

(2014) 03 NCDRC CK 0070

In the National Consumer Disputes Redressal Commission

M/S. Adhiraj Construction (P) Ltd.

APPELLANT

Vs

K.V. Suresh

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Citation : 2014 0 NCDRC 141

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : ANAND PATWARDHAN , UDAY B.WAVIKAR , VIKAS NAUTIYAL

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 29.06.2011 passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (in short, "the State Commission ") in Appeal No. A/10/1087 - Adhiraj Construction Pvt. Ltd. Vs. Suresh K V by which, while dismissing application for condonation of delay, appeal was dismissed.

2. BRIEF facts of the case are that complainant/respondent filed complaint before District Forum and learned District Forum vide order dated 31.12.2007 allowed complaint and directed OP/petitioner to give legal possession of the flat on receipt of balance amount and further directed to pay Rs.25,000/- for mental agony and Rs.10,000/- as litigation expenses. OP filed appeal along with application for condonation of delay and learned State Commission vide impugned order dismissed application for condonation of delay as it was of more than 1000 days and consequently, appeal was not entertained against which, this revision petition has been filed. Heard learned Counsel for the parties finally at admission stage and perused record.

3. LEARNED Counsel for the petitioner submitted that he did not receive free copy of order of District Forum and there was delay of only 115 days in preferring appeal, but learned State Commission committed error in dismissing application for condonation of delay as delay was of more than 1000 days; hence, revision petition be allowed and impugned order be set aside and matter may be remanded back. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with

law; hence, revision petition be dismissed.

4. LEARNED State Commission while dismissing application for condonation of delay observed as under: ""From the certified copy of the order produced i.e. main file (Set I), it could be seen that impugned order is dated 31/12/2007. Copy thereof was sent by the forum to the parties under certificate of posting on 04/01/2008. It is a certified copy obtained afterwards on 21/09/2010. Copy of original certified copy received bears date of issue on 04/01/2008 and it is filed in second set for a member. It also bears date of dispatch of the said copy (free copy) as 04/01/2008. Therefore, this particular information is, prima facie, concealed by the applicant/appellant while presenting the application for condonation of delay. Under the circumstances, we find that delay in filing the appeal is not appropriately calculated. It is more than 1000 days and the same is apparently not properly explained, much less satisfactorily explained. Holding accordingly, we pass following order: - ORDER Misc.application for condonation of delay is rejected. Consequently, appeal is not entertained. Copies of the order be furnished to the parties "".

To ascertain whether original certified copy issued on 4.1.2008 was available in second set of the Member or not, record was called from the State Commission and learned State Commission apprised that no extra set is available with them and record sent by them does not contain original certified copy issued on 4.1.2008. Learned Counsel for the respondent has drawn our attention to the noting made stating that free copy was sent by UPC on 4.1.2008, but learned Counsel for the petitioner submitted that free copy alleged to have been sent by UPC was never received by the petitioner.

5. PETITIONER moved application for condonation of delay of 115 days whereas learned State Commission dismissed application for condonation of delay on the ground that there was delay of more than 1000 days calculated on the basis of original certified copy bearing date of issue as 4.1.2008, which was filed in second set of the Member. As we do not find certified copy issued on 4.1.2008 in State Commission 's record, it cannot be inferred that there was delay of more than 1000 days in filing appeal and, prima facie, there was delay of 115/155 days in filing the appeal. In such circumstances, matter is to be remanded back to learned State Commission to decide fresh application for condonation of delay treating delay as 115/155 days in filing appeal.

6. CONSEQUENTLY , revision petition is allowed and impugned order dated 29.6.2011 passed by learned State Commission in Appeal No. A/10/1087 - Adhiraj Construction Pvt. Ltd. Vs. Suresh K V is set aside and matter is remanded back to learned State Commission to decide application for condonation of delay afresh in the light of above observation after giving an opportunity of being heard to both the parties. Parties are directed to appear before the State Commission on 14.4.2014.