

(2016) 05 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

Case No : 3317 of 2013

M/S. HIRA ENTERPRISES

APPELLANT

Vs

SEEMA NIRMAL & 2 ORS.

RESPONDENT

Date of Decision : 19-05-2016

Acts Referred:

Citation : 2016 3 CPR 293

Hon'ble Judges : K.S. Chaudhari, Prem Narain

Advocate : Rekha Aggrwal, ?Madhuri Shipra

Judgement

1. This revision petition has been filed by the petitioner against the order dated 31.7.2013 passed by the State Consumer Disputes Redressal Commission, Goa (in short, "the State

Commission") in Appeal No. M.A. (CD) 23/2013 - M/s. Hira Enterprises Vs. Mrs. Seema Nirmal & Ors. by which, application for condonation of delay was dismissed with cost.

2. Brief facts of the case are that complainant/respondent No.1 filed complaint before District Forum and learned District Forum after hearing complainant, allowed complaint and directed OP to form Cooperative Housing Society and further directed OP No. 1/petitioner to provide parking space to all the occupants including complainant and further to pay to the complainant Rs. 25,000/- as compensation and Rs.5,000/- as cost of litigation. OP No. 1 filed appeal along with application for condonation of delay and learned State Commission vide impugned order dismissed application for condonation of delay against which, this revision petition has been filed.

3. None appeared for respondent even after service of notice and she was proceeded ex-parte.

4. Heard learned Counsel for the petitioner and perused record.

5. Learned Counsel for the petitioner submitted that ex-parte order was passed

against petitioner by learned District Forum, without service of notice and delay was caused in procuring copies from District Forum and as Counsel had gone out of station; even then, learned State Commission committed error in dismissing application for condonation of delay; hence, revision petition be allowed and impugned order be set aside.

6. Perusal of application for condonation of delay reveals that without service of notice by District Forum, case was decided and he came to know about the order of District Forum only after receiving copy. In this application it has not been mentioned that when he received copy, but perusal of impugned order reveals that petitioner received copy on 29.4.2013. As per application for condonation of delay, petitioner approached Advocate on 8.5.2013, but office of Advocate was closed as he had gone to Delhi during vacations and returned back on 11.6.2013 and after getting copies of some documents from District Forum, as advised by Advocate, appeal was filed on 28.6.2013. It was also mentioned in the application that petitioner was in bona fide impression that 60 days period is for filing appeal; so, delay occurred which may be condoned.

7. Even if it is presumed that petitioner received copy of order of District Forum on 29.4.2013, he contacted his Advocate on 8.5.2013, but found his office closed and as Advocate returned back after vacations on 11.6.2013, he contacted Advocate and appeal was filed on 28.6.2013. Reasonable explanation has been given by Advocate before learned State Commission for condonation of delay of only 35 days and learned State Commission should have condoned delay particularly when there was specific allegation that for want of coram, District Forum adjourned the matter for some time and later on without service of notice on petitioner, complaint was decided by District Forum. Learned District forum has recorded in its order that OP was not

present. When ex-parte order was passed by District forum, learned State Commission should have condoned delay of 35 days as held by Hon''ble Apex Court in latest judgments of Hon''ble Apex Court in (1) Civil Appeal Nos. 10120-10121 of 2014 - Jeevanti Devi Vs. Commercial Motors & Anr; (2) Civil Appeal No. 10289 of 2014 - A.T.S. Govindarajane Vs. Chief Manager, State Bank of India; and (3) Civil Appeal No. 5071 of 2014 - Taipen Traders Ltd. & Anr. Vs. M/s. Bhawani Cold Storage & Ors. by which delay of 135 days, 149 days and 218 days, respectively in initiating revision petition was condoned.

8. None appeared for respondent even after notice and in such circumstances, it can be inferred that respondents do not want to contest this revision petition and in such circumstances, delay is to be condoned subject to cost.

9. Consequently, revision petition filed by the petitioner is allowed and impugned order dated 31.7.2013 passed by the learned State Commission in Appeal No. M.A. (CD) 23/2013 - M/s. Hira Enterprises Vs. Mrs. Seema Nirmal & Ors. is set aside. Delay in filing appeal is condoned subject to payment of Rs.5,000/- to Respondent No. 1 on or before the next date of appearance before the learned

State Commission and matter is remanded back to learned State Commission to decide appeal on merits after giving an opportunity of being heard to the parties.

10. Parties are directed to appear before State Commission on 11.7.2016.