
(1991) 10 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

Life Insurance Corporation of India

APPELLANT

Vs

BAJRANG KUMAR MITTAL

RESPONDENT

Date of Decision : 24-10-1991

Acts Referred:

Citation : 1992 2 CPR 748 : 1992 3 CPJ 550

Hon'ble Judges : S.K.Mal Lodha , Damodar Thanvi , Saria Khan J.

Final Decision : Appeal dismissed

Judgement

1. APPEALS No. 115/91 and 116/90 arise out of the two separate orders passed on 24-9-1990 in complaint case Nos. 545/1990 and 544/1990 respectively. Life Insurance Corporation, Divisional Office, Jaipur through Shri J.P. Bhutra, Manager Law, Bhagwandas Road, Jaipur has filed these two appeals under Sec. 15 of the Consumer Protection Act, 1986 ("the Act" herein). It may be stated that Bajrang Kumar Mittal (complainant) in Complaint Case No. 545(1990) and Smt. Pratibha Devi (complainant in Complaint Case no. 544/1990) filed two complaints against Life Insurance Corporation, Branch Kotputli through Sr. Manager under Sec. 12 of the Act.

2. NOTICES of the complaint were issued by the District Forum, Jaipur to the opposite party in each of the complaints. In both the complaints notices were served on the opposite party. The opposite party failed to appeal on the date fixed 18-6-1990. The District Forum ordered to proceed ex-parte against it and posted the complaint for arguments and orders on 7-7-1990. On 7-7-1990 the District Forum again recorded the same proceedings which were recorded on 18-6-1990. After the hearing of 18-8-1990, ex-parte arguments were heard on 20-9-1990. The impugned orders in both the complaints were passed on 24-9-1990. The appeals were filed by the Divisional Manager of LIC before the State Commission on 1-2-1991. Office reported in each of the two appeals that is barred by 100 days. The appellant submitted the application for condonation of delay supported by affidavit of Shri J.P. Bhutra. Notice was issued to the appellants in each of the two appeals to show cause why the appeals be not

rejected as barred by time. After hearing Mr. Sitaram Sharma, Legal Supervisor and perusing the application for condonation of delay. It was ordered that record of both the complaints be requisitioned from the District Forum, Jaipur. The records have been received. On the question of limitation we heard Mr. B.L. Ajmera, Advocate for the appellants in both the appeals. It was pressed for our consideration by the learned Counsel for the appellant in both the appeals that LIC as such was not impleaded as opposite party in both the complaints. The notice in both the complaints should have been served by the District Forum on the LIC but this was not done. In law it was necessary that notice of any complaint under the Act filed by the complainant should have been sent to the LIC. However, the complainants in both the complaints impleaded LIC, Branch Kotputli, Rajasthan through Br. Manager as opposite party and that notice was served on the opposite party as such it is not binding on the appellant as it cannot be taken as service on the LIC. Reason given for this is that opposite party impleaded in both the complaints is not the principal officer. The absence of the opposite party was recorded on 18-6-1990 and thereafter on 7-7-1990 and upto the date of passing of the order this was so on account of no information having been conveyed to it. The appellant came to know about the passing of the order on 2-1-1991 and as such the appeal as filed on 1-2-1991 is within limitation and if the service is considered to be sufficient then the delay so caused may be condoned. The application for certified copy was made on 4-1-1991. The date fixed for the issuance of the copy was 5-1-1991 and the copy was delivered on 1-2-1991. For the aforesaid reasons it was submitted by Mr. B.L. Ajmera, learned Counsel for the appellant, that in the first place the appeal as presented is within limitation from the date of the knowledge and in the alternative if any delay has been caused, there was sufficient cause for not preferring the appeal within the prescribed period of limitation and so it should be condoned. It is not in dispute that the notice in each of the complaints was issued to the Life Insurance Corporation, Branch Kotputli, Rajasthan through Branch Manager. The notice for the hearing was served on the opposite party in each of the complaints. It failed to appear on 18-6-1990 despite service of notice. It even did not appear on 7-7-1990, 18-8-1990 and 20-9-1990 which were the dates of hearing in both the complaints. It is admitted by the appellant before us in the application for condonation of delay that this notice was served. The appeals were not filed by the opposite party as opposite party impleaded in the complaint and the Divisional Manager Law and the Life Insurance Corp. has filed the appeals. The opposite party as impleaded should have appeared after the service of notice and if there was any good cause for not appearing on the dates fixed, it was open to it to take steps for setting aside the ex-parte order passed on 18-6-1990 which was repeated on 7-7-1990. Nothing was done by the opposite party for setting aside the order.

It may be stated at this stage that in complaint No. 545/90 the District Forum ordered for the payment of Rs. 1,351/- with interest @ 12% p.a. from 8-3-1984 until realisation. In Complaint No. 544/1990 the District Forum ordered for the

payment of Rs. 13,422/- with interest @ 10% p.a. from 31-3-1984 until the date of payment. The service on the LIC in both the complaints was effected through the Branch Manager, Branch Kotputli. The opposite party as such failed to contest the complaint. It allowed the complaint to proceed *ex parte*. No steps were taken by it to find out as to what has happened in both the complaints from 18-6-1990 until the date of the decision. It is very difficult to believe that despite service of notice on opposite party, the appellant before us was not apprised of the complaints instituted by the respective complainants. Nothing has been stated in the application for condonation of delay as to now the appellants before us in each of the appeals came to know about the order dated 24-9-1990 on 2-1-1991. The application in this regard is conspicuously silent with respect to it. Nothing has been stated by Mr. J.P Bhutra in his affidavit in this respect. In these circumstances it is difficult for us to rely on the version of the appellant that it acquired knowledge about the order on 2-1-1991, particularly when the service of the notice in each of the complaints on the opposite party admittedly was made. It was duty of the opposite party to inform if it was necessary to the appellant. A bare look at the memo of appeal in both the appeals shows that this has been adopted as a device for filing the appeal as original typed matter relating to the mention of the name of the appellant-opposite party the name is that of the opposite party mentioned in the complaint but subsequently beyond the Life Insurance Corporation other matter was cut out and instead of that Divisional Manager, Jaipur through Shri J.P. Bhutra is written. This is visible to a naked eye.

3. DELAY of 100 days is required to be explained by the appellants in filing the appeals. It may be stated that the Central Government or the State Government is on no different footing than a private litigant for the purpose of condonation of delay against the bar of limitation. An autonomous Board or a Corporation being a much smaller and a compact body would obviously be on even a lower footing vis-a-vis the Central or the State Government. Reference in this connection may be made to AIR 1972 SC 7. It may be stated that delay in presentation of the appeal is to be condoned under the proviso to Sec. 15 of the Act. The material part of the proviso to Sec.15 of the Act is in *pari materia* with Sec. 5 of the Limitation Act, 1963. The common words "sufficient cause" and "satisfied" employed in the proviso to Sec. 15 of the Act have to be given the same meaning which has been attributed thereto over a long line of precedents to Sec. 5 of the Limitation Act, 1963 and its predecessor statute of 1908. In the context of Sec. 5 of the Limitation Act, the Supreme Court in AIR 1962 SC 361 has observed as under :- "...The context seems to suggest that "within such period" means within the period which ends with the last date of limitation prescribed. In other words, in all cases falling under Sec. 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the

party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed...."

It is incumbent upon the appellant seeking condonation of delay under Sec. 5 of the Limitation Act to explain each day's delay. In AIR 1977 SC 2221 the position has been succinctly summarised as under:- "Section 5 of the Limitation Act is a hard taskmaster and judicial interpretation has encased it within a narrow compass. A large majority of case law has grown around Sec. 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay...."

4. KEEPING these principles in mind we have to consider whether the appellant has succeeded in making out a sufficient cause for condonation of the delay which is of 100 days. At the risk of repetition it may be stated that the notice of the complaints was served on the opposite party who is Branch Manager of Branch Kotputli of the Life Insurance Corporation. There is no dispute about it but nothing was done by him to participate in the proceedings in as much as he failed to appear on 18-6-1990 and 7-7-1990 when the ex-parte order was passed and also on the subsequent dates of hearing. No steps were, taken for getting this order set aside for showing good cause for the non-appearance on 18-6-1990 or for that matter on 7-7-1990. The case of the appellant cannot be believed that LIC acquired knowledge on 2-1-1991. The relevant averment in the application is to this effect: Under what circumstances knowledge was acquired on 2-1-1991 in the first instance after passing of the order on 24-9-1990 have not been stated. The facts stated by the appellant in the application for condonation of delay do not appear to us as the correct facts. The appellant does not have, even a semblance of a case for condonation of delay. The delay of 100 days has to be explained day by day. Far from doing so there does not seem to be even an attempt to conform to the law. The only relevant averment in the affidavit of Shri J.P. Bhutra is totally cryptic and bald in its explanation of the delay of 100 days. Even this has not been averred as to when the prescribed period of limitation expired and the fact or factors from that point till the date of the filing of the appeal. It appears that the Corporation does not seem to be aware of the strict requirements of law and the burden it has to discharge to avail the benefit of condonation under the proviso to Sec. 15 of the Act. For the reasons stated hereinabove we find not the least merit in the application for condonation and dismiss the same. It follows therefore that the appeal of the appellant has to be dismissed because of the bar of limitation.

5. THE appeal is dismissed as barred by time. Appeal dismissed.