

(2014) 11 NCDRC CK 0101

In the National Consumer Disputes Redressal Commission

Karnataka Telecom Department Employees Co -Operative
Society Ltd.

APPELLANT

Vs

N.B. Thriveni

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Citation : (2014) 11 NCDRC CK 0101

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : HARSH KAUSHIK , ABHAY CHATTOPADHYAY , Charu Shahi

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 17.04.2013 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, "the State Commission ") in Appeal No. 2022 of 2012 - Bakathavakchalam V.J.K. Vs. Smt. N.B. Tiveni by which, while dismissing appeal, order of District Forum allowing complaint was upheld.

2. BRIEF facts of the case are that complainant/respondent became Member of OP/Petitioner -Society by paying necessary charges of Rs.20/ - and share amount of Rs.1,000/ - in the hope of getting site for house. Complainant deposited total Rs.6,50,000/ - on different dates and OP assured that it would allot site within two years. OP failed to allot site inspite of demands. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that they have taken up steps and all the projects have been developed and 75% of the sites have already been allotted to the Members after obtaining necessary approval. It was further submitted that as value of the site has gone up considerably, no loss to purchaser will be caused on account of delay and prayed for dismissal of complaint. Learned District Forum after hearing both the parties, allowed complaint and directed OP to refund Rs.6,50,400/ - with 12% p.a. interest and further allowed Rs.3,000/ - as cost. Appeal filed by OP was dismissed by learned State Commission vide impugned order against which, this revision petition has been filed along with application for condonation of delay.

3. HEARD learned Counsel for the parties on application for condonation of delay and perused record. Learned Counsel for the petitioner submitted that delay of 63 days occurred in filing of revision petition due to approval from necessary authorities and seeking legal advice from Advocates; hence, delay may be condoned. On the other hand, learned Counsel for the respondent submitted that there is delay of 134 days and that too without any explanation; hence, application be dismissed.

4. AS per office report, there is delay of 134 days in filing revision petition. Impugned order was passed on 17.4.2013 and as per application, petitioner applied for certified copy on 3.7.2013 and received it on 12.7.2013. He filed writ petition before Hon "ble High Court of Karnataka on 25.7.2013, which was dismissed on 11.9.2013 and petitioner applied for certified copy on 13.9.2013 and received copy on 24.9.2013 and filed this revision petition on 27.11.2013.

5. PERUSAL of application reveals that petitioner applied for certified copy of the impugned order just after 2 1/2 months and even after receiving the same on 12.7.2013, writ was filed on 25.7.2013 and no explanation has been given for applying for certified copy after 2 1/2 months and for taking 13 days in filing writ petition before Hon "ble High Court. Hon "ble High Court dismissed writ petition on 11.9.2013 and petitioner applied for certified copy on 13.9.2013 and received certified copy on 24.9.2013, but filed revision on 27.11.2013 and explanation for filing revision petition has been given that petitioner had to take approval from necessary authorities and sought legal advice from the Advocates. Petitioner has not placed on record any document on which permission for filing revision petition was made to the proper authorities of the petitioner and when permission was received. It has also not been mentioned that on which date Advocate was consulted and when he advised for filing revision petition. Hon "ble High Court of Karnataka while dismissing writ petition already observed that there was alternative remedy available. When petitioner was aware about alternative remedy of filing revision petition before this Commission and Hon "ble High Court of Karnataka had already dismissed writ petition, petitioner was under an obligation to file revision petition immediately but petitioner took 64 days in filing revision petition and no reasonable explanation has been furnished by the petitioner in obtaining requisite permission from necessary authorities or in seeking legal advice and in such circumstances, delay in filing revision petition without any explanation cannot be condoned in the light of following judgments.

6. 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."

7. INRAM Lal and Ors. Vs. RewaCoalfieldsLtd., 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."

8. HON "ble 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."

9. HON "ble Apex Court in (2012) 3 SCC 563 - *Post Master General and Ors. Vs. Living Media India Ltd. and Anr.* has not condoned delay in filing appeal even by Government department and further observed that condonation of delay is an exception and should not be used as an anticipated benefit for the Government departments.

10. HON "ble Apex Court in 2012 (2) CPC 3 (SC) - *Anshul Aggarwal Vs. New Okhla Industrial Development Authority* observed 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".

11. LEARNED Counsel for the petitioner has placed reliance on (2012) 12 SCC 527 - *Poonam & Ors. Vs. Harish Kumar & Anr.* in which delay of 63 days was condoned by Hon "ble Apex Court in filing writ petition before High Court on the ground that out of three appellants, two were married and illiterate and one appellant who was pursuing the case fell ill and in spite of request to the Counsel, Counsel did not inform the appellant regarding dismissal of case. Facts of the aforesaid case are not applicable at all to the case in hand because in the present

case petitioner had already taken advice and challenged impugned order before Hon "ble High Court and inspite of directions by the Hon "ble High Court, petitioner did not file revision petition immediately and no satisfactory explanation has been given for condonation of delay of 63 days.

12. AT every stage, petitioner delayed in obtaining copy of impugned order in filing writ petition and in filing revision petition and in such circumstances, application for condonation of delay is liable to be dismissed. Thus, it becomes clear that there is no reasonable explanation at all for condonation of inordinate delay of 63 days. In such circumstances, application for condonation of delay is dismissed. As application for condonation of delay has been dismissed, revision petition being barred by limitation is also liable to be dismissed.

When prices of plot have increased considerably as per version of petitioner, he is not losing anything in refunding amount. He is unnecessarily pursuing revision.

13. CONSEQUENT LY , the revision petition filed by the petitioner is dismissed as barred by limitation at admission stage with no order as to costs.