

(2007) 04 NCDRC CK 0081

In the National Consumer Disputes Redressal Commission

KOHINOOR INTERNATIONAL

APPELLANT

Vs

INTRA SHIP

RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:

Citation : 2007 2 CPR 286 : 2007 3 CPJ 49

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Advocate : N.Ganapathy , Rajeev Kumar , Sanjeev Walia , Sanjeev Sharma

Judgement

1. THIS order will govern the disposal of identical applications filed under Section 24a of the Consumer Protection Act, 1986 (for short the "act") for condonation of delay in filing Original Petition Nos. 444/2002, 445/2002, 447/2002, 448/2002 and 449/2002. In former two complaints, M/s. Kohinoor International is the complainant while in later three complaints M/s. M. G. Exports is the complainant. Opposite parties are same in all the five complaints.

2. FOR the sake of brevity the facts are being taken from the application filed in said O. P. No. 444/2002. It is alleged that complainant had filed O. P. No. 81/1999 in the State Commission on 28. 9. 1999 well within limitation period. Notices in the complaint were issued, evidence was adduced and arguments were heard by the State Commission. By the order dated 2. 5. 2001 which came to the knowledge of complainant only on 6. 9. 2001 the complaint was ordered to be returned for being presented before the National Commission on the ground that the total amount involved therein was above Rs. 20 lakh which was beyond its pecuniary jurisdiction. Complaint was, thereafter, re-filed along with a miscellaneous application restricting the total claim to Rs. 16,98,307 after waiving interest @ 24% p. a. On being pointed out that only a fresh complaint would lie, the application was withdrawn on 5. 10. 2001. Thereafter Complaint Case No. 113/2001 was filed in the State Commission limiting the total claim to Rs. 16,98,307. This complaint was dismissed by the State Commission by the order dated 12. 8. 2002. Hence, this complaint is being filed by the complainants. It is alleged that if the period spent before the State Commission

is excluded, there is delay of about 130 days. It is this delay which is sought to be condoned by the complainant. Opposite parties contested the application by filing replies.

In O. P. Nos. 445/2002, 447/2002, 448/2002 and 449/2002 though the principal amount is less than 20 lakh each but by adding interest the same exceeds Rs. 20 lakh.

3. MAIN thrust of argument advanced by Mr. Sanjiv Sharma for opposite party No. 4 - Insurance Company which was adopted by the Counsel of remaining opposite parties, was that the parties in present complaints and Complaint Case Nos. 80/1999, 81/1999, 83/1999, 85/1999, 86/1999 and 88/1999 initially filed before the State Commission are different and present complaints are also not based on the cause of action on which said complaints of the year 1999 were instituted. It was pointed out that certain new facts have been incorporated in present complaints. To be noted that O. P. Nos. 1 and 4 in the said complaints of the year 1999 were dropped as parties on the applications filed by the complainants. Remaining opposite parties in those complaints are the opposite parties in the present complaints. Further, we have perused the two sets of the complaints filed in 1999 and present complaints and, in our view, the amounts claimed as also cause of action thereof are similar. It is pertinent to mention that in addition to filing of present complaints, the complainants had challenged the aforesaid order of the State Commission dated 12. 8. 2002 by filing appeal Nos. 505/2002, 506/2002, 507/2002, 508/2002, 509/2002 and 510/2002 which were dismissed by this Commission by the order dated 31. 3. 2003 holding that in view of the said order dated 2. 5. 2001 the only course open to the complainants was to have filed complaints before the National Commission instead of again filing them by reducing the claimed amount by waiving interest before the State Commission. Present complaints were filed on 9. 12. 2002. Admittedly, complaints initially filed in the year 1999 were within limitation period. In our opinion, in the facts and circumstances of case, there is sufficient cause to condone the delay in question in all these complaints. Accordingly, while allowing condonation applications the delay in question is condoned.

4. LIST on 9. 5. 2007 for further proceedings. Ordered accordingly.