

(2012) 03 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE CO LTD

APPELLANT

Vs

Kempe Gowda R/O Late Linge Godwa

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Citation : 2012 0 NCDRC 208 : 2012 2 CPJ 80 : 2012 2 CPR 488

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

Advocate : NEERAJ SINGH

Judgement

1. SHORT question which arise for consideration is as to whether State Consumer Disputes Redressal Commission, Bangalore (for short "State Commission ") was justified in rejecting the application of the petitioner seeking condonation of delay of 183 days in filing of the appeal, vide its order dated 29.9.2011.

2. BRIEF facts are that respondent No. 1, who was complainant before the District Forum filed a complaint on the grounds that he was the registered owner of a tractor and trailer which were covered with the petitioner(opposite party No.1 in the District Forum). On 25.11.2007, his tractor was stolen and he immediately informed the police. Petitioner failed to settle the claim, though theft had occurred well within the insurance coverage period. In the District Forum, petitioner denied the allegations in its written statement. It took the plea that there was inordinate delay in reporting the theft to the petitioner and as such it was unable to settle the claim.

3. DISTRICT Forum, vide order dated 22.2.2011, allowed the complaint.

4. AGGRIEVED by the order of District Forum, petitioner filed an appeal before the State Commission. Along with it, an application seeking condonation of delay of 183 days was also filed. . State Commission being not satisfied with the reasons mentioned in the application for condonation of delay, dismissed the same. Consequently, appeal was dismissed at the admission stage.

5. AGGRIEVED by the impugned order, petitioner has filed the present revision.

6. IT is contended by learned counsel for the petitioner that State Commission should have given a liberal interpretation in constituting the meaning of " sufficient cause " and it ought not to have dismissed summarily. In support, learned counsel has relied upon the following judgments ; (i) Collector, Land Acquisition Vs. Katiji AIR 1987 SC 1953 and (ii) New India Assurance Co. Ltd. Vs. Shanti Misra (1975) 2 SCC 840.

7. REASONS seeking condonation of delay have been enumerated in para 4 of the application, and it reads as under; " 4. I submit that the judgment was passed on 22.2.2011 and certified copy was received on 11.3.2011. Thereafter the same was sent to Branch Office by Mandya Office o 9.8.2011 and then sent papers to the Learned Advocate at Bangalore, who had suggested an appeal. Thereafter the papers were sent to the Regional Office at Bangalore for filing of the appeal. In the process due to the aforesaid administrative reasons delay has occurred ".

8. STATECOMMISSION in impugned order has observed ; "Onperusal of the grounds urged in the affidavit we are not satisfied with the reasons assigned by the appellant. Appellant is expected to explain each and every days delay. But in our view, it failed to do so. There is inordinate delay of 183 days. The appellant has failed to explain each and every days delay, is not entitled for condonation of the same ".

As per petitioner 's own case, certified copy of the impugned order was received by it on 11.3.2011. However, the same was sent to the petitioner 's Branch Office only on 9.8.2011. There is no explanation as to what happened during this interregnum period of about five months. Assuming for the arguments sake that papers were sent to their Advocate at Bangalore after 9.8.2011, even thereafter, appeal was filed only on 22.9.2011. There is also no explanation given in the application as to who were the delinquent officials for causing this delay and whether petitioner has taken any action against any of such officials.

9. THUS , apparently no sufficient cause has been shown by the petitioner for not filing the appeal within the period of limitation.

10. IT is well settled that sufficient cause for non appearance in each case, is a question of fact. Thus, There is no dispute with the principle of law laid down to this effect in the various judgments (supra) cited by leaned counsel for the petitioner. 14. In Ram Lal and Ors. Vs. Rewa Coalfields Ltd., AIR 1962 Supreme Court 361, it has been observed ; " Itis, however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a discretionary jurisdiction vested in the Court by S.5. If sufficient cause is not proved nothing further has to be done; the application for condonation has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is

at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. "

In "R.B. Ramlingam Vs. R.B. Bhavaneshwari, 2009 (2) Scale 108 ", it has been observed ; " Wehold that in each and every case the Court has to examine whether delay in filing the special appeal leave petitions stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition. "

11. RECENTLY , Supreme Court in "AnshulAggarwal vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC) "laid down that ; " Itis 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. SINCE , no reasonable explanation for delay in filing the appeal before State Commission has been given, it rightly declined to condone the delay. Even on merits, petitioner has no case since the vehicle of respondent No.1 was insured with it at the time of theft. Respondent No. 1 had sent intimation to the Police and accordingly, FIR was registered on 27.12.2007.

13. LOOKING from any angle, we do not find any infirmity or illegality in the impugned order passed by the State Commission. Present revision petition is devoid of any merits and there is no legal force in it. Accordingly, the same is here by dismissed with costs of Rs. 10,000/- (Rupees Ten Thousand only)

14. PETITIONER is directed to deposit the costs of Rs. 10,000/- by way of a demand draft in the name of "Consumer Legal Aid Account ", within four weeks from today. In case, costs are not deposited within the prescribed period, then petitioner shall be liable to pay interest @ 9% p.a., till realization.

15. LIST on 20th April 2012, for compliance.