
(2014) 02 NCDRC CK 0080

In the National Consumer Disputes Redressal Commission

M/S. Regain Laboratories

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 91

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

Advocate : VAIBHAV TOMAR , J.P.N.SHAHI

Judgement

1. THIS appeal has been filed by the appellant against the order dated 23.8.2013 passed by learned State Commission, Haryana in C.C. No. 65/2013 - M/s. Regain Laboratories Vs. New India Assurance Co. Ltd. by which, complaint was dismissed in limine as time barred.

2. BRIEF facts of the cases are that the complainant firm got its machinery and stock including raw material and packing material insured from the opposite party (insurance company) vide two policies i.e. bearing No. 353400/11/09/00000005 valid from 24.4.2009 to 23.4.2009 for Rs.60,00,000/- covering stock of all kind of medicines, Raw material, packing materials and another policy bearing No. 353400/11/09/11/00000067 valid from 20.9.2009 to 19.9.2010 for Rs.20,00,000/-. Unfortunately, during the subsistence of the insurance policy on 13.4.2010 a fire incident took place at the insured premises of the complainant due to which the complainant suffered a loss of Rs.70,00,000/-. The matter was reported to the police. Necessary intimation was given to the insurance company who appointed surveyor to assess the loss/damage in the above said incident of fire. The complainant submitted all the documents and completed all the formalities with respect to settlement of his claim but the opposite parties paid only Rs.3,30,200/- and Rs.3,13,300/- to the complainant vide two cheques dated 17.4.2011. The complainant made several requests to the opposite party to pay the balance amount but the opposite party refused to pay the balance amount to the complainant. It was further alleged that complainant approached the Permanent Lok Adalat and Complaint No.23 of 2012

was filed, but that was dismissed by Permanent Lok Adalat as withdrawn with permission to file a fresh case by order dated 7.3.2013. Alleging deficiency on the part of OP, respondent/complainant filed complaint before State Commission. Along with complaint, complainant also filed application u/s 5 read with Section 14 of the Limitation Act for condonation of 448 days delay. Learned State Commission by impugned order dismissed complaint as barred by limitation against which, this appeal has been filed. Heard learned Counsel for the parties and perused record.

3. LEARNED Counsel for the Appellant submitted that inspite of satisfactory explanation for condonation of delay, learned State Commission has committed error in dismissing complaint in limine being barred by limitation; hence, appeal be allowed and complaint may be treated in limitation and matter may be remanded back to the State Commission. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, appeal be dismissed.

4. COMPLAINANT along with complaint filed application under section 5 read with Section 14 of the Limitation Act for condonation of 448 days delay in filing the complaint. Learned State Commission observed that there was no explanation for condonation of delay of 165 days from 7.3.2013 to 19.8.2013 when complaint was filed before the State Commission and dismissed complaint as barred by limitation. Learned Counsel for the appellant submitted that on account of wrong legal advice, complainant approached Permanent Lok Adalat and later on after receiving proper legal advice, complaint was withdrawn and complaint was filed before State Commission. In such circumstances, delay should have been condoned by learned State Commission. In support of the contention, he has placed reliance on 1969 (2) SCC 770 - Lala Mata Din Vs. A. Narayanan in which it was held that mistake of Counsel may in certain circumstances be taken into account in condoning delay although there is a no general proposition that mistake of Counsel by itself is always a sufficient ground. He has also placed reliance on (1979) 4 SCC 365 - M/s. Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi & Ors. in which delay of 30 days in filing appeal was condoned as delay occurred due to bona fide mistake of legal adviser to public corporation in calculating the limitation period. It was observed in the aforesaid case that in case of patent and gross delays or incomprehensible indifference, extension under Section 5 of Limitation Act is not available. We agree with the law laid down by Hon "ble Apex Court in aforesaid judgments, but aforesaid judgments are not applicable to the facts and circumstances of the present case. Admittedly, complaint filed before Permanent Lok Adalat was withdrawn on 7.3.2013 and immediately after that complaint should have been filed before the State Commission, but it was filed on 19.8.2013 and there is no reasonable explanation at all for condonation of inordinate delay of 165 days. In paragraph 6 of the application under Section 5 of the Limitation Act, complainant has not given any explanation from 7.3.2013 to May, 2013 when the matter was entrusted to the Counsel for filing complaint. As per paragraph 6 of the

application, matter was entrusted to the Counsel in May, 2013 and he assured to file complaint within the limitation but in July, 2013 complainant found that engaged Counsel was busy in preparation of Higher Judicial Services Exam and later on matter was entrusted to some other Counsel. Complainant has not filed affidavit of the concerned Counsel to whom the matter was entrusted firstly. Not only this, when the matter was entrusted to another Counsel in July, 2013 there was no reason for filing complaint on 19.8.2013. Rather, complaint should have been filed immediately after withdrawal of the complaint from Permanent Lok Adalat.

5. LEARNED State Commission has rightly observed as under: ""Having taken into consideration the grounds stated in the application for condonation of delay, we feel that the complainant has failed to establish "sufficient cause " to condone the delay. Even if we ignore the period during which the petition remain pending before the Public Utility Services, Hisar there is delay of 207 days in filing of the complaint. So far as delay of pendency of case before the Public Utility Services, Hisar for the period from 23.5.2012 to 7.3.2013 such period is not to be counted in view of Section 14 (2) of the Limitation Act. The petition was withdrawn by the complainant on 7.3.2013 and the present complaint was filed before this Commission on 19.8.2013 i.e. after period a period of 165 days. The delay of 165 days has not been sufficiently proved by setting up a plea of sufficient cause for non -filing of the complaint on the following date of withdrawal of the petition from the Public Utility Services, HIsar. Moreover, a valuable right has accrued to the opposite party on account of non -filing of the complaint within the prescribed period of limitation. By condoning this delay which is not sufficiently explained we cannot put the opposite party to a disadvantage position. The court has to keep the balance of justice intact while deciding such type of application. The reasons stated in the application for condonation of delay are general in nature and based on flimsy grounds and are not sufficient to allow the application for condonation of delay. We are therefore, left with no other alternative but to dismiss the application of condonation of delay as complainant has failed to prove sufficient cause. Hence, the application for condonation of delay is rejected. ""

6. WE do not find any illegality, irregularity in the impugned order and appeal is liable to be dismissed at admission stage. Consequently, appeal filed by the appellatant is dismissed at admission stage with no order as to costs.