(2016) 05 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

Case No : 1277 of 2016

K.A. SAIRA BANU APPELLANT

Vs

K.J. VASUDEVAN & 7 ORS. RESPONDENT

Date of Decision : 23-05-2016

Acts Referred:

Partnership Act, 1932, Section 32(3) - Retirement of a partner

Citation : 2016 3 CPR 278

Hon'ble Judges : Dr. B.C. Gupta

Advocate : S. Devarajan, ?Shinoj K. Narayanan

Judgement

1. In this revision petition, the impugned order dated 31.07.2009, passed by the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram (hereinafter referred to as "the State Commission") in Appeal No. 346/2003, A. Rahim & Ors. vs. K. J. Vasudevan & Ors., vide

which, while dismissing the said appeal, the order dated 29.10.2009, passed by the District Consumer Disputes Redressal Forum, Alappuza in O. P. No. A. 217/98, filed by the complainant/respondent no. 1, K.J. Vasudevan, allowing the said complaint, was upheld.

2. It has been alleged by the complainant/respondent no. 1, K. J. Vasudevan that the opposite party no. 1/respondent no. 2, United Trading Finance is a partnership firm and the opposite parties no. 2 to 8, including the present petitioner/opposite party no. 7 are its partners. The complainant deposited certain amounts with the opposite party no. 1 firm as Fixed Deposits as per the details below:-

Date Amount Maturity Date Rate of Interest

12.01.1995 50,000/- 11.1.1999 22.5%

12.01.1995 40,000/- 11.1.1999 22.5%

01.06.1995 60,000/- 28.2.1999 22.5%

3. It was stated that the opposite parties failed to return the said amounts to the complainant after the maturity date. The District Forum, vide order dated 29.10.2009, allowed the said complaint and directed the opposite parties no. 1 to 8 to pay a sum of Rs. 1,50,000/- with interest @ 12% from the date of deposit till realization with a cost of Rs. 5,000/-. This order was challenged by way of an appeal before the State Commission by four partners i.e. opposite parties no. 5 to 8, pleading that they had since retired from the firm as partners and hence, not liable to pay the said sum. Vide impugned order dated 31.07.2009, the State Commission rejected the said appeal and held that under Section 32(3) of the Partnership Act, the retiring partners were liable for the liabilities that existed prior to their date of retirement. Being aggrieved from the said order, the petitioner/opposite party no. 7 is before this Commission by way of the present revision petition.

4. There is a huge delay of 2341 days in filing the present revision petition. In the application for condonation of delay, the petitioner has stated that the learned counsel for the petitioner could not communicate the impugned order to him in time and hence, the delay in filing the petition was neither deliberate nor intentional. During hearing before me, the learned counsel could not advance any cogent and convincing evidence for the enormous delay in filing the revision petition. The petitioner was the appellant before the State Commission and hence, expected to be aware of the impugned order passed by the State Commission. No affidavit of the concerned counsel has been placed on record, from where it could be inferred that the said counsel did not communicate the order of the State Commission to the petitioner. It is a settled legal proposition that unless there are proper grounds with convincing explanation for condoning the delay, the same cannot be condoned. The Hon?ble Supreme Court, in their judgements from time to time, have taken the consistent plea that the delay should be condoned only if there are valid grounds for doing so. In their judgment in Anshul Aggarwal vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC) , the Hon?ble Supreme Court, interalia, held 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 Foras".

5. The present revision petition, therefore, deserves to be dismissed on this ground alone.

6. Even on merits, it has not been denied anywhere that the amounts in question were not deposited by the complainant with the Company, of which he was one of the partners. The plea taken by the petitioner that he alongwith three other partners had retired from the firm on 04.07.1998, does not help him at all,

because the State Commission has rightly observed that under Section 32(3) of the Partnership Act, the retiring partners could not be held liable for the liabilities that existed prior to the date of retirement. The plea taken by the petitioner that the complainant was not a consumer under the Consumer Protection Act, 1986, is also not tenable because a person, who has made deposits with a firm expecting financial returns on the same, is a consumer as held by this Commission in the case "Kavita Ahuja vs. Shipra Estate Limited & Jai Krishna Estate Developers Pvt. Ltd." [CC/137/2010 decided on 12.02.2015].

7. Based on the discussion, I do not find any merit in the revision petition and the same is liable to dismissed and I order accordingly. There is no illegality, irregularity or jurisdictional error in the orders passed by the fora below. There shall be no order as to costs.

