
(2008) 07 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

NEW INDIA ASSURANCE COMPANY LIMITED

APPELLANT

Vs

GOBIND WOOLLEN MILLS

RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Citation : 2008 3 CPJ 355

Hon'ble Judges : R.C.Jain , P.D.Shenoy J.

Advocate : Abhinav Jain , Brijender Chahar , S.K.Paul

Judgement

1. -THIS case has a somewhat chequered history. M/s. Gobind Woollen Mills, Panipat respondents herein had filed a complaint against the petitioner New India Assurance Company Limited praying for grant of compensation/indemnification of the loss occasioned to them on account of fire which had occurred in their insured factory premises on 31. 5. 1995 at 8. 30 a. m. , resulting into loss of goods and stocks worth Rs 14,30,250 lying in the factor. Insurance Company wanted to settle the complaint for a total consideration of Rs. 2,08,492. The said amount was admittedly received by the complainant under protest and so they filed complaint for recovery of the balance amount. The complaint was resisted by the Insurance Company primarily on the ground that the loss sustained by the complainant was much less and assessed at Rs. 2,08,492 which amount has been paid to the complainant in full and final settlement of their claim and, therefore, they were not entitled to any further amount. District Forum on a consideration of the matter vide order dated 20. 4. 1999 partly allowed the complaint by holding that the Insurance Company was deficient in their services is not settling the claim of the complainant properly and consequently directed the Insurance Company to pay a further sum of Rs. 4,95,000 to the complainant along with interest @ 12% from the date of filing of complaint till realization. Aggrieved by the order passed by the District Forum, the petitioner-Insurance Company filed appeal under Section 15 of the Consumer Protection Act before State Consumer Disputes Redressal Commission, Haryana, Chandigarh (State Commission). The said appeal was dismissed by the State Commission vide order dated 16. 5. 2000 which is to the following effect: order amarjeet

Chaudhary, J. (Oral)- "we have heard the Counsel of both the sides and have also perused the impugned order. After taking into consideration the respective submission of the Counsel, we hardly find an ground to interfere with the well-reasoned order passed by District Forum, Panipat and the appeal is dismissed in view of the discussions made in para 7 of the impugned order. "

Aggrieved by the above order of the State Commission, the petitioner-Insurance Company filed revision petition No. 1199/2000 in the National Commission. The said revision petition was disposed of by this Commission vide order dated 5. 9. 2001 observing as under: "this revision petition is directed against the order passed in appeal by the State Consumer Disputes Redressal Commission Haryana. We find that the order does not give any reason. Supreme Court on many occasions had said that the Appellate Authority must give reasons though in brief. We, therefore, set aside the order of the State Commission dated 16. 5. 2000 and remand the matter to the State Commission to record its reasons. The parties shall appear before the State Commission on 15. 10. 2001. The revision petition is disposed of as above. "

2. PURSUANT to the above order passed by the National Commission, the appeal of the Insurance Company stood remitted to the State Commission for disposal by recording reasons. The State Commission once again heard and disposed of the appeal vide second order dated 10. 6. 2003 which reads as under: "this Commission vide order dated 16. 5. 2000 had dismissed the appeal filed by the New India Assurance Company. Thereafter, the Assurance Company filed a revision petition No. 1199 of 2000 before the Hon''ble National Commission and the Hon''ble National Commission had remanded the case to the State Commission for passing a speaking order. Notice of the appeal was issued and in pursuance of which Mr. Partap Singh, Advocate has put in appearance on behalf of the respondent. At the outset of hearing, Mr. Partap Singh, Counsel for the respondent states that this appeal has become infructuous as order of the District Forum has been implemented and the complainant has received a sum of Rs. 4,95,000 vide cheque No. 0734158 dated 30. 5. 2000 in the presence of the Counsel for the Insurance Company. In order to fortify his submissions, he has produced a zerox copy of the order of the District Forum dated 30. 5. 2000 which is taken on record. In view of the matter, the appeal is dismissed being infructuous. "

Still aggrieved by the order passed by the State Commission on remand of the matter, the petitioners have filed the present revision petition inter alia assailing the order on the grounds that the State Commission has committed a grave error of law and facts in holding that First Appeal No. 1033 of 1999 had become infructuous for the reason that the order of the District Forum has been implemented and the complainant had received a sum of Rs. 4,95,000 vide cheque No. 0734158 dated 30. 5. 2000. Irrespective of the said payment made in execution proceedings, the petitioner was entitled to disposal of its appeal on merits and the appeal could not be dismissed as infructuous on that account; the

State Commission has not decided the appeal on merits and, therefore, impugned order is unsustainable in law. Along with the memorandum of revision petition, the petitioner has filed an application for condonation of delay in filing the revision petition. In this application it is not mentioned as to how much is delay in filing the revision petition, the condonation of which the petitioner is seeking. However, Registry on computation of the period spent in obtaining copy of the impugned order and the period prescribed for filing of the revision petition has reported delay of 119 days in filing the revision petition. Before advertng to the merits of the revision petition, we consider it appropriate to consider and dispose of the application for condonation of delay.

In the application for condonation of delay it is averred that the petitioner-Insurance Company had appointed Mr. R. K. Bashamboo, Advocate as their Counsel to conduct First Appeal No. 1033 of 1999 titled New India Assurance Company Ltd. v. M/s. Gobind Wollen Mills, Kabri Road, Panipat before the State Commission, Haryana and the above named Advocate was also present before the State Commission on 10. 6. 2003, the date of the impugned order but the said Advocate did not receive the certified copy of the judgment either through post or received dasti and after coming to know of the passing of the judgment in the said appeal, the Advocate immediately applied for certified copy of the judgment which was delivered on 11. 2. 2004. Afterwards the Regional Officer of the petitioner-Insurance Company scrutinized the order passed by the State Commission and after taking opinion of the Counsel Mr. Bashamboo, Advocate and of Mr. L. M. Suri, Advocate directed the file to be sent to its Regional Office for filing revision petition in the National Commission. Regional Office of the petitioner after receipt of the file sent the same to Mr. S. K. Paul, Advocate with the instructions to file revision petition, who took time to file the same. In support of the application, affidavit of Shri Raj Kumar Bashamboo has been filed.

3. THE application is opposed on behalf of the respondent and a reply has been filed inter alia raising preliminary objections that the petitioner has not approached this Commission with clean hands and, therefore, deserves no indulgence from this Commission; the application for condonation of delay has been made with deliberately stated incorrect facts with a view to mislead this Commission. It is clarified that the certified copy of the impugned order of the State Commission dated 10. 6. 2003 itself contains endorsement "certified copy of the order supplied free of cost to the parties/counsel on 8. 7. 2003. The parties/counsel applied for duplicate copy. Hence this is duplicate copy". According to the respondent this endorsement would clearly show that a copy of the order had earlier been supplied free of cost to the petitioner/counsel on 8. 7. 2003 and, therefore, seeking certified copy of the application again after several months of the order and its supply by the Office of the State Commission would not enlarge the period of limitation. We have heard Mr. S. K. Paul, learned Counsel representing the petitioner-Insurance Company and Mr. Brijender Chahar, Senior Advocate and Mr. Abhinav Jain, learned Counsel representing the respondent and have given our thoughtful consideration to their respective

submissions. The main ground put forth for condonation of delay is that the certified copy of the order dated 10. 6. 2002 was not received by the Counsel for the appellant and, therefore, after waiting for several months, the Counsel applied for obtaining certified copy in February, 2004. This assertion is belied by the above noted endorsement appearing on the certified copy of the order itself. It is the admitted case of the petitioner that Mr. R. K. Bashamboo who was representing the petitioner in appeal before the State Commission was present at the time of having of the appeal by the State Commission on 10. 6. 2003. His presence is also recorded in the impugned order. Impugned order passed by Mr. Justice Amarjeet Chaudhary is stated to be an oral order which implies that the order was passed by the State Commission in presence of the Counsel for the parties. Therefore, it must be presumed that the Counsel for the petitioner was very much aware of the order passed by the State Commission on 10. 6. 2003 itself. This being the position, there was no earthly reason for the Counsel of the petitioner to have either applied for second certified copy of the order until February, 2004. To our mind the making of the application for grant of certified copy of the order after several months of the passing of the impugned order after having already received the certified copy of the order from the Commission free of cost, was a clever move on the part of the petitioner-Insurance Company to cover up the long delay in filing the revision petition, prescribed period for filing the revision petition having expired long away before the application for certified copy was made. This Commission deprecates such practice on the part of the parties and Counsel in that behalf. For the above stated reasons, we must hold that the reasons on the basis of which delay is sought to be explained are ingenuine, concocted and unsatisfactory and, therefore, the application for condonation of delay is liable to be dismissed. We find no satisfactory reasons for condoning undue delay of 119 days in filing the revision petition. The application for condonation of delay is, accordingly, dismissed.

4. EVEN having dismissed the application for condonation of delay, we have bestowed our consideration to the merits of this revision petition. At the time of admission hearing of the revision petition, learned Counsel for the petitioner sought three week time for producing the additional documents to establish that the amount was paid in view of the proceedings under Section 27 of the Consumer Protection Act and under protest. Subsequently, copy of an application dated 21. 6. 2000 purportedly, moved on behalf of the petitioner before the District Forum, Panipat has been filed with title "application for reserving right to recover the amount of Rs. 4,95,000 deposited on 30. 5. 2000 from the complainant on acceptance of revision before the National Commission. Before we consider the effect of making such an application, it is necessary to recapitulate the order dated 30. 5. 2000 passed by the District Forum Panipat in execution proceedings. The said order reads as under: "in view of the separate statement made by the complainant, he received a cheque No. 0734158 worth Rs. 4,95,000 from the respondent, the present application stands dismissed as withdrawn as fully satisfied. "

Besides, the learned Counsel for the respondent has filed copy of the statement of Narendar Kumar, partner of the respondent which he made before the District Forum on 30. 5. 2000 in which there is a clear recitation that respondent had received a sum of Rs. 4,95,000 in full and final payment of his claim under the said complaint and no claim or amount remained due to the respondent and that the execution may be consigned to record room. This statement and the order passed by the District Forum on 30. 5. 2000 would clearly show that the amount of Rs. 4,95,000 was tendered by the petitioner-Insurance Company to the respondent in full and final satisfaction of the award made in the complaint and the said amount was accepted by the respondent also with the same stipulations. It is pertinent to note here that the amount of Rs. 4,95,000 which the respondent received represented only the principal awarded amount and had no component of interest thereon, though the award made by the District Forum vide its order dated 20. 4. 1999 had awarded interest @ 12% from the date of filing of the complaint. There is nothing on record to show that the amount of Rs. 4,95,000 was paid by the petitioner under any protest or by reserving any right of any kind or without prejudice or subject to outcome of the revision petition as on 30. 5. 2000. Since amount so paid was only in part compliance of the order and it was accepted by the respondent towards full and final settlement of the claim, it must be concluded that a settlement was reached between the parties in respect of the subject matter of the claim inasmuch as respondent had agreed to accept principal amount only, thereby foregoing the interest part which must be almost to the same amount as principal on the assurance of the petitioner that the matter was being finally settled and it will not be agitated any further. The application dated 21. 6. 2000 was made 21 days after the said final disposal of the matter and, therefore, it does not lie in the mouth of the petitioner to allege that the amount of Rs. 4,95,000 was paid by them was under protest after reserving the right to recover the same depending upon the outcome of the revision petition. In this view of the matter also, we see no merits in the revision petition, which is also dismissed. Revision Petition dismissed.