
(2012) 02 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

Narayana Iit Academy

APPELLANT

Vs

Atishya Jain S/O Shri Ashwani Jain

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Citation : 2012 0 NCDRC 274 : 2012 2 CPJ 210

Hon'ble Judges : V.B.GUPTA , VINAY KUMAR J.

Final Decision : application also stands disposed

Judgement

1. PRESENT revision petition has been filed by petitioner challenging order dated 23.7.2010, passed by State Consumer Disputes Redressal Commission, Delhi (for short as "State Commission ").

2. VIDE impugned order, appeal filed by the petitioner was dismissed, being barred by limitation. Brief facts are that respondents (complainants in the District Forum) filed a complaint under Section 12 of the Consumer Protection Act, 1986 (for short "the Act ") against petitioner(opposite party in the District Forum) on the ground that respondent no.1 has suffered shock, trauma and mental agony due to the poor educational facilities being provided by the petitioner and as such he could not concentrate on his studies. Accordingly, respondents sought the following reliefs before the District Forum; i) To direct the opposite party to refund back Rs.65,730/- with interest, @ 18% per annum from the date of its receiving to the date of its realization. ii) To pay a sum of Rs.1,50,000/- for causing mental pain, agony, harassment of complainants, loss of invaluable study and preparation time of the complainant no.1 to the complainant. iii) To impose the exemplary penalty for practicing unfair trade practice for taking the tuition fees and other charges for two year at the time of admission in the O.P. against the various orders of the Hon "ble State Consumer Disputes Redressal Commission, Delhi. i) To pay litigation cost of Rs.5000/- to the complainant. "

3. DISTRICT Forum, vide its order dated 15.9.2009, directed the petitioner to refund to respondent no.2, total sum of Rs.65,730/- as deposited, at the time of admission.

4. AGGRIEVED by the order of District Forum, petitioner filed an appeal before the State Commission, which was dismissed. Being aggrieved by the order of State Commission, petitioner earlier also filed (Revision Petition No.3181 of 2010) and the same was listed before this Commission on 10.10.2011.

5. ON that date, one Mr. Lalit Kumar, Advocate appeared on behalf of the petitioner and withdrew the above cited petition.

6. ORDER dated 10.10.2011 passed by this Commission in R.P. No. 3181 of 2010, read as under:- "Counsel for petitioner wants to withdraw this petition. In view of the statement given by counsel for the petitioner, petition is hereby dismissed as withdrawn. "

Now, in the present revision petition it has been pleaded by the petitioner that being aggrieved by the impugned order, petitioner preferred a (Revision Petition No.3181 of 2010) before this Commission which was listed on 10.10.2011. However, due to non mentioning of complete facts relating to occurrence of delay in filing the revision, they were not pleaded. Therefore, the said revision was withdrawn. However, while withdrawing the said revision it was orally observed by this Hon "ble Commission that revisionist can further file another revision petition setting out all the relevant facts required to be mentioned in the application for condonation of delay with the revision petition. Therefore, the revisionist is now filing the present revision petition afresh challenging the impugned order passed by the Hon "ble State Commission, Delhi.

7. ALONGWITH present revision petition, an application seeking condonation of 45 days of delay has also been filed.

8. PRESENT revision petition is ex-facie not maintainable. It is nothing but gross abuse of the process of law, for the reasons mentioned hereunder It is an admitted fact, that petitioner earlier filed (R.P. No. 3181 of 2010) challenging the impugned order passed by the State Commission, which was withdrawn unconditionally by the counsel for the petitioner.

9. AFTER withdrawal of the earlier revision petition, petitioner has filed the present petition in which it has been mentioned that this Commission has observed "that revisionist can further file another revision petition ". These averments made in the present petition are against the record and are totally false and baseless.

10. ĩ 1/2As PER order dated 10.10.2011 passed by this Commission no where it was suggested or observed by this Commission, that petitioner can file further revision petition. Averments made in the present petition with regard to the above observations made by this Commission, are totally false and mischievous. It is well settled law that a petitioner is precluded from instituting any fresh suit/ petition in respect of such subject matter or such part of the claim, which the petitioner has withdrawn earlier unconditionally. Since, earlier petition was withdrawn unconditionally by the petitioner, present petition on the same cause

of action is not maintainable.

11. RECENTLY , Hon "ble Supreme 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. "

12. EVEN on the point of limitation, present petition is hopelessly barred by limitation and no sufficient or cogent reason has been given in the application for condonation of delay. Looking from any angle, the present petition filed by the petitioner is most bogus and frivolous one and the same has been filed just to waste the time of this Commission. Moreover, petitioner has tried to drag the Commission unnecessarily, in its litigation in which he has already lost two rounds of legal battle, i.e., before the District Forum as well as the State Commission.

13. IT appears that petitioner in order to escape its liability with regard to the orders of the Fora below, has adopted a novel method by making false averments in this fresh revision petition and has tried to involve this Commission in its personal litigation. We strongly condemn this act of the petitioner. The only motive of the petitioner in filing of the present petition appears to be, to keep the complainant engaged in the litigation on one ground or the other and to deprive them the fruits of award passed by the Foras below.

14. PRESENT revision petition has been filed under Section 21(b) of the Act. It is well settled that the powers of this Commission as a Revisional Court are very limited and have to be exercised only, if there is some prima facie jurisdictional error in the impugned order. Hon "ble Supreme Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. 2011 (3) Scale 654 has observed ; "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora. "

15. THUS , no jurisdiction or legal error has been shown to us to call for interference in the exercise of power under section 21 (b) of the Act, since, two fora below have given cogent reasons in their orders, which does not call for any interference nor they suffer from any infirmity or revisional exercise of jurisdiction.

16. IN Ravinder Kaur Vs. Ashok Kumar, AIR 2004 SC 904, Apex Court observed ; "Courts of law should be careful enough to see through such diabolical plans of the judgment debtor to deny the decree holders the fruits of the decree obtained by them. These type of errors on the part of the judicial forum only encourage frivolous and cantankerous litigations causing law "s delay and bringing bad name to the judicial system. "

It is well settled that no leniency should be shown to such type of litigants who in order to cover up their own fault and negligence, goes on filing meritless petitions in different foras. Time and again Courts have held that if any litigant approaches the Court of equity with unclean hands, suppress the material facts, make false averments in the petition and tries to mislead and hoodwink the judicial Forums, then his petition should be thrown away at the threshold. Equity demands that such unscrupulous litigants whose only aim and object is to deprive the opposite party of the fruits of the decree must be dealt with heavy hands. Unscrupulous builders like petitioners who after taking entire costs of the building do not perform their part of obligation, should not be spared. A strong message is required to be sent to such type of builders that this Commission is not helpless in such type of matters.

17. NOW question arises for consideration is as to what should be the quantum of costs which should be imposed upon the petitioners for dragging the respondent upto this fora when petitioners had no case at all. It is not that every order passed by the judicial fora is to be challenged by the litigants even if the same are based on sound reasonings.

18. APEX Courtin Ramrameshwari Devi and Ors. Vs. Nirmala Devi and Ors., Civil Appeal Nos.4912-4913 of 2011 decided on July 4, 2011 has observed ; "45. We are clearly of the view that unless we ensure that wrong -doers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court "s otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases. 46. Usually the court should be cautious and extremely careful while granting ex-parte ad interim injunctions. The better course for the court is to give a short notice and in some cases even dasti notice, hear both the parties and then pass suitable biparte orders. Experience reveals that ex-parte interim injunction orders in some cases can create havoc and getting them vacated or modified in our existing judicial system is a nightmare. Therefore, as a rule, the court should grant interim injunction or stay order only

after hearing the defendants or the respondents and in case the court has to grant ex-parte injunction in exceptional cases then while granting injunction it must record in the order that if the suit is eventually dismissed, the plaintiff or the petitioner will have to pay full restitution, actual or realistic costs and mesne profits. 47. If an ex-parte injunction order is granted, then in that case an endeavour should be made to dispose of the application for injunction as expeditiously as may be possible, preferably as soon as the defendant appears in the court. 48. It is also a matter of common experience that once an ad interim injunction is granted, the plaintiff or the petitioner would make all efforts to ensure that injunction continues indefinitely. The other appropriate order can be to limit the life of the ex-parte injunction or stay order for a week or so because in such cases the usual tendency of unnecessarily prolonging the matters by the plaintiffs or the petitioners after obtaining ex-parte injunction orders or stay orders may not find encouragement. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In *Swaran Singh Vs. State of Punjab* (2000) 5 SCC 668 this court was constrained to observe that perjury has become a way of life in our courts. 49. It is a typical example how a litigation proceeds and continues and in the end there is a profit for the wrongdoers. 50. Learned Amicus articulated common man "s general impression about litigation in following words : "Make any false averment, conceal any fact, raise any plea, produce any false document, deny any genuine document, it will successfully stall the litigation, and in any case, delay the matter endlessly. The other party will be coerced into a settlement which will be profitable for me and the probability of the court ordering prosecution for perjury is less than that of meeting with an accident while crossing the road. "

19. IN our opinion, the present petition is nothing but a gross abuse of process of law and the revision petition is totally false, frivolous and bogus one, which is required to be dismissed with punitive costs of Rs.75,000/-. Accordingly, we dismiss the present petition with costs of Rs.75,000/-(Rupees Seventy Five Thousand only).

20. PETITIONER is accordingly directed to deposit the costs by way of cross cheque for the sum of Rs.75,000/- (Rupees seventy five thousand only) in the name of "Consumer Legal Aid Account " within four weeks from today.

21. IN case, costs are not deposited within the prescribed period, petitioner shall be liable to pay interest @ 9% p.a., till realization.

22. COSTS awarded to the respondent shall be paid only after expiry of the period of appeal or revision preferred, if any.

23. PENDING application also stands disposed of. 33. List for compliance on 20.4.2012.