
(2016) 12 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

Case No : 2726 of 2016

M/S. TAYAL INDIA MOTORS PVT. LTD. THROUGH ITS
GENERAL MANAGER SALES MR. SANJEEV RATNA

APPELLANT

Vs

SANJEEV KUMAR S/O. SHRI K.P. SINGH

RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:

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

Citation : 2017 1 CPR 268

Hon'ble Judges : D.K. Jain

Advocate : S.R. Bansal

Final Decision : Petition dismissed

Judgement

1. This Revision Petition, under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act"), by a Dealer in cars manufactured by Tata Motors, is directed against the order dated 04.08.2016, passed by the Haryana State Consumer Disputes Redressal Commission at Panchkula (for short "the State Commission") in First Appeal No.296 of 2015. By the impugned order, the State Commission has declined to condone a delay of 981 days in filing of the Appeal by the Petitioner and has consequently dismissed the Appeal on the ground of limitation.

2. The Appeal, together with the Application, seeking condonation of delay, had been preferred by the Petitioner, questioning the correctness and legality of the order dated 18.06.2012, passed by the District Consumer Disputes Redressal Forum, Faridabad (for short "the District Forum") in Consumer Complaint No. 570 of 2007, preferred by the Respondent/Complainant. By the said order, the District Forum, while allowing the Complaint, had directed the Petitioner herein to return the car in question to the Complainant after repairing it to his satisfaction in all respects, without demanding any amount, within a period of one month from the date of receipt of a copy of the order, failing which the

Petitioner was made liable to pay the price of the car, amounting to 3,70,000/-, with interest @ 9% p.a. from the date of default till the date of payment. In addition thereto, the Petitioner was also directed to pay to the Complainant a sum of 50,000/- as compensation towards mental harassment and litigation expenses.

3. The occasion to file the Complaint arose under the following circumstances: On 04.09.2006, the Complainant had purchased an Indica Car from the Petitioner against sale consideration of 3,70,000/-. For the purpose, he had availed financial assistance from HDFC Bank. The vehicle had one year warranty. Within a period of 17 days from the date of purchase, when the vehicle had covered barely 479 kms., the Complainant noticed certain manufacturing defects in it. Despite four services of the vehicle on 21.09.2006, 05.11.2006, 29.11.2006 and 08.01.2008 respectively, the defects persisted in the vehicle, and the Complainant was advised to get installed a CNG kit. Though the said kit was got installed, but each defect still persisted. Since 18.02.2007 the vehicle was lying at the service center of the Petitioner. 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, wherein the Complainant had prayed for a direction to the Petitioner to either replace the defective car with a new one or refund the price thereof with interest @ 24% p.a., besides paying sums of 5,00,000/- as compensation and 5,500/- as litigation expenses.

4. As noted above, the District Forum allowed the Complaint and issued the afore-noted directions to the Petitioner.

5. Aggrieved, the Petitioner carried the matter in further Appeal to the State Commission, with a delay of 981 days. The Petitioner had also filed Application, seeking condonation of the said delay in filing the Appeal. In paragraphs 1 to 3 of the said Application, the Petitioner had furnished the following explanation:

"1. That the applicant had engaged one counsel Mr. Deeptak Thukral to contest the main complaint and accordingly handed over appeal papers to file before the State Consumer Commission, Haryana, Panchkula after handing over vakalatnama and other expenses and further he had been informing about the status of the appeal with the observation that some date of Sept. 2012 and accordingly the D.H. had filed execution application, to which the applicant had put in his appearance through another Advocate Mr. Udai Chaudhary and accordingly being attended by him on behalf of Tayal India Motors and had filed objections along with another annexures showing the intimation being sent to the complainant about the readiness of the car on 06.07.2012 on the basis of job card dated 02.07.2012.

2. That accordingly execution proceedings were being adjourned for further proceedings i.e. for filing reply by the D.H. to the objection petition and to lead evidence by both the parties but in the meantime the attachment application was filed by the D.H. which was got attached vide letter dated 17.3.2015 and feeling

some more doubt to the present Advocate Mr. Udai Chaudhary who did not inform the status of the execution proceedings about the attachment order but the G.M. (Sales) had come to know from their bankers about the attachment of account on 17.03.2015 then immediately they called for their standing Advisor Mr. S.R. Bansal, Advocate who immediately informed to collect the certified copies of the orders of the relevant documents which were applied and procured on 19.03.2015 on urgent basis and accordingly he visited in the DCF, Faridabad to know the status of the execution proceedings which were coming on 24.03.2015 and after inspecting the court file, it was observed that objection petition as well as application for dismissal of execution proceedings were not decided nor rejected but remained undecided and accordingly, Mr. Bansal, Advocate appeared on 24.03.2015 before the Ld. DCF, Faridabad and filed his vakalatnama and apprised the entire facts and picture of the proceedings, to which he tendered his evidence about the delivery of the letters and thereafter the matter stands adjourned to 17.04.2015 for evidence of the D.H. and after completing all the formalities, the present appeal was drafted on 25.03.2015 along with other misc. applications, affidavit etc. without any further delay.

3. That the applicant/appellant had been suffering at the hands of their Advocate who remained deficient, negligent and careless towards their services, although they were well paid and hand miserably failed to inform the proceedings time to time, so passed by the Ld. DCF, Faridabad, to which they were under obligation to inform the same"

(Emphasis added)

6. As noted above, by the impugned order the State Commission has dismissed the Appeal on the ground of limitation, observing that the case before it was not found to be fit for condonation of delay. Hence, the present Revision Petition.

7. 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 exercising the jurisdiction vested in it under Proviso to Section 15 of the Act and in not condoning the said delay in filing the Appeal. Accordingly, I have heard learned Counsel for the Petitioner on the said question.

8. Tested on the touchstone of the broad principles laid down in a catena of decisions of the Hon'ble Supreme Court, viz., "sufficient cause" cannot be construed liberally if negligence, inaction or lack of bonafides are attributable to the party, praying for exercise of such discretion in its favour, and that when a statute provides for a particular period of limitation, it has to be applied with all its rigors, as an unlimited limitation leads to a sense of uncertainty, I am of the opinion that the State Commission has not committed any jurisdictional error in coming to the conclusion that a case for condonation of the said delay was not made out.

9. It is manifest from the material on record that the Petitioner was duly

represented by its Counsel before the District Forum. On disposal of the Complaint by the District Forum, vide its final order dated 18.06.2012, and the resultant directions issued against the Petitioner, Petitioner's bald plea that it was not informed by its Counsel about the final order in the Complaint holds no water. Pertinently, the Petitioner did not state in his Application as to when and how it learnt about the same. Thereafter, even though the Petitioner was pursuing the Execution proceedings, initiated by the Complainant, yet it had not taken any steps to challenge the substantive order dated 18.06.2012, passed by the District Forum in the Complaint, by way of an Appeal, which had been filed only on 26.03.2015, i.e. with an inordinate delay of 981 days, over and above the statutory period of 30 days, provided under the Act. Bearing in mind the fact that the Petitioner was duly contesting the Complaint and had also filed Written Version, refuting the allegations levelled against it, and in the absence of any explanation from the Counsel concerned, the plea of the Petitioner that the said delay occasioned because of negligence and carelessness on the part of the said Counsel, does not inspire any confidence. The Petitioner being a body Corporate, it belies any conviction that there was none in the Company who was looking after its affairs, including the legal matters. Besides, if the Petitioner was really interested in challenging the substantive order passed by the District Forum, whereby certain directions were issued, of which it claims to have no knowledge, it would have been on its toes to ensure that the Appeal was filed promptly atleast on knowing the fact that the Complainant had initiated Execution proceedings against it, but that was not to be. In that view of the matter, there is no ground to disagree with the view taken by the State Commission that the explanation furnished by the Petitioner for the delay in filing the Appeal was unsatisfactory.

10. Accordingly, I am of the view that the State Commission, for the reasons stated in the impugned order, was fully justified in declining to condone the inordinate delay of 981 days in filing the Appeal by the Petitioner and in dismissing the same on the ground of limitation. I do not read any material irregularity or illegality in the impugned order, requiring interference in the Revisional Jurisdiction.

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