

(2012) 05 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

Ketan Consultants Pvt. Ltd

APPELLANT

Vs

Suresh Dattaraya Namjoshi

RESPONDENT

Date of Decision : 22-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 799 : 2012 3 CPJ 60

Hon'ble Judges : R.C.JAIN , S.K.NAIK J.

Final Decision : Petition dismissed

Judgement

1. AGGRIEVED by the order dated 24.11.2011 passed by the Maharashtra State Consumer Disputes Redressal Commission (for short "the State Commission ") in FA No. A/10/66, the original opposite party, M/s. Ketan Consultants Pvt. Ltd. has filed this petition purportedly under Section 21(b) of the Consumer Protection Act, 1986 with a view to invoking the supervisory jurisdiction of this Commission.

2. WE have heard the learned Counsel for the petitioner and have considered his submissions. The facts and circumstances which led to the filing of the complaint, passing of the order in the complaint and filing of the appeal are amply noted in the impugned order passed by the State Commission and need no repetition at our end. The petitioner was proceeded ex parte in the complaint proceedings before the District Forum. When the order passed by the District Forum was put to execution, the petitioner moved an application for setting aside the order but without success. The petitioner, therefore, approached the High Court for Redressal of his grievance and, ultimately, Writ Petition was withdrawn by the petitioner in February 2009 with liberty to file the appeal before the State Commission. However, no appeal was filed up till 2010. Along with the appeal an application was filed seeking condonation of delay of 84 months which included the time taken before the District Forum as also before the High Court in writ proceedings. The State Commission having considered the submissions and reasons put forth by the petitioner in the application held that the petitioner has failed to explain the undue delay in filing the appeal by observing as under: "10. Considering the above undisputed facts, there was delay of 30 months in filing

the application to set aside the ex parte order and further the appeal is filed after 10 months after withdrawing the Writ Petition from the High Court. We find much force in the argument advanced by Advocate Ms. Khatate on behalf of non-applicant/respondent-Though the applicant had wrongly filed Writ Petition in the High Court, and consumed the time of about three and half years that period is excluded as provided under Section 14 of Limitation Act, in our view, there could be no difficulty for the applicant to file the appeal within stipulated period of limitation or within reasonable period after withdrawal of Writ Petition. 11. As pointed out by the proxy Advocate for the non-applicant that though the applicant was ailing and advised for constant medical supervision by visiting the Doctor at Mumbai, he was not bed-ridden. In such situation he could have contacted and instructed his Counsel to file the application for setting aside the ex parte judgment and order. Therefore, such inordinate delay on medical ground cannot be condoned. Further no explanation is given by the applicant as to why he could not file an application for setting aside ex parte order within stipulated period of limitation. 12. Considering all these facts, we find no substance in the application under order. It is well settled law that in absence of any just and reasonable ground such inordinate delay cannot be condoned. Therefore, we decline to condone the delay. "

Counsel for the petitioner would assail the said order as not based on correct and proper appreciation of the facts and circumstances of the case, least being in consonance with the legal position as established by the Apex Court in a catena of judgments. He submits that if a governmental body can be shown some latitude in the matter of condoning the delay in filing proceeding the individual like the petitioner is also entitled to the similar kind of latitude and, therefore, the State Commission ought to have allowed the application for condonation of delay and decided the appeal on merits rather than dismissing it on the ground of limitation. We have noted down this submission only to be rejected because the law on the subject of condonation of delay in filing a particular proceedings is well-settled by a catena of decisions rendered by the Apex Court, various High Courts and this Commission in umpteen number of cases. A person who seeks the exercise of judicial discretion of a Court or Tribunal in his favour in the matter of condonation of delay, must explain to the satisfaction of the Court/Tribunal/ Forum that he had "sufficient cause " which prevented him from filing the proceedings within the prescribed period of limitation. While doing so, he must explain each day "s delay and show that the delay was not intentional or wilful which will entitle him to seek judicial discretion in his favour. In our view, going by the totality of the facts and circumstances of the case, the State Commission was fully justified in declining to exercise its judicial discretion in favour of the petitioner in not condoning the delay in this case. We see no illegality, material irregularity much less any jurisdictional error in the impugned order which warrants interference by this Commission. The revision petition is dismissed with cost of Rs. 10,000 to be deposited in "Consumer Legal Aid Account " of this Commission within four weeks from today. Revision Petition dismissed.