

(2015) 07 NCDRC CK 0077

In the National Consumer Disputes Redressal Commission

Case No : 4248 of 2014

KUONI TRAVEL (INDIA) P. LTD.

APPELLANT

Vs

PARESH RAMJIBHAI PATEL & 2 ORS

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Citation : (2015) 07 NCDRC CK 0077

Hon'ble Judges : V.B. Gupta, Suresh Chandra

Advocate : Chayan Sarkar

Judgement

1. Challenge in this revision petition is to the order dated 23.12.2013 passed by the Gujarat State Consumer Disputes Redressal Commission, Ahmedabad in appeal No.333/2012 whereby the State Commission has dismissed the appeal filed by the OPs/petitioners herein and upheld the order dated 30.8.2011 passed by the District Forum in complaint No.216 of 2011.

2. Along with the revision petition, the petitioners have filed an application for condonation of delay. The delay as mentioned in the condonation application on behalf of the petitioners is of 196 days.

3. We have heard arguments of learned Shri Chayan Sarkar, Advocate for the petitioners on the application for condonation of delay. At the outset, learned counsel has stated at bar that there is a delay of 202 days. Be that as it may, as per office note, there is a delay of 232 days beyond the prescribed period for filing the revision petition.

4. Learned counsel has contended that the delay in question was caused mainly on account of the time spent in getting the impugned orders as well as other documents before the District Forum translated from Gujarati into English and the illness of the earlier counsel, Shri Rohit Kapoor, Advocate who was handling the legal matters on behalf of the petitioners in Delhi. He submitted that the delay was neither deliberate nor intentional and occurred on account of bonafide reasons duly explained in the application for condonation of delay and as such he

pleaded that it should be condoned in the interest of justice and the revision petition heard on merits.

5. We have considered the submissions made by learned counsel for the petitioners and perused the application containing reasons on account of which the delay has occurred in filing the petition. We may note that the petitioners have tried to explain the delay in question by giving reasons for the delay as narrated in paras 2 & 3 of the application. The relevant paras may be reproduced thus: "2. That the applicant submits that impugned order happens to be in Gujarati which was got officially translated into English. The translation was received on 04 February, 2014. Likewise, the complaint preferred by the complainant before the District Forum followed with the final order as passed therein on 30.8.2011 were originally in Gujarati which were got translated into English. The translation took some time hence resulting in delay in filing of the accompanying petition. Additionally, the certified copies of documents forming part of the complaint before the District Forum were applied for by the petitioner, which were obtained on 13 th May, 2014. The documents thereafter were sent to the Counsel in Delhi for preparing accompanying petition which was done and petition filed.

3. That the Petitioner would like to state that Shri Rohit Kapoor, Advocate of the Petitioner, previously was handling all legal matters on behalf of the Petitioner in Delhi. That however, unfortunately, he suffered from a major illness due to which the litigation of the Petitioner pending before the courts in Delhi, suffered badly. That the said circumstance was due to the bad health of the counsel of the Petitioner and has nothing to do anything with the Petitioner's intentions. That the affidavit executed by the previous counsel of the Petitioner is annexed herewith as Annexure A to this application."

6. For better appreciation of the explanation offered by the petitioners, the affidavit of the previous counsel, Shri Rohit Kapoor referred to in para 3 of the condonation application is also reproduced as follows:-

"I, Rohit Kapoor S/O Sh. Baldev Kapoor R/O House No.1566, Sector 38 B, Chandigarh, AGED ABOUT 39 years, DO HEREBY STATE AS UNDER:

1. That I was engaged as the counsel for filing the accompanying Revision Petition and agree to the facts mentioned in the application filed along with Revision Petition.

2. That I hereby state that I have suffered from multiple seizure attacks and subsequent problems of stress and depression, as a consequence of which I have had a severe health condition and hence could not file the Revision Petition under reference.

3. That I further state that the reason was bona fide and that for the same no one is to be blamed.

4. That I am ready to furnish medical records if needed and serve the same to the

current counsels of the Petitioner in the matter or to the Petitioner in person if needed or ordered by this Hon"ble Court."

5. That this affidavit is voluntarily being given, in the interest of justice and that the same has not been written under any kind of coercion or force."

7. It would be seen from the aforesaid explanation given by the petitioners that the delay in question has occurred on account of the time spent in getting the translation of the impugned orders as well as other documents from Gujarati into English, obtaining the certified copies of the pleadings before the District Forum and the illness of the previous counsel, Shri Rohit Kapoor, Advocate.

8. So far as the delay on account of translation of the documents is concerned, we may note that the impugned order was passed by the State Commission on 23.12.2013 and Shri Yogesh Pathak, Advocate, representing the petitioners before the State Commission was present at the time of the passing of the order by the State Commission and as such the petitioners were fully aware of the impugned order having been passed against them on 23.12.2013 itself. While stating that the translation of the impugned order was received on 4.2.2014, i.e., after more than 40 days of the impugned order, it has not been stated as to when the petitioners filed the application for final translation from Gujarati into English so as to know whether the petitioners applied for final translation into English immediately after the passing of the impugned order and in case there was delay even in applying for final translation, the same has not been explained. So far as the translation of the order of the District Forum from Gujarati into English is concerned, no dates have been given at all. Thus, the delay on account of translation of the two orders from Gujarati into English, has not been justified properly and the explanation given is general and vague. Coming to the time spent on obtaining the certified copies of documents forming part of the complaint before the District Forum, here again it is not disclosed by the petitioners as to when they applied for the certified copies although the date of receipt of the certified copies is mentioned as 13.5.2014. As regards the third reason, namely, illness suffered by the previous counsel Shri Rohit Kapoor, Advocate, it is stated in paras 2 and 3 of the application that after obtaining the documents, they were sent to the counsel in Delhi for preparing petition which was done and petition filed. Now since the petitioners have offered the major illness of the previous

counsel as one of the factors for the delay in question, it should have been disclosed in the application as to when the documents were given to Shri Rohit Kapoor, Advocate with a request to file the revision petition. The affidavit of Shri Rohit Kapoor, Advocate does not throw any light as to when he was engaged for filing the revision petition by the petitioners and what was the duration of his illness. It is simply stated that the counsel suffered from "multiple seizure attacks and subsequent problems of stress and depression, as a consequence of which I have had a severe health condition and hence could not file the revision petition under reference." This again is a very vague explanation to justify the

delay in question. In the circumstances, we are not convinced that the illness of the previous counsel Shri Rohit Kapoor could really be considered as an appropriate and reasonable excuse which resulted in the inordinate delay of more than 200 days in question. It is obvious from the application of the petitioners that they did not deal with this important matter involving financial implications for the Co. with due diligence and sense of urgency. In fact, when they received certified copies of the documents on 13.5.2014, the period of 90 days prescribed under the law for filing of the revision petition was already over and as such they should have taken urgent steps to ensure filing of the petition soon thereafter. Rather than doing so, they seem to have engaged the previous counsel Shri Rohit Kapoor and forgot about the matter for more than six months inasmuch as the matter was pending with Shri Rohit Kapoor unattended since he was reported to be unwell. Obviously, there was no action taken by the petitioners to engage another counsel if Shri Kapoor was unwell so as to ensure immediate filing of the petition. 8. It is well settled that "sufficient cause" for condoning the delay in each case is a question of fact and has to be decided on its own merits.

9. In *Ram Lal and Ors. Vs. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 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 S.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."

10. In "*R.B. Ramlingam Vs. R.B. Bhavaneshwari*, 2009 (2) Scale 108 ", Apex Court has 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."

11. We are not satisfied with the explanation given by the petitioners to justify the period of delay. The vague and general explanation, in our considered opinion, cannot be considered as "sufficient cause" by any stretch of imagination. In the absence of dates and the periods having been given by the petitioners in their application, it is clear that the petitioners have failed to explain day-to-day delay to justify it. Hon"ble Supreme Court in a recent judgement of *Anshul Aggarwal vs. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC) has held 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 revision petitions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if the appeals and revisions which are highly belated are entertained. Relevant observations of the Hon"ble Court may be reproduced thus: "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."

12. In view of the above discussion, the delay of 202/232 days cannot be condoned without sufficient cause being shown. Application for condonation of delay is dismissed. Consequently, the above revision petition also stands dismissed as barred by limitation.