

(2017) 09 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

Case No : 2339 of 2017

KARNATAKA VIDYUTCHAKTHI MANDALI & ANR

APPELLANT

Vs

S.B. ESHWARAPPA

RESPONDENT

Date of Decision : 21-09-2017

Acts Referred:

Citation : 2017 4 CPR 235

Hon'ble Judges : V.K. Jain

Advocate : Poonam Seth, Rumi Chanda

Judgement

1. The complainant / respondent was enrolled as a member of the petitioner society and in that capacity he applied for registration of a site valued at Rs.99,500/-. He paid Rs.64,000/- to the petitioner but the site was not allotted to him. He therefore, approached the concerned District Forum by way of a consumer complaint.

2. No-one appeared for the petitioner despite of service of notice and therefore an ex-parte order was passed by the District Forum, directing it to allot the site and execute the registered sale deed after receiving the balance amount of Rs.35,500/- from the complainant.

3. Being aggrieved from the order passed by the District Forum the petitioner approached the concerned State Commission by way of an appeal. Since there was a delay of 298 days in filing the appeal, an application seeking condonation of the said delay was filed. The said appeal having been dismissed as barred by limitation as well as on merits, the petitioner is before this Commission by way of the present revision petition.

4. Since there is a delay even in filing this revision petition, an application seeking condonation of the said delay of 148 days has also been filed.

5. The application which the petitioner had filed before the State Commission, seeking condonation of delay of about 10 months in filing the appeal, to the

extent it is relevant reads as under: " 3. I state that for the reasons mentioned in the Memorandum of Appeal, the impugned order is arbitrary and deserves to be inferred by this Hon'ble Commission. I say that the appellants / OP's on service of notice could not contest the case for the reasons stated hereunder. I say that during January, 2012, i.e. 19.1.2012, the Department of Co-operation superseded the appellant society without there being any grounds for the same and the appellant society was to prepare all the records including the accounts etc., to challenge the said order and to obtain the stay. I say that the appellant society herein obtained the order of stay. Further I say that the matter was contested and went upto Hon'ble High Court and was remanded. I say that, thereafter, in the month of December, 2012 the said order was set aside and the appellant society had to meet the officials of the Cooperative Department to show the necessary documents showing that no illegality is committed by the society. I say that in view of the above unavoidable and difficult circumstances, the office boys who received the notice, have misplaced the same and as such the appellant society could not engage the advocate and contest the same. I say that the appellant came to know about the ex-party order only in the month of March, 2013 when our advocate filed vakalath in execution proceedings and verified the same. I say that the appellant society came to know about the ex-parte order only in the month of March, 2013 when our advocate filed vakalath in execution proceedings and verified the same. I say that the appellant society came to know about the same when the non bailable warrant was issued in the execution proceedings. I say that the non-appearance before the District Forum is not intentional one, but due to unavoidable circumstances. 5. I say that the respondent has already filed the execution petition before the District Forum to implement the order of the District Forum and the warrant has been issued against the second respondent herein. I state that I have a good case on merits and that I am bound to succeed in the appeal. I say that the order passed by the District Forum is erroneous and not sustainable in law and hence the same is liable to be set aside".

6. The order by the District Forum came to be passed on 31.8.2012. This is not the case of the petitioner that the copy of the aforesaid order was not sent to it by the District Forum. As per the

practice of the District Forums a free copy of the order is sent to every party. Therefore, in the ordinary course of business a copy of the order dated 31.8.2012 would have been sent to the petitioner and received by it. The only explanation given in the application was that the petitioner society was superseded by the Government in January, 2012 and the said supersession was set aside by the High Court in December, 2012. Even if it is presumed that before December, 2012, the petitioner could not have taken adequate steps to file an appeal before the State Commission, there was no justification for not approaching the said Commission once the supersession of the society was set aside in December, 2012. The appeal before the State Commission however, came to be filed about six months after supersession was revoked. Since the

prescribed period of limitation for filing an appeal before the State Commission had already expired by that time, the petitioner ought to have explained the delay of each and every day. The petitioner however, did not even make an attempt to explain the delay between December, 2012 till it approached the State Commission by way of an appeal, on a day-to-day basis. It is alleged that the petitioner came to know of the ex-parte of the District Forum only in March, 2013, but it is not claimed that a copy of the order of the District Forum was not received by the petitioner prior to March, 2013. In fact, the appeal before the State Commission was not filed even in March, 2013 or soon thereafter. This clearly shows that the petitioner society was grossly negligence in the matter and did not bother to approach the state Commission even after execution proceedings had been initiated against it and warrants of arrest of its functionaries had been issued. The State Commission therefore was fully justified in not condoning the abnormal delay of almost ten months in filing the said appeal.

7. The negligence of the petitioner society did not come to an end with the dismissal of its appeal by the State Commission. It has approached this Commission against the order of the State Commission dated 14.11.2016 only in August, 2017. It is rather unfortunate that despite its having been proceeded ex-parte before the District Forum and its appeal before the State Commission having been dismissed as barred by limitation, the petitioner did not act with expediently and has approached this Commission only after a delay of about five months. The conduct of the petitioner therefore does not call for any indulgence by this Commission in exercise of its revisional jurisdiction.

8. For the reasons stated hereinabove I find no merit in the revision petition, which is accordingly dismissed, with no order as to costs.