

(2016) 12 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

Case No : 3373 of 2016

M/S. KHALSA GYMNASTIC WORKS A PARTNERSHIP FIRM
THROUGH ITS PARTNER SHRI JASJEET SINGH

APPELLANT

Vs

CHETAK SPORTS COMPLEX (SOUTH) THROUGH ITS OFFICER
IN CHARGE C/O. 56 APO

RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:

Consumer Protection Act, 1986, Section 15, Section 27, Section 21(b) -
Appeal - Penalties - Jurisdiction of the National Commission

Citation : 2017 1 CPR 265

Hon'ble Judges : D.K. Jain

Advocate : Narender S. Yadav

Final Decision : Petition dismissed

Judgement

1. This Revision Petition, under section 21(b) of the Consumer Protection Act, 1986 (for short "the Act"), has been filed by the sole Opposite Party in the Complaint under the Act, against the order dated 27.10.2016, passed by the Punjab State Consumer Disputes Redressal Commission at Chandigarh (for short "the State Commission") in Miscellaneous Application No.775 of 2015 in/and First Appeal No. 426 of 2015. By the impugned order, the State Commission has dismissed the Application filed by the Petitioner for condonation of delay of 596 days in filing the Appeal. As a necessary corollary, the Appeal has also been dismissed as barred by limitation.

2. The Appeal had been filed by the Petitioner against the order dated 13.06.2013, passed by the District Consumer Disputes Redressal Forum at Bathinda (for short "the District Forum") in Complaint Case No. 152 of 2013, preferred by the Respondent/Complainant. By the said order, the District Forum, while allowing the Complaint, had directed the Petitioner to rectify the defects in the Tennis Court laid by the Petitioner to the entire satisfaction of the Complainant; obtain a satisfaction note from it to that effect, besides paying to it

a sum of 10,000/- towards compensation and costs.

3. In order to provide training to its employees and maintain their fitness, on 19.09.2009 the Complainant, a Sports Unit of the Indian Army, had invited tenders for construction of a "Synthetic Surface Floodlit with Chainlinked Fencing Tennis Court", on the existing Clay Tennis Court at Bathinda. After negotiations, the said work was assigned to the Petitioner, vide supply order dated 10.02.2010. As per the terms and conditions thereof, the Petitioner was required to furnish a bank guarantee to the extent of 5% of the total cost of the work as well as warranty for three years to repair the Tennis Court, if there was any defect, within seven days from the date of such complaint. With a considerable delay, the Petitioner completed the work, where-upon entire payment, amounting to 12,03,568/-, was made to it, while retaining 5% of the amount, as agreed between the parties. Pursuant to the occurrence of some defects in the Tennis Court in the month of May, 2011, the Complainant requested the Petitioner to carry out necessary repairs. Despite several telephonic conversations and letters, the said defects were not removed by the Petitioner. The Complainant got assessed the cost for repairs of the Tennis Court, which was quantified at 4,72,000/-. In the said background, alleging deficiency in service and unfair trade practice on the part of the Petitioner, the afore-noted Complaint came to be filed before the District Forum. The Complainant had prayed for a direction to the Petitioner to repair the Tennis Court as per the terms and conditions of the supply/work order; extend the warranty for a further period of three years; and pay sums of 2,00,000/- and 50,000/- as compensation and litigation costs respectively.

4. Despite service, the Petitioner remained unrepresented before the District Forum, necessitating it to be set ex-parte.

5. On appreciation of the evidence adduced before it by the Complainant, the District Forum allowed the Complaint and issued the afore-noted directions to the Petitioner.

6. Aggrieved, the Petitioner filed the Appeal before the State Commission, with a delay of 596 days. An Application, seeking condonation of the delay in filing the Appeal, supported with an affidavit, was filed along with the Appeal. In paragraphs 1 - 3 of the said affidavit, the Petitioner had furnished the following explanation:

"1. That this appeal is directed under section 15 of the C.P. Act, 1986 against the ex-party order dated 13.06.2013 passed by the District Forum Bhatinda on application of respondent/applicant bearing No. CC152 of 11.04.2013.

2. That the copy of order under appeal was received in office of appellant/O.P. on 20.03.2015 along with notice of execution application U/S 27 of C.P. Act, 1986.

3. That this appeal is being barred by prescribed limitation because the order under appeal was not in knowledge of appellant prior to 20.03.2015 as no notice

was ever served of the proceedings on application No. CC 152 of 11.04.2013 conducted by respondent/applicant before the District Forum, Bhatinda."

7. As noted above, by the impugned order the State Commission has held that the Petitioner has failed to make out a sufficient ground or cogent explanation for the said inordinate delay and has accordingly dismissed the Application for condonation of delay as well as the Appeal. Hence, the present Revision Petition.

8. Since the Appeal has been dismissed by the State Commission on the ground of limitation, I am required to consider the question whether or not the State Commission has committed any jurisdictional error in not condoning the said delay in filing the Appeal. Accordingly, I have heard learned Counsel for the Petitioner on the said question.

9. Having heard learned Counsel for the Petitioner and perused the material placed on record, I do not find any material irregularity or illegality in the impugned order and thus the Revision Petition must fail.

10. It is evident from the documents on record that office address of the Petitioner, as mentioned in the Complaint, preferred by the Complainant, and the Appeal, preferred by the Petitioner, is the same. Before setting the Petitioner ex-parte, the District Forum had issued notice to the Petitioner at the same address. There is no reason to believe that it was not delivered at the given address. Thereafter, as is apparent from the copy of the order dated 13.06.2013 passed by the District Forum, placed on record, a free certified copy of the same had been issued to the parties on 02.07.2013 on the address mentioned in the memo of parties name. It is not the case of the Petitioner that his address mentioned in the Complaint was not correct. Yet, the Petitioner did not bother to respond on the notice or on the order passed against it. It was only on 20.03.2015, when the Petitioner received a notice in the Execution proceedings, initiated by the Complainant for execution of the order passed by the District Forum in its favour, that the Petitioner came out of its slumber and filed the Appeal before the State Commission, with an inordinate delay of 596 days, over and above the statutory period of 30 days, as provided under the Act. Except for the bald plea that before 20.03.2015, it had no knowledge about the order passed by the District Forum, as it had not received any notice from the District Forum in the Complaint, in the absence of any supporting documentary evidence, the explanation has no legs to stand. Evidently, the Petitioner wanted to somehow protract the matter on one pretext or the other. I am equally not convinced with the explanation furnished by the Petitioner for the delay in filing the Appeal and, hence, no fault can be found with the impugned order. For the reasons mentioned in the impugned order, I am in complete agreement with the State Commission that the Petitioner had failed to make out sufficient cause for condonation of inordinate delay of 596 days in filing the Appeal and in dismissing the same on the ground of limitation.

11. Consequently, the Revision Petition is dismissed in limine .