

(2017) 03 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

Case No : 3767 of 2013

JAGNNATH PRASAD MISHRA R/O VILLAGE & POST SANGALI

APPELLANT

Vs

REGIONAL MANAGER, LIC & ANR.

RESPONDENT

Date of Decision : 14-03-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21 \(b\)](#) - Jurisdiction of the National Commission

Citation : 2017 2 CPR 359

Hon'ble Judges : Rekha Gupta

Advocate : GAGANDEEP SHARMA, KAMAL GUPTA

Judgement

1. The present revision petition no. 3767 of 2013 has been filed against the judgment dated 13.05.2013 of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow ("the State Commission") in First Appeal no. 206 of 2011.

2. The facts of the case as per the petitioner/ complainant are that the petitioner's wife Smt Savitri Devi took an insurance policy on 28.02.1997. Smt Savitri Devi expired on 27.01.2000 and the petitioner was the nominee of the insurance policy of his wife. The petitioner has claimed the amount from the respondent - LIC but the respondent repudiated the claim.

3. The petitioner hired Mr Rajesh Kumar, Advocate from Lucknow to claim the amount and after consulting him the petitioner filed a case on 23.10.2002 in the District Consumer Disputes Redressal Forum, Lucknow which was registered as complaint no. 911 of 2002. The date of hearing was fixed for 27.02.2002 and as the petitioner was suffering from high fever, the petitioner could not be present on the said date. After one week when the petitioner was feeling better, the petitioner contacted his lawyer, and was informed that the Forum had reserved the verdict and he would be informed when the judgment was delivered. The petitioner tried to ascertain about the judgment many times from his lawyer but in vain. The petitioner again went to find out about the judgment and on

14.08.2007, the petitioner was informed that the Presiding Officer has been transferred, hence, the judgment was not pronounced. The petitioner doubted his lawyer so he went to the District Forum and saw the Presiding Officer working there. The petitioner contacted his lawyer again, and he asked the petitioner to come to his home in the evening. In the evening the lawyer gave the photocopy of the order passed by the Forum dated 27.02.2007 and said that the jurisdiction of his complaint pertains to Unnao Forum and not at Lucknow Forum. The petitioner was cheated by his lawyer. The petitioner came to Unnao on 16.08.2007 and after preparing the case, the petitioner filed the case. After going through the same, it was revealed that the copy has been prepared on 04.04.2007.

4. The District Consumer Disputes Redressal Forum, Unnao ("the District Forum") vide its order dated 08.05.2009 held as under: "The complainant has filed an affidavit in support of his contention, but it is also clear that the complainant did not try anything during 27.02.2007 to 14.08.2007. He never tried to know about the proceedings of the District Forum. It is also not acceptable that the complainant has kept silent because of over confidence in his lawyer and did not took any further step. The complainant informed to be unhealthy on 27.02.2007 but no medical evidence has been submitted. Also it is unacceptable that the complainant was quiet and waited from 27.02.2007 to 14.08.2007 for the judgment and if the judgment is not pronounced within one month, another date of hearing is provided for further arguments. The complainant clearly wants to take the advantage of his lawyer's deceit just to make the complaint within the period of limitation but did not complaint to his lawyer about the cheating. The complainant relied on the case of Rafiq vs Munshi Lal ARI 1981 SC 1400, in which due to the lawyer's fault the complainant should not bear any loss. In this matter no affidavit has been filed by the complainant's lawyer and no fault of the lawyer have been found instead the complainant is found guilty. No ordinary man/ woman can keep quiet till 14.08.2007, without making any effort and just waiting for his lawyer's call knowingly that the judgment has been reserved for judgment on 27.02.2007. Hence, it is clear that the grounds given by the complainant are not true. The complainant is not successful to proof and authentic reason for the delay and it cannot be condoned. The application under section 24 A, sub-section (2) of the Consumer Protection Act, is dismissed and the complaint is also dismissed as barred by limitation".

5. Aggrieved by the order of the District Forum, the petitioner/ complainant filed an appeal before the State Commission. The State Commission vide its order dated 20.08.2009 had passed the following order: "The defects have not yet been removed by the appellant/ complainant although a period of more than two months has elapsed after the appeal was presented and the defects pointed out. It appears that the appellant is not interested in prosecuting this appeal. As a consequence, it is dismissed for non-prosecution."

6. Thereafter, the State Commission on 13.05.20013 dismissed the application for recall of the order dated 20.08.2009 because as per the Hon''ble Supreme Court in Civil Appeal no. 4307 of 2007 and 8155 of 2001 - Rajeev Hitendra Pathak and Ors vs Achyut Kashinath Karekar and Anr. - IV (2011) CPJ 35 (SC), as they did not have the power to review/ recall their own order.

7. Hence, the present revision petition.

8. We have heard the learned counsel for the parties. Learned counsel for the petitioner has contended that the petitioner was not aware that the appeal was dismissed in default and came to know only on 20.06.2011 and thereafter the recall application was filed. The petitioner on one pretext or the other was informed or told by his counsel that the matter is pending before the State Commission and was under the bonafide impression that the appeal was pending and came to know only on 20.06.2011 and thereafter the recall application was filed.

9. The learned counsel for the respondent on the other hand has drawn our attention to the fact that even before the State Commission whereas the order dismissing the revision petition for non-prosecution was passed on 20.08.2009, the application for recall of the said order was only filed in the year 2011.

10. We have carefully gone through the record.

11. The reasons given in the application for recall of the order are as under: The appellant's lawyer informed, in the second week of August that the appeal presented contains certain defects and the index, photocopy of the complaint letter and photocopy of evidence has to be filed. Only after that the hearing of the appeal should be possible; After collecting the above said information the appellant informed the lawyer of his District dated 15.08.2009 and came to know that he is not available in town and will return back after one week; When the appellant visited the District Court to meet the District Lawyer after one week he asked the appellant to get the information noted to his clerk who would provide the documents; The appellant's lawyer asked the District lawyer's clerk about his application, he replied that he need 15-20 days to search for the application and will provide the same;

The appellant's lawyer visited the district lawyer in the first week of October, he replied that his clerk is not feeling well and asked to come again after one week; During this period the appellant got sick and could not communicate with the District lawyer. After getting well he again communicated to the District Lawyer in the month of November and the clerk told the appellant to come to their office; The appellant communicated again with the District lawyer's clerk in the second week of November, then the lawyer's clerk gave that documents to the appellant; After getting the application, the appellant contacted his lawyer at Lucknow and provided him the same. After looking at the documents he informed that the evidence is not available in the documents. The lawyer told the appellant to ask the District lawyer to provide the evidence and send the same

through courier or by himself; The appellant again visited the District Court to meet the District lawyer in the month of December and told him that the evidence is not in the documents to which the District lawyer replied that he has provided the whole copy of the documents and if something is missing then he has to find from the court or the respondent's lawyer for the same; The District lawyer had asked the appellant to contact him in the month of January 2010. After contacting the District lawyer, the appellant got the photocopy of the evidence; The appellant came to meet his lawyer on 07.02.2010 after getting the photocopy of the evidence from the District lawyer at Lucknow then he came to know that the lawyer's relative is ill and he is out of District and return after one week; After returning back home the appellant got sick and could not contact his lawyer; The appellant visited his lawyer to give the photocopy of the evidence at Lucknow on 15.03.2010 and asked him to clear the deficiencies in the appeal and proceed the case for hearing; The appellant's lawyer told the appellant that he is not in town and will return back in one month. The appellant has been talking to his lawyer on phone since, as it is not possible for him to go to Lucknow again; The appellant visited his lawyer in June 2011 because of the summer holidays but the appellant came to know that he is not available and will come back on 10.07.2011. The appellant himself came to the State Commission and got filed and inspected through Shri Ramakant Dixit, Advocate and came to know that due to non-clearance of the defects and non-appearance of the lawyer, an order to dismiss the appeal have been passed dated 20.08.2009; To get the photocopy of the above said order Shri Ramakant Dixit, Advocate filed the application on 20.06.2011 and the appellant was told to come back in the first week of July to file an application for the recall the order passed on 20.08.2009;

The appellant collected the papers from his previous lawyer from Lucknow on 15.07.2011 and give it to Shri Ramakant Dixit, Advocate for further assistance; The appellant has been aware about the order dated 20.08.2009 on 20.06.2011 when the appellant contacted the State Commission office through Shri Ramakant Dixit, Advocate; The appellant presented an apology before the State Commission that the deficiencies were created by mistake and the appellant should be forgiven for the same.

12. In the application for recall of the order, the petitioner/ complainant has given no reasons for the day today delay of almost two years in filing the application for recall of the order. The reasons given are merely a litany of the efforts made by him to get his counsel to do the needful. It would appear from the application as also the orders of the lower fora that the complainant was extremely negligent in pursuing/ monitoring the case and as also to monitor the manner in which his counsel was pursuing his case on his instructions. It is extremely difficult to believe that the petitioner came to know only on 20.06.2011 that his appeal was dismissed on 20.08.2009. It only strengthens our conviction that the petitioner was extremely negligent in pursuing his case and he has failed to adduce any valid and acceptable reasons to interfere with the order of the State Commission.

13. 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 Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is hereby, dismissed.