
(2012) 10 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

M/S Maruti Countrywide Auto Finance Services Pvt. Ltd

APPELLANT

Vs

Raj Rani Agarwal

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Citation : 2012 0 NCDRC 597

Hon'ble Judges : V.B.Gupta J.

Advocate : Suman Tripathy , G.L.Agarwal

Judgement

1. IN this revision petition there is challenge to order dated 7.3.2011, passed by Delhi State Consumer Disputes Redressal Commission, Delhi (for short, "State Commission ") vide which Petitioner/O.P. 's application for condonation of delay filed alongwith appeal was dismissed.

2. BRIEF facts are that on 16.4.1996 respondent/complainant obtained a car loan of Rs. 2,18,052/- from the petitioner for purchase of Maruti 800 Car bearing No. HR-26C-9700. The car loan was for the period of 60 months at EMI of Rs.5,654/- per month. As per scheme of the petitioner, the respondent had deposited Rs.54,715/- with the petitioner as fixed deposit on the same date i.e. 16.4.1996 @ 15% simple interest. The maturity date of the FD was 15.4.2001. On maturity date, the petitioner had to return the principal amount i.e. Rs.54,715/- alongwith the interest Rs.41,036/- total amount Rs. 95,751/-. This amount was refunded on termination of the loan subject to however that there are no arrear or outstanding by the borrower. The respondent wanted to clear the loan after 36 EMIs i.e. after 3 years but the petitioner was not inclined for prepayment of the loan. Meanwhile 40 installments of loan were cleared and only 20 EMIs had remained unpaid. On the adverse attitude of the petitioner, the respondent filed complaint before District Consumer Forum-III, New Delhi with the prayer to direct the respondent to accept the prepayment balance loan amount and issue NOC in respect of car loan. On 29.5.2002, as per directions of the District Forum, a compromise was made and respondent paid Rs.18,000/- and the car loan of the petitioner was cleared but F.D. has not been of the released nor interest paid

thereon. The respondent claims refund amount of FD worth of Rs.54,715/- together with interest@ 15% p.a., Rs.20,000/- as compensation and Rs.5,000/- as litigation charges. Petitioner in its written statement denied all the allegations. The car loan of Rs.2,18,052/- for a period of 60 months EMIs was admitted. It is also admitted that respondent had deposited Rs.54,715/- with the petitioner as fixed deposit on 16.4.1996 at 15% simple interest. The maturity date of the fixed deposit was also admitted as 15.4.2001. It is stated that petitioner was constrained to adjust a sum of Rs. 90,464/- being the outstanding as on 29.9.2001, being the aggregate of security deposit i.e. Rs.54,714/- and interest accrued thereon i.e. Rs.36,849.43 after deducting the TDS. On 31.5.2002, there was outstanding amount of Rs. 28,270/- but in the course of compromise, petitioner waived Rs.10,270/- and it made a credit entry of Rs.28,270/-.

District Forum, vide its order dated 24.2.2010 allowed the complaint of the respondent.

3. AGGRIEVED by the order of District Forum, petitioner filed appeal alongwith application for condonation of delay before the State Commission which dismissed the application for condonation of delay. I have heard the learned counsel for the petitioner as well as Authorized Representative of the respondent and perused the record.

4. IT is argued by learned counsel for the petitioner that petitioner has a bonafide case on merits and the delay occurred was due to unanticipated chain of events which was not deliberate on the part of the petitioner. On the other hand, it is argued by Authorized Representative of the respondent that no sufficient cause has been shown which entitles petitioner to have the delay condoned. The point which arise for consideration is as to whether State Commission was justified in not condoning the delay of 47 days in filing of the appeal before it.

5. THE impugned order passed by State Commission reads as under; " 3. There is admittedly 47 days delay in filing of the appeal. The reason given for the delay is as follows as given in the application; (B) That on and around 9.3.2010 the appellant company received the impugned order at its common desk, which was sorted and sent to the legal department on 18.3.2010. (C) However, the order was forwarded to the Law Firm for opinion, as the case was quite old and several orders had to be taken into account as also the record had to be searched, the Law Firm gave their detailed opinion to file the appeal, thereafter the appeal was drafted, FD was made, approval was taken from the concerned official of the respondent company, which process took a long time resulting a delay of 47 days, which is bonafide and due to inadvertence. Accordingly the present appeal is being filed on 27.5.2010. 4. The explanation offered for delay provides no justification for condonation of delay. The appellant company needs to update and accelerate its process of decision on pending files. We find no good reason to condone the delay. 5. The condonation application does not deserve to be allowed, and it is accordingly dismissed ".

6. AS apparent from the findings of the State Commission, the petitioner has received the copy of District Forum order, on 9.3.2010, whereas appeal in question was filed on 27.5.2010. In the entire application, it has nowhere been stated from which Law Firm, petitioner has sought its opinion and on which date the case was given to the Firm and who were the concerned officials who were dealing with the petitioner 's matter. Application is absolutely silent on these material aspects. It is well settled that "sufficient cause " for condoning the delay in each case is a question of fact.

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. "

7. SIMILARLY , in Oriental Insurance Co. Ltd. vs. Kailash Devi and 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. "

In R.B. Ramlingam Vs. R.B. Bhavaneshwari, 2009 (2) Scale 108, it has been 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. "

8. HON "ble Supreme Court after exhaustively considering the case law on the aspect of condonation of delay observed in Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation reported in (2010) 5 SCC 459 as under; "We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal

remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987)2 SCC 107, N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123 and 10 Vedabai v. Shantaram Baburao Patil (2001) 9 SCC 106 ".

Apex Court in Anshul Aggarwal Vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC) has observed ; "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 ".

Recently, Hon "ble Supreme Court in Post Master General and others vs. Living Media India Ltd. and another (2012) 3 Supreme Court Cases 563 has held; "24. After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and Government Undertaking, this Court observed as under; "29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy. 30. Public interest undoubtedly is a paramount consideration in exercising the courts" discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation / resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public

interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest. " The Court further observed; "27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. 28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. 29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. 30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. 31. In view of our conclusion on Issue (a), there is no need to go into the merits of Issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. 32. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs ".

9. OBSERVATIONS made by Apex Court in the authoritative pronouncements discussed above are fully attracted to the facts and circumstances of the case.

10. THUS , I hold that State Commission has not committed any jurisdictional or material irregularity in passing the impugned order. I find no reason to disagree with the findings of the State Commission. Accordingly, this revision petition stands dismissed with cost of Rs. 10,000/- (Rupees Ten Thousand only). Petitioner is directed to pay the cost by way of demand draft in the name of respondent, within four weeks from today.

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

11. PENDING applications, if any, stand dismissed. List on 30.11.2012 for compliance.