it is assumed that he remained sick from 14.01.2009 to 10.03.2009, there is no explanation from 23.03.2009 to 29.04.2009. He also could not explain as to why no action was taken between 16.07.2008 to 23.09.2008. The First Appeal filed by the respondent is hopelessly barred by time. This view is supported by the following authorities.

5. IN *Anshul Aggarwal 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 ".

6. RECENTLY this Commission presided over by Hon "ble Mr. Justice Ashok Bhan has dismissed the revision petition on the ground of delay and the delay of 104 days was not condoned, in case reference "*Mahindra Holidays and Resorts India Ltd. Versus Vasantkumar H. Khandelwal and Anr.* " [Revision petition No. 1848 of 2012 decided on 21.05.2012]. In *Balwant Singh Vs. Jagdish Singh and Ors.* (Civil Appeal No. 1166 of 2006), decided on 08.10.2010, the Hon "ble Apex Court has held that 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] ".

See also, (1) *Bikram Dass Vs. Financial Commissioner and others*, AIR, 1977 SC 1221, (2) *R.B. Ramlingam v. R.B. Bhavaneshwari*, I (2009) CLT 188 (SC)= I (2009) SLT 701=2009 (2) Scale 108, (3) *Ram Lal and Others v. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361, (4) *Sow Kamalabai, W/o Narasaiyya Shrimal and Narsaiyya, S/o Sayanna Shrimal Vs. Ganpat Vithalroa Gavare*, 2007 (1) Mh. LJ 807.

7. IN view of these judgments, the revision petition is dismissed.