(2013) 05 NCDRC CK 0104

In the National Consumer Disputes Redressal Commission

O. Ranjini APPELLANT

Vs

Bank Manager, Syndicate Bank RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 419 : 2013 2 CPJ 654

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Judgement

1. THERE is a delay of 1462 days in filing the present revision petition. The petitioner had not filed application for condonation of delay. Vide order dated 04.01.2013, she was given an opportunity to file an application for condonation of delay. It is also not out of place to mention here that the petitioner who appears to be an educated lady argued the case herself. She was offered legal aid, but she refused. The State Commission decided the case against the petitioner vide order dated 17.06.2008. She has explained the delay in the following para in her affidavit:- "I had filed Writ Petition before the Hon ''ble High Court of Kerala as W.P.(C) No.3147/2012 (P) against the order of the Kerala State Consumer Disputes Redressal Commission in Appeal No.623/2003 and 313/2004. The Hon ''ble High Court of Kerala passed an order dated 20.09.2012 directing me to file Revision Petition before this Hon ''ble National Commission within six weeks from 20.09.2012. It is submitted that I have filed Revision Petition before this Hon ''ble National Commission within the time granted by the Hon ''ble High Court. Copy of the said order is produced herewith ". The petitioner vehemently argued that in view of the order of the Hon ''ble High Court, the present case is within time.

2. ALL these arguments lack conviction. The Hon ''ble High Court is not authorized to condone the delay of four years which took place from 17.06.2008 to the filing of the Writ Petition (C) No.3147/2012 (P). The order of the Hon ''ble High Court is conspicuously silent about the said four years. The petitioner has also failed to explain the day-to-day delay in filing the revision petition. There is no provision under Consumer Protection Act, 1986 wherein the petitioner is

authorized to file the Writ Petition before the Hon ''ble High Court. In an authority reported in M/s. Advance Scientific Equipment Ltd. and Anr. vs. West Bengal Pharma and Photochemical Development Corporation Ltd., (Appeal (Civil) Nos.17068 - 17069/2010, decided on 9 July 2010) wherein it observed inter alia, as under:- " ... ... We are further of the view that the petitioners '' venture of filing petition under Article 227 of the Constitution was clearly an abuse of the process of the court and the High Court ought not to have entertained the petition even for a single day because an effective alternative remedy was available to the petitioner under section 23 of the Act and the orders passed by the State Commission did not suffer from lack of jurisdiction ".

Furthermore, the Apex court in a recent authority reported in Cicily Kallarackal Vs. Vehicle Factory, IV (2012) CPJ 1 (SC) 1, was pleased to hold as under :- "Despite this, we cannot help but to state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the Legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of the improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds ".

3. EVEN as per law, the petition is also not maintainable. The present case also does not come with the ambit of Section 14 of the Limitation Act. The petitioner has failed to prove that she was contesting the case anywhere, from 2008 to 2012. The case is hopelessly barred by time.

4. IN Anshul Aggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC), the Hon ''ble Apex Court has held that 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. Let us turn to the merits of this case. Ms.O.Ranjini, the petitioner was transacting the business under the name and style of ''Kerala Steels ", Taliparamba. She used to take financial assistance from Syndicate Bank, Taliparamba, OP 1. She opened a Savings Bank Account with OP1, on 27.11.1975. Her Savings Bank Account bore No.10421 in the name of ''M/s. Kerala Steels ''. On 31.03.1978, she opened another account having SB A/c No.34. The said account closed on 24.02.1987. Subsequently, another account was opened in the name of the complainant with account

No.829.

5. THE grievance of the complainant is that the above said account No.829 of M/s. Kerala Steels was opened without her consent or knowledge but it was opened at the instance of her brother, Mr.O.C.Premarajan. She filed a case against O.C.Premarajan as well in the original complaint. She being an unmarried lady, she kept Mr.O.C.Premarajan, her brother, for looking after the day-to-day affairs of her business. It is alleged that her brother Mr.O.C.Premarajan, while working in cahoots with the Manager of Syndicate Bank, OP1, manipulated the account with said OP. He effected so many withdrawals. O.C.Premarajan, OP2, has forged the signatures of the complainant and OP1 failed to verify the signatures of the complainant appearing on the cheques, produced by said O.C.Premarajan, OP2. Due to the fraudulent and collusive acts of the OPs, the complainant suffered a huge loss of more than Rs.5,00,000/-. However, she limited her claim to Rs.5,00,000/- only.

6. THIS is an admitted fact that subsequently she deleted the name of her brother from the array of parties. There is no dispute that the complainant is the Sole Proprietor of her business and she entrusted the day-to-day management of the said business to her brother, O.C.Premarajan. The petition for deletion of his name was filed by the complainant herself, for the reasons best known to the complainant. The complainant did not produce any evidence showing that her signatures were forged. She did not produce the Handwriting Expert ''s evidence or any other evidence to show that her signatures were forged. The entire case hinges upon her sole testimony. She had no explanation as to why the name of the main culprit, O.C.Premarajan, her brother, was deleted. Rather, it appears that she had colluded with her brother, since deceased.

7. ON the other hand, OP placed Ex.R-3, authority of letter executed by the complainant authorizing Mr.O.C.Premarajan, to make, draw, accept, endorse and negotiate otherwise sign any Hundies, Bills of Exchange and Promissory Notes or other negotiable instruments to operate or overdraw on the above account with the Bank and also to receive payment of all moneys due to the complainant and to acknowledge debt or debts due from the complainant, etc. It also goes to show that the complainant had authorized her brother to sign cheques on behalf of the complainant. The complainant has denied having executed authority letter, Ex.R-3. She could not produce any evidence to show that it was not executed by her, no Expert evidence was pressed into service.

8. MOREOVER , the State Commission has observed that she had herself, opened account No.829. It compared the specimen signatures placed at Ex.R-2 and R-5, which go to show that she had herself opened an account with OP1 on 22.06.1992. All the necessary documents were proved on the record. The State Commission rightly held that since the issues like forgery, fraud, misrepresentation or collusion, are involved in this case, therefore, the civil court can decide these questions, after opportunity to lead evidence, including the Handwriting Expert ''s evidence. It is, therefore, also noteworthy that no such

evidence was adduced before the fora below, by the complainant, who was to carry the ball in proving this case. The case of the complainant must stand on its legs. Due to lack of evidence, her case does not stand proved. The case is meritless and same is, therefore, dismissed as barred by time, as well as on merits.