

**(2011) 10 NCDRC CK 0026**

**In the National Consumer Disputes Redressal Commission**

HDFC Bank Limited having its Registered Office at HDFC Bank House APPELLANT

Vs

Amardeep Tharumal Chhabriya, Prop. Mahalxmi Automotive Sales Near Ujamba Wadi, Auto Lane RESPONDENT

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**Date of Decision :** 14-10-2011

**Acts Referred:**

**Citation :** 2011 0 NCDRC 766 : 2011 4 CPJ 623

**Hon'ble Judges :** V.B.Gupta , Suresh Chandra J.

**Advocate :** Rishab Raj Jain

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**Judgement**

1. BY way of present revision petition filed under Section 21 of the Consumer Protection Act, 1986 (for short 'the Act?'), there is challenge to order dated 1.4.2011, passed by State Consumer Disputes Redressal Commission, Nagpur (for short 'State Commission? ) as well as order dated 24.11.2006, passed by District Consumer Disputes Redressal Forum, Amravati (for short 'District Forum? ).

2. RESPONDENT no.1 herein (complainant before the District Forum ) filed a complaint under Section 12 of the Act. District Forum after considering the plea of the parties partly allowed the complaint and held that opposite parties no.1 and 2 (petitioners herein) have given loan on Indica vehicle to respondent no.1. However, instead of giving such loan of Rs.3,00,000/-, they had given only Rs.2,97,500/- to opposite parties no.3 and 4 ( who are respondents 2 and 3 in this petition) by cheque. As the amount of Rs.2500/- has not been paid, the registration of the vehicle of respondent no.1 could not be made as the documents have not been supplied Thus, petitioners have caused financial, physical and mental loss to respondent no.1 and there has been deficiency in the service. Order dated 24th November, 2006 passed by the District Forum was challenged by the petitioners before the State Commission. As per impugned order, there was delay of 546 days in filing of the appeal. The State Commission dismissed the application for condonation of delay as well as the appeal.

This is how the matter has reached before this Commission.

3. IT is contended by learned counsel for the petitioner that State Commission has erred in observing that there was delay of 546 days in filing of the appeal. In fact, there was delay of only 53 days and the same has been well explained in the application and petitioner has sufficient cause for condonation of delay. In support, learned counsel has placed before us certified copy of order passed by this Commission in "HDFC Bank vs. Rajeev Narula (R.P. No. 211 of 2011)" decided on 25.2.2011. On merits, it is contended that District Forum has given the relief on the basis of conjectures and surmises as there is no document on record to show as to why the registration of the vehicle was not done by respondents no.2 and 3, when petitioners had duly performed its part of obligation by paying the amount as per arrangement with the dealer.

4. ORDER allowing the complaint of respondent no.1 was passed on 24.11.2006 by the District Forum, whereas application for condonation of delay in filing the appeal before the State Commission, was filed on 26.2.2007. As per averments made in the application for condonation of delay, it is stated that certified copy of District Forum's order was received only on 5.12.2006 and as such there is delay of only 53 days in filing of the appeal. It is apparent from the record that there is delay of only 53 days and not as observed by the State Commission. that of 546 days. Be that as it may, the question to be seen is as to whether sufficient grounds were mentioned in the application for condonation of delay filed before the State Commission or not. Relevant portion of the application for condonation of delay read as under; 2. The Appellant states that the impugned order though passed on 24.11.2006, the certified copy thereof was received by the Bank officer only on 5.12.2006, the Appellant submits that all the Legal matters pertaining to that region are handled by the appellants branch at Nagpur i.e. HDFC Bank Ltd., 204, Bhagyashree Complex, Cement Road, Shankar Nagar Square Dharampeth Nagpur. The Appellant states that the authorized officer Mr. Dilip P. Raghorte who was attending the matter before the District Forum and as soon as he came of knowledge of the impugned order, he informed the higher officials of the bank and upon the instructions sent the papers to the Mumbai legal department of the Appellants for filing the appeal. 3. The Mumbai office thereafter directed to prefer the appeal against the impugned order and accordingly the appeal was drafted and it was again sent to Mumbai for approval. It is submitted that the appellant is being a bank all legal work needs to be sanctioned from Mumbai legal section and accordingly in this period the time was consumed for taking the approval. Thereafter delay is caused in filing the appeal as the mandatory procedure was required to be followed by the bank/appellant. The delay caused is bonafide and not a deliberate one. It caused just to complete the procedural formalities of the bank."

5. AS per averments made in the application for condonation of delay, certified copy of the order of District Forum was received by Bank officer on 5.12.2006 and petitioner's authorized officer Mr. Dilip P. Raghorte who was attending the

matter before the District Forum informed the higher officials of the bank and upon instructions sent the papers to the Mumbai legal department for filing of the appeal.

6. IT is nowhere stated in the entire application, as to when the authorized officer of petitioner's Bank Mr. Dilip P. Raghorte came to know about the passing of the order by the District Forum and to which official at Mumbai he had sent the papers. Further, it is nowhere stated as to on which date Mumbai official directed and to whom such direction was given that appeal should be filed. The application is absolutely vague and does not give any particulars as to when the papers were sent to Mumbai and it was dealt by which of the official of the Petitioner-Bank. Relevant portion of the impugned order reads as under; "Heard Advocate Walekar for the Appellant and Advocate Kasture for the Respondent. There is delay of 546 days in filing this appeal. Application for condonation of delay vide M.A. No.92/07 has been moved. In this application for condonation of delay, some grounds have been mentioned to show that Appellant HDFC Bank has sufficient cause to file appeal belatedly. However, on closer scrutiny of the application, we are finding that the application is not supported by any affidavit. In our view this is a major lacuna. This appeal came to be filed in the year 2007 alongwith condonation of delay application and now, we are in 2011. Since last 4 years, no affidavit in support of condonation of delay application is filed by the appellant nor any justification for not filing such affidavit is given. In these circumstances, we have no other option but to dismiss the said application. Hence the order. ORDER Condonation of delay application bearing No.MA- 92/07 is rejected. Consequently, Appeal does not survive for consideration."

It is well settled that "sufficient cause" for non appearance in each case, is a question of fact. Delhi High Court in New Bank of India Vs. M/s Marvels (India): 93 (2001) DLT 558, has held; "No doubt the words "sufficient cause" should receive liberal construction so as to advance substantial justice. However, when it is found that the applicants were most negligent in defending the case and their non-action and want of bonafide are clearly imputable, the Court would not help such a party. After all "sufficient cause" is an elastic expression for which no hard and fast guide-lines can be given and Court has to decide on the facts of each case as to whether the defendant who has suffered ex-parte decree has been able to satisfactorily show sufficient cause for non appearance and in examining this aspect cumulative effect of all the relevant factors is to be seen."

7. 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."

Similarly, in *Oriental Insurance Co. Ltd. vs. Kailash Devi & 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."

8. 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."

The Hon<sup>ble</sup> Supreme Court after exhaustively considering the case law on the aspect of condonation of delay observed in *Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation* reported in (2010) 5 SCC 459 as under; "We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - *Collector, Land Acquisition, Anantnag v. Mst. Katiji* (1987)2 SCC 107, *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123 and 10 *Vedabai v. Shantaram Baburao Patil* (2001) 9 SCC 106. In dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while emphasizing that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not

impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay."

Decision of this Commission in HDFC Bank (supra) is not applicable to the facts of the present case as in that case the counsel who was handling the case of the petitioner was suffering from spondylitis and high blood pressure. It was in such circumstances, the delay was condoned.

9. IN the case in hand, there is no such thing, As already observed, the application for condonation of delay is absolutely vague. It is nowhere mentioned as to which of the official at Mumbai had drafted the matter, on which date the Mumbai office received the file and on which date instructions were given for filing the appeal.

10. SINCE, no reasonable explanation has been given, we hold that no sufficient cause nor any cogent reason has been given which entitles the petitioner to have the delay condoned. Even on merits, the petitioner has no case and we do not find any illegality or infirmity with the order passed by the District Forum.

It is well settled that under Section 21 (b) of the Consumer Protection Act, 1986, scope of revisional jurisdiction is very limited.

11. RECENTLY, Hon<sup>ble</sup> Supreme Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. 2011 (3) Scale 654 has observed ; "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

It is also well settled that no leniency should be shown to such type of litigants, who in order to cover up their own fault and negligence goes on filing meritless petitions in different foras.

12. THUS, no jurisdictional or legal error has been shown to us to call for interference in the exercise of powers under Section 21 (b) of the Act. THUS, present petition is hereby, dismissed with punitive costs of Rs.25,000/- (Rupees

Twenty Five Thousand only). Petitioner is directed to deposit the costs of Rs.25,000/- in the Consumer Legal Aid Account of this Commission, within four weeks from today. In case, petitioner fails to deposit the said cost within the prescribed period, then it shall also be liable to pay interest @ 9% p.a., till realization. List for compliance on 18.11.2011.