

(2015) 11 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Case No : 1422 of 2015

M/S. FIAT INDIA AUTOMOBILES LIMITED

APPELLANT

Vs

PRASEEJA & ANR.

RESPONDENT

Date of Decision : 30-11-2015

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : 2016 1 CPJ 474

Hon'ble Judges : V.B. Gupta, Prem Narain

Advocate : Ramesh Kumar Bamal

Judgement

1. Petitioner/Opposite Party No.1 has filed present revision petition under Section 21(b) of the Consumer Protection Act, 1986(for short, "Act") against impugned order dated 18.02.2015 passed by Kerala State Consumer Disputed Redressal Commission, Thiruvananthapuram(for short, "State Commission")
2. Brief facts are that, Respondent No. 1/Complainant filed a consumer complaint before the District Forum against petitioner and Respondents No.2 and 3/ Opposite Parties No. 2 and 3, alleging deficiency in service on their part.
3. District Forum gave enough opportunities to the petitioner but petitioner remained absent and as such was proceeded exparte.
4. District Forum, vide order dated 29.09.2012 allowed the complaint in part and petitioner was directed to replace the defective car with a new road worthy and safe car of the same brand. In addition, petitioner was directed to pay towing charges Rs.8,500/- with interest @ 9% p.a. till the date of realization and to pay compensation of Rs.50,000/- along with cost of Rs.1,500/-.
5. Being aggrieved, petitioner filed an appeal before the State Commission in which there was delay of 772 days. Vide impugned order, State Commission dismissed the same. Consequently, appeal was also dismissed as filed beyond time.

6. Hence, this petition.

7. We have heard learned counsel for petitioner and gone through the record.

8. It is submitted by learned counsel for the petitioner, that on receipt of summon, petitioner contacted its dealer (respondent no.2) who communicated the petitioner, that all issues with complainant have already been resolved and complainant would withdraw the complaint. Respondent No.2 also intimated the petitioner, that there was no defects in the car and as such new upgraded cylinder has been put in the complainant's car, free of cost.

9. Further, in memorandum of appeal it has been averred that as a matter of fact, copy of order passed on merits by the District Forum was not served on the petitioner, since petitioner by that time has shifted its office to the following address; " M/s Fiat India Automobiles Ltd.

(Represented by its Chief Executive Officer)

Corporate Park II, 5 Floor, th

SW Trombay Road Cambers,

Mumbai-400071"

Hence, there are sufficient grounds for condoning delay of 772 days.

10. Admittedly, petitioner after receiving summons from the District Forum, did not appear before it. Thus, it has no defence on merits. Be that as it may, the State Commission while dismissing the application for condonation of delay, observed; " 3. It is admitted in the affidavit accompanying the petition to condone the delay in filing the appeal that the first opposite party received the summons issued by the consumer forum to appear before it and answer the complaint. The case set up is that on receipt of the summons the appellant contacted its authorized dealer the second opposite party and the appellant was informed that the issues had been

settled with the complainant. But there is absolutely nothing to indicate that there was such communication between the appellant and their authorized dealer. Further that was no sufficient reason for the appellant from desisting to appear before the consumer forum. The real reason for non-appearance before the consumer forum appears from the subsequent allegation that the concerned officer of the first opposite party who was handling the matter left the services of the company and therefore the effective tracking of the case did not happen. That was something for the appellant to look after and is not sufficient reason to condone the delay in filing the appeal. It is also explained that the copy of the order of the district forum was not served on the appellant since they had shifted their office in the meantime. There is also no sufficient reason to condone the delay in filing the appeal ."

11. It is well settled that "sufficient cause" for condoning the delay in each case

is a question of fact.

12. 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."

13. Similarly, in *Oriental Insurance Co. Ltd. vs. Kailash Devi & Ors.* AIR 1994 Punjab and Haryana 45 , it has been laid down that ; " There is no denying the fact that the expression sufficient cause should normally be construed liberally so as to advance substantial justice but that would be in a case where no negligence or inaction or want of bona fide is imputable to the applicant. The discretion to condone the delay is to be exercised judicially i.e. one of is not to be swayed by sympathy or benevolence ."

14. In *R.B. Ramlingam Vs. R.B. Bhavaneshwari*, 2009 (2) Scale 108, Supreme Court 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 ."

15. Hon"ble Supreme Court in *Anshul Aggarwal vs. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC) has laid down that; " 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 ."

16. Decision of *Anshul Aggarwal* (Supra) has been reiterated in *Cicily Kallarackal Vs. Vehicle Factory*, IV (2012) CPJ 1(SC) 1, wherein Hon"ble Supreme Court observed ; " 4 . This Court in *Anshul Aggarwal v. NOIDA*, (2011) CPJ 63 (SC) has explained the scope of condonation of delay in a matter where the special Courts/ Tribunals have been constituted in order to provide expeditious remedies to the person aggrieved and Consumer Protection Act, 1986 is one of them. Therefore, this Court held that while dealing with the application for condonation

of delay in such cases the Court must keep in mind the special period of limitation prescribed under the statute (s).

5. In the instant case, condoning such an inordinate delay without any sufficient cause would amount to substituting the period of limitation by this Court in place of the period prescribed by the Legislature for filing the special leave petition. Therefore, we do not see any cogent reason to condone the delay.

6. Hence, in the facts and circumstance of the case as explained hereinabove, we are not inclined to entertain these petitions. The same are dismissed on the ground of delay ."

17. Petitioner after having received the summon from the District Forum, did not appear before that Forum. Therefore, petitioner was rightly proceeded exparte. Moreover, no plausible explanation has been given by the petitioner in not contesting the complaint before the District Forum. There is no material on record in support of petitioner's assertion, that complainant was going to withdraw his complaint. It is all a cock and bull story created by the petitioner.

18. Thus, looking from any angle, no illegality or infirmity can be found in the impugned order passed by the State Commission. The order passed by State commission is well reasoned order and it rightly rejected the application for condonation of delay and also dismissed the appeal of the petitioner. 19 . Under these circumstances, present appeal being without any legal basis is meritless and the same stand dismissed with cost of Rs.10,000/-(Rupees Ten Thousand only).

20. Petitioner is directed to deposit the aforesaid cost by way of demand draft in the name of "Consumer Legal Aid Account" of this Commission, within four weeks from today.

21. In case, petitioner fails to deposit the cost within the prescribed period, then it shall also be liable to pay interest @ 9% p.a. till realization.

22. List for compliance on 8 January, 2016 at 2.00 P.M.