(2013) 04 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

KRISHI UPAJ MANDI SAMITI APPELLANT

Vs

Sarbati Devi RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Citation : (2013) 04 NCDRC CK 0006

Hon'ble Judges : Rekha Gupta J.

Final Decision : Petition dismissed

Judgement

1. REVISION petition No. 923 of 2013 has been filed against the final judgment and order dated 28.9.2012 passed by the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (''the State Commission'') in appeal No. 1017 of 2012. The facts of the case as per the respondent/complainant before the District Consumer Disputes Redressal Forum, Jhunjhunu, Rajasthan (the District Forum) are as follows:

2. THE respondent is staying at village Jhanjhot, Tehsil Chirawa. Respondent''s husband Late Mahinder Singh was running livelihood of his family through doing the work of agriculture. On 28.6.2011, when he was giving water to his crops during that time because the electricity was gone, when the electricity came then he came in Kotari of running the motor of well. Because of current in Kotari husband of the complainant died on the spot. According to the scheme of State Government any person who gets injured, handicap, permanently disabled and die while doing the work of agriculture then the help is provided under Rajiv Gandhi Krishi Sathi Yojna 2009 through wholesale market.

3. THE husband of the respondent died while doing the agricultural work, therefore, the respondent filed one claim memo on filing the same on 5.8.2011 for the amount of Rs. 1,00,000 because of his demise under Rajiv Gandhi Krishi Sathi Yojna 2009 in the office of non -applicant but the non -applicant kept on giving assurance to pay the amount within one -two months only but despite the fact that complainant fulfilled all the formalities, the petitioner/respondent did not make the payment even on demise because of current at the time of doing

the work by Late husband Mahender Singh of respondent, only this much is stated by the petitioner that post -mortem report is not annexed along with claim form. Therefore, will not pay the amount of Rs. 1,00,000.

4. THE respondent along with his claim memo filed the documents, death certificate of gram panchayat, panchnama of renowned persons, majornama, enquiry report of police station showing that the husband of the respondent died because of current of electricity at the time of doing work. Despite the same the claim of the respondent is dismissed by the petitioner which was not in the interest of justice. The petitioner in their written statement had admitted that the application was made by the respondent but stated that the respondent did not give the post -mortem report due to want of the same it was not possible to give relief amount.

5. THAT the complaint of the respondent was not sustainable. Respondent is not a consumer of the petitioner, therefore, complaint is not sustainable.

6. THE District Forum in their order dated 11.6.2012 opined that "in the present case, the petitioner/respondent stated that no postmortem report was given but the complainant has submitted along with her application the death certificate of deceased agriculturist Mahendra Singh which was issued by Gram Panchayat, panchnama, panchnama of motbir witnesses (illegible)/enquiry report of police station and whereby it is proved that farmer Mahendra Singh died due to electric shock in Kotdi at the time when he was going to switch on the motor while doing agricultural work and the respondent by overlooking the same, has gone away from the real objective of Rajiv Gandhi Krishi Sathi Yojna launched by State Government and did not make payment to the complainant on the basis of technical complexities and dismissed her claim application on wrong grounds and which is deficiency in its services. Consequently, the application of the complainant is allowed and the petitioner/respondent "Secretary, Krishi Upaj Mandi Samiti, Chirawa" is directed to make payment of aid amount to complainant under Rajiv Gandhi Krishi Sathi Yojna 2009 due to immediate death the spot/death of agriculturist Mahendra Singh due to electric shock while doing agricultural work, within a period of one month".

Aggrieved by the order of the District Forum, the petitioner herein - Secretary, Krishi Upaj Mandi Samiti has filed an appeal before the State Commission. The State Commission vide their order dated 28.9.2010 opined that "in the light of facts and circumstances, we do not find any error in the order dated 11.6.2012 passed by learned District Forum, Jhunjhunu. Since, the District Forum has correctly exercised the discretion on the facts available on the record, no ground of interference is made out. Besides this, there seems no substance in the appeal even on merits. Therefore, the order dated 11.6.2012 passed by District Forum, Jhunjhunu in complaint No. 201 of 2011 is upheld and the appeal filed by the appellant is dismissed on merit. The complainant shall be entitled to receive the amount deposited with District Forum, Jhunjhunu along with earned benefits. The appellant is granted one month''s time to comply with the remaining order."

7. DISSATISFI ED by the order of the State Commission, the petitioner filed this present revision petition before us. The main grounds for the revision petition are as follows:

- - both the Fora below have not appreciated the terms of paragraph No. 5 under the Rajiv Gandhi Krishi Sathi Yojna which lays down the procedure and requirements for any claim under the said scheme. This paragraph clearly lays down that a post -mortem report needs to be submitted along with the claim form before the claim authority. It is an admitted fact by the respondent herein that she did not submit any post mortem report and further no suitable clarifications have been given by her as to why she was unable to submit a post -mortem report.

- -the respondent herein is not covered under the definition of a consumer within the Consumer Protection Act, 1986. Section 2(1)(d) of the Consumer Protection Act, 1986.

- -the respondent did not pay any consideration to Krishi Upaj Mandi Samiti, Chirawa under the Rajiv Gandhi Krishi Sathi Yojana of 2009 and the compensation to be provided was merely a beneficial scheme for agriculturists.

8. WE have heard the learned Counsel for the petitioner and gone through the records of the case carefully. There is a delay of 59 days in filing the present revision petition before us. The reasons given for the delay in the application for condonation of delay are as follows: The impugned judgment was rendered on 28.9.2012. A decision was taken by the department to file the revision petition on 17.1.2013. The receipt of payment of Rs. 35,000 before the District Forum, Jhunjhunu in compliance of order dated 11.6.2012 received on 5.2.2012. Thereafter the revision petition was filed. For the reasons mentioned above, as such the delay in filing the Special Leave Petition may be condoned.

9. IN the application for condonation of delay it has not been mentioned when the order was received by the petitioner. In fact, there are no details and no explanation given for the period between 29.9.2012 to 17.1.2013 and thereafter from 17.1.2013 to 8.3.2013 when the revision petition was filed.

10. LEARNED Counsel for the petitioner could not give any further information nor reasons or justification to account for the delay. It is well settled that ''sufficient cause'' for condoning the delay in each case is a question of fact. In Ram Lal and Ors. v. Rewa Coalfields Ltd., : AIR 1962 SC 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 Section 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.

In R.B. Ramlingam v. R.B. Bhavaneshwari, : I (2009) CLT 188 (SC) : I (2009) SLT 701 : 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.

Hon''ble Supreme Court after exhaustively considering the case law on the aspect of condonation of delay observed in Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation, reported in : I (2010) CLT 333 (SC) : II(2010) SLT 205 : (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.

The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - -Collector, Land Acquisition, Anantnag v. Mst. Katiji, : (1987)2 SCC 107, N. Balakrishnan v. M. Krishnamurthy, : (1998) 7 SCC 123 and Vedabai v. Shantaram Baburao Patil, : (2001) 9 SCC 106.

The 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.

In Ravinder Kaur v. Ashok Kumar,, VI (2003) SLT 505 :, AIR 2004 SC 904, Apex Court observed:

Courts of law should be careful enough to see through such diabolical plans of the judgment debtor to deny the decree holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forum only encourage frivolous and cantankerous litigations causing law''s delay and bringing bad name to the judicial system.

11. ACCORDINGL Y , no sufficient grounds are made out for condoning the delay of 59 days in filing the present revision petition. In the above circumstances, the application for condonation of delay is dismissed being time barred by limitation with cost of Rs. 10,000 (Rupees ten thousand only). Petitioner is directed to deposit the cost by way of demand draft in the name of ''Consumer Welfare Fund'' as per Rule 10A of Consumer Protection Rules, 1987, within four weeks from today. In case the petitioner fails to deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation. List on 10th May, 2013 for compliance.