

(2013) 12 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

Known You Seeds (India) Pvt. Ltd.

APPELLANT

Vs

Ashwathanarayana Reddy

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : 2013 0 NCDRC 902 : 2014 2 CPJ 689

Hon'ble Judges : V.B.GUPTA J.

Final Decision : Petition dismissed

Judgement

1. HEARD . Respondent/Complainant herein, filed a consumer complaint before the District Consumer Disputes Redressal Forum, Tumkur (for short, "District Forum") on the ground that he has purchased certain bags of Papaya seeds from Petitioner No. 2/opposite party No. 2 and the seeds were manufactured by Petitioner No. 1/opposite party No. 1. The said seeds were not germinated within the specified time and as such respondent/complainant suffered loss and claimed damages in the form of compensation amounting to Rs. 4,90,000 with interest.

2. BOTH the petitioners did not appear before the District Forum, in spite of service. Accordingly, they were proceeded ex parte. Thereafter, District Forum vide order dated 10.6.2010, allowed the complaint of the respondent in part and awarded a sum of Rs. 1,00,000 (Rupees one lac only) as compensation along with cost of Rs. 1,000.

3. BEING aggrieved by the order of the District Forum, both petitioners filed appeal before the State Commission. Along with it, an application seeking condonation of delay of 114 days was also filed.

4. THE State Commission vide its impugned order dated 10.11.2011 dismissed the application for condonation of delay being devoid of merits and also dismissed the appeal on merits. Hence, this revision petition.

5. IT is contended by learned Counsel for the petitioners that respondent did not produce any expert evidence before the District Forum. Moreover, the seeds were not sown in the field but in the poly bags in open sun light. Hence, respondent

itself was negligent.

6. ON the other hand, it has been contended by learned Counsel for the respondent that petitioners were proceeded ex parte before the District Forum. The respondent has fully proved his claim before the District Forum. Further, before the State Commission there was delay of 114 days in filing the appeal. So, there is no infirmity or ambiguity in the order passed by the State Commission. The State Commission in its order has observed: 8. It is the case of the complainant that he being lured away with the advertisement and publicity issued by the OP, purchased several packets of Papaya seeds from the OP for a total cost of Rs. 12,600. He has sown the Papaya seeds in two acres of his land and carried out all the agricultural operation as contemplated and as per the instructions of OP. He did provide the water and the manure. Unfortunately the said seeds did not germinate. Thereby he suffered total loss. He made request to OP to visit his field and notice the existing situation. Though one of the field officers of the OP i.e., Venugopal visited the field, noticed that the seeds are not germinated, thereafter also there was no response from the OP. Then complainant caused the legal notice, again the OP kept quiet. Thus, he felt both deficiency in service and unfair trade practice.

9. The evidence of the complainant which finds full corroboration with the contents of the undisputed documents appears to be natural, cogent and consistent. There is nothing to discard his sworn testimony. It is a quality of evidence that is more important than that of the quantity. Though OPs were duly served with the notices, remained absent without any sufficient reasons or cause. The absence of the OPs does not appear to be bona fide and reasonable. When there is a basic proof that the seeds sold by the OPs did not germinate, there is no need to get any other expert evidence. The contention of the complainant that one of the field Officers of the OP i.e., Venugopal visited the land and observed non -germination of the seeds remained unchallenged. OP neither put their defence nor examined their field officer to substantiate their defence if any.

7. THOUGH OP is aware of the filing of the said complaint failed to appear. It is contended by the OPs that they came to know of the order only when they received the notice in execution case No. 34/2010 that is why there is a delay in filing the appeal. We do not accept the said explanation. The appellants failed to explain each and every days delay. In that context also the approach of the appellants is not fair. Though complainant invested his hard earned money, he is unable to reap the fruits of his investment because of the defective seeds. The OP collected the huge amount by selling the sub -standard seeds accrued wrongful gain to themselves and caused wrongful loss to the complainant that too at no fault of his.

8. VIEWED from any angle, we do not find any illegality or irregularity committed by the D.F. in allowing the said complaint. On the other hand, the appellants has also failed to show before this Commission that the impugned order suffers from

legal infirmity, unsustainable in law or that it suffers from any error apparent on the face of record requiring our interference. Appeal appears to be devoid of merit so also LA. 2 filed seeking condonation of delay. Accordingly we answer point Nos. 1 to 3 and proceed to pass the following: ORDER

The appeal and I.A. 1 are dismissed.

10. It is well settled that "sufficient cause" for condoning the delay in each case is a question of fact.

11. Apex Court in *Anshul Aggarwal v. New Okhla Industrial Development Authority*, : IV (2011) CPJ 63 (SC), has observed:

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.

It is apparent from the findings of both the Fora below, that petitioners have conducted this litigation in a very careless and negligent manner. Firstly, they did not appear before the District Forum. Secondly, even thereafter they did not become wiser and have chosen to file the appeal after a delay of 114 days. Thus, State Commission rightly refused to condone the long delay of 114 days.

9. IT is well settled that under Section 21(b) of the Consumer Protection Act, 1986 (for short, "Act"), this Commission can interfere with the order of the State Commission where such State Commission has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

10. HON "ble Supreme Court in *Mrs. Rubi (Chandra) Dutta v. United India Insurance Company*, : II (2011) CPJ 19 (SC) : IV (2011) SLT 303 : 2011 (3) Scale 654, has observed: Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view that what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a

view could have been taken, by setting aside the concurrent finding of two Fora.

As it is an admitted fact that petitioners were ex parte before the District Forum. Therefore, petitioners have no defence on merits. Be that as it may, petitioners in the entire revision petition have now here mentioned as to on which date and how they got the knowledge of the order of the District Forum. Since, petitioners were ex parte, the District Forum was justified in allowing the complaint. Furthermore, we do not find any reason to disagree with the findings of the State Commission.

11. IN view of the concurrent findings of facts given by the Fora below, there is no infirmity or ambiguity in the orders.

12. HENCE , the present revision petition stands dismissed. No order as to cost.