
(2016) 09 NCDRC CK 0091

In the National Consumer Disputes Redressal Commission

Case No : 2509 of 2016

NATIONAL INSURANCE CO. LTD.

APPELLANT

Vs

SK ALINGIR & ANR.

RESPONDENT

Date of Decision : 21-09-2016

Acts Referred:

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

Citation : 2016 4 CPR 177

Hon'ble Judges : B.C. Gupta

Advocate : Pradeep Gaur

Final Decision : Petition dismissed

Judgement

1. These revision petitions have been filed under section 21(b) of the Consumer Protection Act, 1986, against the impugned interim order dated 18.12.2015, passed by the West Bengal State Consumer Disputes Redressal Commission, Kolkata (hereinafter referred to as "the State Commission") in Miscellaneous Application No. MA/892/2015, in First Appeal No. FA/762/2013, National Insurance Co. Ltd. vs. SK Alingir, pending before that Commission, vide which the State Commission did not allow the petitioner/OP the Insurance Company to file additional documents at the appellate stage before that Commission. In the consumer complaint filed by the complainant/respondent no. 1, SK Alingir, it was stated that he had obtained an insurance policy from the OP Insurance Company for his rented shop in the name and style of M/s. Alingir Jari & Saree House and he had flourishing business. However, there was theft in the insured premises on 27.06.2009, due to which he suffered huge loss. He filed the consumer complaint in question, seeking directions to the OP Insurance Company to pay him the insured sum of Rs. 12.6 lakhs, alongwith interest and to further pay him Rs. 5.40 lakhs as compensation for mental agony etc. The District Forum, vide their order dated 30.05.2013, allowed the said complaint and directed the OP Insurance Company to pay a sum of Rs. 12.6 lakhs alongwith interest @ 8% per annum from the date of claim till realisation. Being aggrieved against this order, the

Insurance Company challenged the same before the State Commission by way of an appeal. During the pendency of the appeal, M.A. No. 892/2015 was filed by the appellant Insurance Company, seeking amendment of the written statement, as filed before the State Commission and also to place on record certain additional documents. The State Commission observed as follows:- "Really, these applications have got no merit whatsoever at this stage. It is a far far belated approach from the side of the Appellant, when the appeal has been fixed for hearing as further special chance with no further time. It is not the case of the Appellant that the survey report and the repudiation letter did not form part of the case of the Appellant before the Ld. District Forum. As we find, the same have been duly considered by the Ld. District Forum in the making of the impugned order. So, there seems to be no ground and no necessity at all to allow such belated petitions of the Appellant. Accordingly, both the MAs are rejected and stand disposed of."

2. Being aggrieved against the said order, the petitioner is before this Commission by way of the present revision petition. There is a delay of 162 days in filing the present revision petition, although the impugned order dated 18.12.2015 was passed by the State Commission in the presence of the Advocate of the petitioner. It has been stated in the application for condonation of delay that on receipt of a copy of the order of the State Commission, the concerned office prepared a note and forwarded the same to their head office, which in turn decided to file the appeal and forwarded the papers to their Regional Office at New Delhi. The Regional Office further forwarded the file to their Advocate to prepare and file the revision petition. However, since the papers got mixed up with some other files, the petition could not be filed in time. During hearing before me as well, the learned counsel stated that the delay in filing the petition was not intentional, but the same had occurred, as the papers got mixed up with some other file. On being asked to provide the exact specific details of the circumstances and the dates etc., explaining the cause of delay, it was stated that the delay was due to mixing up of the papers only.

3. It is clear from the material available before me that there is a huge delay of 162 days in filing the present revision petition and no cogent and convincing explanation has been furnished, explaining the delay. It was the duty of the Insurance Company to file exact details of the chain of circumstances that necessitated the said delay and to advance reasons for the condonation of such delay. In the absence of any such specific information, there is no case made out for the condonation of the delay and the petitions deserve to be dismissed on this ground alone.

4. In number of judgments passed by the Hon''ble Supreme Court, it has been made clear that unless a cogent and convincing explanation is furnished, explaining the delay in filing cases, the same cannot be condoned. In this regard, reliance can be placed on a judgment passed by the Hon''ble Supreme Court in Anshul Aggarwal vs. New Okhla Industrial Development Authority, IV (2011) CPJ

63 (SC) , in which, it was observed as follows:- "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".

5. The Hon"ble Apex Court observed in *Post Master General and others vs. Living Media India Ltd. and another* (2012) 3 Supreme Court Cases 563, as under: "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.

Considering the fact that there was no proper explanation offered 30. 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 ."

6. Based on the views taken by the Hon"ble Apex Court in the cases cited above, it is held that no case is made out for allowing the application for condonation of delay. Even on merits, it has been stated by the State Commission that the survey report and repudiation letter had been duly considered by the District Forum, while making the impugned order. During arguments, the learned counsel for the petitioner stated that although the survey report was already there on

record, they only wanted to file annexures to the said report before the State Commission. The OP Insurance Company should have been careful in filing complete survey report, when the case was taken up for consideration by the District Forum. There is no justification for allowing production of documents at a belated stage and that also at the appellate stage, when such documents were already in the possession of the petitioner Insurance Company.

7. Based on the discussion above, it is held that there is no merit in this revision petition, as there is no infirmity, illegality or jurisdictional error in the order passed by the State Commission. The revision petitions are, therefore, ordered to be dismissed and the orders passed by the State Commission upheld, with no order as to costs.