

(2016) 11 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

Case No : 499 of 2016

MY CAR (PVT.) LTD. THROUGH ITS ATTORNEY HOLDER, MR. S.S. CHAUHAN APPELLANT

Vs

SATYA KUMAR S/O SHRI BHAGWAN DEEN RESPONDENT

Date of Decision : 03-11-2016

Acts Referred:

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

Citation : (2016) 11 NCDRC CK 0009

Hon'ble Judges : D.K. Jain, M. Shreesha

Advocate : Jai Prakash Yadav

Final Decision : Petition Dismissed

Judgement

1. As prayed, the Petitioner is exempted from removing the office objections and the Revision Petition is taken up for consideration.
2. This Revision Petition, under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act") has been filed by an Authorized Dealer of Maruti Cars, Opposite Party No.4 in the Complaint, against the order dated 13.08.2015, passed by the Uttar Pradesh State Consumer Disputes Redressal Commission at Lucknow (for short "the State Commission") in Appeal No. 2633 of 2014. By the impugned order, the State Commission has dismissed the Appeal in default, as, despite having been afforded several opportunities, neither the defects pointed out by the Registry of the State Commission had been removed nor had anybody appeared on behalf of the Appellant, the Petitioner herein, when its Appeal was taken up for consideration.
3. The Appeal had been filed by the Petitioner against the order dated 14.08.2014, passed by the District Consumer Disputes Redressal Forum - II, Lucknow (for short "the District Forum") in Complaint Case No. 368 of 2013. By the said order, the District Forum, while holding that there was deficiency in service on the part of the Opposite Parties, including the Petitioner, had partly

allowed the Complaint and directed them to jointly and severally pay to the Respondent/Complainant a sum of 2,96,827/-, as refund of the amount deposited by him for purchase of a car, with simple interest @ 9% p.a., besides 15,000/- as compensation towards mental agony and 5000/- as litigation expenses. The said directions were to be complied by the Opposite Parties within a period of six weeks from the date of the order, failing which they were required to pay the aforesaid amount with interest @ 12% p.a.

4. On 14.06.2012 the Complainant had booked a Maruti Alto LXI Car with the Petitioner, by issuing a cheque in the sum of 1,85,000/-. The balance cost of the vehicle, amounting to 1,11,827/-, was to be paid at the time of delivery. Though, as demanded by the Petitioner, the Complainant had paid the balance sale consideration, the vehicle booked was not delivered to him. According to the Complainant, despite several requests, the Petitioner did not deliver the vehicle, due to which he had suffered inconvenience/losses in his business. On 23.03.2013, the Complainant issued a legal notice to the Petitioner. Yet, the vehicle was not delivered. Hence, the afore-noted Complaint came to be filed before the District Forum, wherein the Complainant had prayed for a direction to the Opposite Parties to either deliver the vehicle or refund the amount paid together with interest @ 18% p.a. as also compensation of 5,00,000/- with the same rate of interest.

5. Despite issue of notice in the Complaint, the Petitioner remained unrepresented before the District Forum.

6. On consideration of the evidence adduced before it, the District Forum, while proceeding ex-parte against the Petitioner, held the Opposite Parties guilty of deficiency in service and consequently issued the aforesaid directions to them.

7. Aggrieved, the Petitioner filed the Appeal before the State Commission, which, as noted above, has been dismissed in default. Hence, the present Revision Petition.

8. It is pointed out by the office that this Revision Petition is barred by limitation, as there is a delay of 95 days in filing the same. An Application for condonation of delay, supported with an affidavit, has been filed along with the Revision Petition. In paragraphs 3 to 6 of the affidavit, the Petitioner has furnished the following explanation:

"3. That the order was passed in the above matter on 13.08.2015 but the time of 9 days was taken to obtain the certified copy of the order

4. That the deponent immediately contacted a counsel of District Court, Kanpur Nagar, namely, Shri Visharjan Lal Satyarthi, Advocate to get prepared the revision and to file before the Hon'ble National Consumer Disputes Redressal Commission of India at New Delhi and handed over the certified copy of the said order and relevant and related papers and the said counsel also obtained the signatures of the deponent on some blank papers to prepare the revision and

assured the deponent that he shall file the same before this Hon''ble National Commission.

5. That the deponent having believed upon the version of the said counsel, the deponent some time wanted to know the progress of the revision telephonically, however, the deponent suddenly visited the chamber of his counsel on 24 th December, 2015, then it was known to the deponent from some other counsels that he above counsel, Shri Visharjan Lal Satyarthi, Advocate, had died on 17.12.2015.

6. That 24 th December, 2015 was the last working day of the court and 25 th December, 2015 was closed holiday on account of Christmas day and was also winter vacation till 31 st December, 2015 and the junior advocates also assured that they will collect all the papers regarding the case from the house of Late Visharjan Lal Satyarthi and called the deponent on Monday i.e. 04.01.2016 to receive the same.

6. That the deponent received back all the papers on 04.01.2016 and immediately again engaged to Shri Jai Prakash Yadav, Advocate to prepare the revision petition and handed over all the relevant papers to him on 05.01.2016."

9. We have heard learned counsel for the Petitioner on the question of delay.

10. In our view, the explanation furnished by the Petitioner is absolutely unsatisfactory. It is apparent from the record that certified copy of the impugned order, dated 13.08.2015, had been received by the Petitioner on 21.08.2015. The Application is silent as to the dates when the Petitioner contacted the Advocate at Kanpur Nagar; when the requisite documents were handed over to the Advocate; and when the Petitioner's signatures were obtained. On receipt of the impugned order on 21.08.2015, when the Petitioner came to know that his Appeal has been dismissed in default, bearing in mind the limited statutory period of 90 days, as provided under Regulation 14 of the Consumer Protection Regulations, 2005, he was expected to be on its toes to ensure that the impugned order was challenged promptly, more so, when the District Forum had passed an adverse order, setting him ex-parte . For a period of four months the Petitioner did not try to ascertain from the Counsel engaged the fate of the Revision Petition to be filed. Though on 24.12.2015, on which date the Petitioner came to know that the Counsel engaged by him at Kanpur had already died on 17.12.2015, the Revision Petition, to be filed, was already barred by limitation by almost one month, yet the Petitioner took ten days to retrieve the documents handed over to the earlier Counsel. Admittedly, on 05.01.2016 the Petitioner assigned the matter to the present Counsel for doing the needful but he also took his merry time and ultimately filed the present Revision Petition on 22.02.2016, i.e. after one and a half months, whereas it was prepared/finalized on 16.01.2016. The lethargy and indifferent attitude of the Petitioner gets compounded with the fact that even before the District Forum, though notice had been issued, it did not bother to defend the proceedings, and as far as his Appeal

is concerned, at the cost of repetition we may note that despite having been afforded several opportunities, neither the defects pointed out in the same were removed nor had anybody entered appearance on its behalf before the State Commission. We are of the view that the Petitioner has throughout been negligent in prosecuting its cause and seems to be only interested in delaying the matter on one pretext or the other to the detriment of the Complainant. The present state of affairs is Petitioner's own making and does not deserve any indulgence by this Commission in the Revisionary Jurisdiction.

11. Bearing in mind the afore-stated facts and the observations of the Hon'ble Supreme Court in Anshul Aggarwal vs. New Okhla Industrial Development Authority [(2011) 14 SCC 578] to the effect that while deciding an application for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Act for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if highly belated petitions filed against the orders of the Consumer Foras are entertained, we are not inclined to condone an inordinate delay of 95 days in filing the present Revision Petition and subject the Complainant to further harassment, who, despite having parted with the whole sale consideration for the car in 2012, has neither received the vehicle nor the refund of the money paid.

12. Accordingly, the Application seeking condonation of delay is dismissed and consequently the Revision Petition is dismissed in limine on the ground of limitation.