

(2012) 09 NCDRC CK 0066

In the National Consumer Disputes Redressal Commission

Jannabai Rambhau More

APPELLANT

Vs

New India Assurance Co. Ltd

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Citation : 2012 0 NCDRC 542

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

Advocate : Mahaling Pandarge

Judgement

1. THE Law does not come to the rescue of a sleeping person. Delay dampens the ordour of a case. It has definitely deleterious effect on the case as a whole. In this case, we are called upon to decide a case where there was delay of about three years " in filing the complaint under Section 12 of the Consumer Protection Act, 1986 before the District Forum and AGAIN there was delay of 778 days " in filing this revision petition, before this Commission.

2. THE complainant Ms. Janabai Rambhau More, resides at Village Bhanarwadi, District Beed, Maharashtra. She took "Janata Personal Accident Policy " covering the period 04.05.1998to 03.05.2003. On 07.10.1998, the complainant while travelling from Ahmednagar to Bhoom by Maharashtra State Road Transport Corporation bus, along with her son, received injury because the window of the bus where the complainant was sitting, got broken and caused hurt to the eyes and nose of the complainant. She sustained permanent injury on one eye. She was taken to Dr. Sanap "s Hospital, who gave her first aid and advised her to go to Ahmednagar. THE complainant went to Shri Datta Netralaya and Eye Foundation and Accident Hospital, Ahmednagar, where she was admitted and was discharged on 13.10.1998, after treatment and surgery. She had to incur an expenditure of Rs.45,650/-. Her claim was repudiated by the New India Assurance Co. Ltd., the respondent. A complaint was filed before the District Forum. THE District Forum allowed the complaint and directed the respondent to pay Rs.2,15,000/-, with interest at the rate of 6% p.a. from the date of complaint, till its realisation. Aggrieved by that order, the New India Assurance

Co. Ltd. Preferred an appeal before the State Commission. The State Commission came to the conclusion that the original complaint filed by the complainant before the District Forum was barred by time, and allowed the appeal, dismissing the complaint.

Aggrieved by the order of the State Commission, the complainant/ petitioner filed the present revision petition before this Commission, with delay of 778 days".

We have heard the counsel for the petitioner at length. The learned counsel for the petitioner submitted that the Hon "ble Apex Court as well as the Hon "ble National Commission has always held in their plethora of judgments that the technical points and grounds should not be raised before the Consumer Fora as the Consumer Protection Act is social welfare legislation, as such in this case the Hon "ble State Commission has reversed the order of the Hon "ble District Forum on the technical grounds and hence it is to be set aside by this Hon "ble National Commission. We are of the considered view that the State Commission took the right view. It must be borne in mind that the facts are stubborn things. This is an indisputable fact that the complainant was discharged from the hospital on 13.10.1998. The complaint was filed in the year 2003. No explanation for the above said inordinate delay is forthcoming. There is no evidence that the complainant had moved an application for condonation of delay before the District Forum. There is delay of five years ", which remains unexplained.

3. IN SBI Vs. M/s. B.S. Agricultural Industries ĩ½ 2009 (SC-2) - GJX ĩ½ 0414 ĩ½ SC, the Apex court, in paras 7, 8, 9 and 15, has held :- "7. Section 24A of the Act, 1986, prescribes limitation period for admission of a complaint by the Consumer Fora thus: "24A. Limitation period ĩ½ (1) - The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. 2) - Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period: Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay ". "8. It would be seen from the aforesaid provision that it is peremptory in nature and requires Consumer Forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The Consumer Forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. The expression, "shall not admit a complaint " occurring in Section 24A is sort of a legislative command to the Consumer Forum to examine on its own whether the complaint has been filed within limitation period prescribed thereunder. As a matter of law, the Consumer Forum must deal with the complaint on merits only

if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. IN other words, it is the duty of the Consumer Forum to take notice of Section 24A and give effect to it. If the complaint is barred by time and yet, the Consumer Forum decides the complaint on merits, the Forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside ". "9. IN Union of India and Anr. Vs. British India Corporation Ltd. and Ors. 12½ (2003) 9 SCC 50, the Apex court while dealing with an aspect of limitation for an application for refund prescribed in Business Profits Tax Act, 1947, has held that "the question of limitation was a mandate to the forum and, irrespective of the fact whether it was raised or not, the forum must consider and apply it ". "15. On its plain averments, the complaint is barred by time and ought to have been dismissed as such but curiously this aspect was not examined by any of the consumer fora although specific plea to this effect was taken by the Bank. Since the complaint is barred by time and liable to be dismissed on that count, it would be unnecessary to examine the other grounds of challenge "

. Moreover, there is delay of 778 days " in filing the present revision petition before this Commission. The State Commission had decided the case on 16.10.2009. We have perused the application for condonation of delay filed by the complainant/petitioner in this revision petition. She had made the following averments. She resides in a remote village at District Beed and could not contact her Advocate in the month of December, 2009. She met her Advocate in the month of January, 2010. The local counsel had advised her to challenge this order in the Appellate Authority. A number of documents were in Marathi Language and the same had to be got translated into English, which she could not get it done in the months of January and February, 2010. Due to her poor financial condition and due to agricultural work, her family members were busy. She took a decision to file this revision petition in the year 2012. It was prayed that delay of 777 days " should be condoned. The facts detailed above, do not constitute the "sufficient cause/ground ". It is not difficult for a counsel to get the Marathi documents translated into English or Hindi. This could have been done within a week. There is no evidence that the financial condition of the complainant was weak, otherwise, she should not have filed the instant revision petition. There is a huge delay and the case is hopelessly barred by time.

4. 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 ". In R.B. Ramlingam v. R.B. Bhavaneshwari, I (2009) CLT 188 (SC)= I (2009) SLT 701=2009 (2) Scale 108, it has been

observed that "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 ". In *Ram Lal and Others v. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361, it has been observed that "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 Section 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 bonafides may fall for consideration; but the scope of the inquiry 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. "

In *Sow Kamalabai, W/o Narasaiyya Shrimal and Narsaiyya, S/o Sayanna Shrimal Vs. Ganpat Vithalroa Gavare*, 2007 (1) Mh. LJ 807, it was held that "the expression "sufficient cause " cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of Section 5 of Limitation Act. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation. I do not find any such "sufficient cause " stated in the application and no such interference in the impugned order is called for ".

5. SEE also, *Balwant Singh Vs. Jagdish Singh and Ors.*, (Civil Appeal no. 1166 of 2006), decided by the Apex Court on 08.07.2010. In view of the above discussion, it is clear that the instant revision petition is barred by time and deserves dismissal. Consequently, the revision petition is dismissed, as barred by time.