

(2015) 03 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

NEELAM GUPTA

APPELLANT

Vs

Onida Swtich Gear

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Citation : 2015 2 CPR 17

Hon'ble Judges : J.M.MALIK J.

Final Decision : Petition disposed

Judgement

1. LEARNED counsel for the parties present. Learned counsel for the respondent has filed Vakalatnama. Arguments heard.

2. THE present revision petition has been filed by the petitioner/complainant as the first appeal was dismissed by the State Commission on the ground that it was delayed by 40 days. The State Commission came to the conclusion that the complainant/petitioner was required to prove that there was sufficient cause for condonation of delay but he failed to do so. The case of the complainant is that it took sometime to complete and arrange the paper -book. The State Commission observed that day -to -day delay was not explained by the complainant.

3. THE next submission made by the complainant was that father -in -law of the advocate had fallen sick and ultimately died. The State Commission contended that there was no affidavit of the advocate in support of these contentions. Even the affidavit filed by the complainant/petitioner was not correctly verified. It is surprising to note that during the dictation of this order, learned counsel for the complainant submits that he will now file the affidavit of the advocate in support of the case. Perhaps he has not read the order of the State Commission. He should have come prepared in the Commission. Despite the warning given by the State Commission, the needful was not done. There appears to be negligence, inaction and passivity on the part of the complainant. Learned counsel for the respondent/opposite party has invited my attention towards an authority, which is Tirupati Balaji Cold Storage and Ice vs. New India Assurance Co. Ltd., 2003 1 CPJ 187 (NC).

4. I am of the considered view that there is short delay and the Commission has suo -moto power to condone the delay in the interest of justice. This view is supported by the Supreme Court authorities decided recently. In A.T.S. Govindarajane Vs. Chief Manager, State Bank of India, civil appeal No. 10289 of 2014, the delay of 9 days was condoned. Likewise, in another case titled as Taipan Traders Ltd. and Anr. Vs. M/s Bhawan Cold Storage and Ors., the delay of 218 days was condoned by the Hon"ble Supreme Court, Civil Appeal No. 5071/2014 decided on 19th May, 2014. In Vinayakrao Shankarrao Borse Vs. M/s Wasan Auto Sales Pvt. Ltd. , civil appeal No. 10514 of 2014 decided on 24.11.2014, Hon"ble Supreme Court condoned the delay of 195 days. The main reason given by the Supreme Court was that the National Commission has suo moto power to condone the delay.

5. IN the interest of justice and to grant the opportunity to the complainant to get the case decided on merits, we condone the delay of 40 days in filing the first appeal before the State Commission, subject to payment of Rs.10,000/ - as costs, which be deposited in Consumer Welfare Fund in the name of "Pay and Accounts Officer -Ministry of Consumer Affairs", payable at New Delhi through demand draft within a period of fifteen days with the Registrar of this Commission who will transmit the same to the concerned department. If the amount is not deposited within fifteen days, the first appeal shall stand automatically dismissed. If the order of this Commission is complied with, the parties are directed to appear before the State Commission on 15.4.2015. The State Commission will decide the case on merits after satisfying that the above said cost has been paid. The revision petition stands disposed of.