

(2015) 05 NCDRC CK 0108

In the National Consumer Disputes Redressal Commission

Case No : NO 1539 of 2014

ORIENTAL INSURANCE CO. LTD.

APPELLANT

Vs

NATIONAL BULK HANDLING CORPORATION LTD.

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : 2015 3 CPJ 470

Hon'ble Judges : K.S. Chaudhari

Advocate : Kishore Rawat, Mayank Sharma, Siddhartha Chowdhury

Judgement

1. This revision petition has been filed by the petitioner against order dated 09-08-2010 passed by the learned State Consumer Disputes Redressal Commission, Madhya Pradesh (in short, "the State Commission"), in Original Case No. CC/10/11 - National Bulk Handling Corporation Ltd. Vs. Sr. Divisional Manager, Oriental Insurance Co. Ltd., by which petitioner was proceeded ex-parte.

2. Brief facts of the case are that complainant/respondent filed complaint before State Commission and claimed compensation of Rs.94,37,454.38/- on the basis of insurance policy issued by opposite party. As none appeared on behalf of opposite party inspite of service of notice, opposite party was proceeded ex-parte by impugned order dated 09-08-2010. Later on, on 11-03-2011 counsel for opposite party filed Vakalatnama and sought adjournment and later on filed application for setting aside ex-parte order, which was dismissed by learned State Commission vide order dated 01-03-2012. Petitioner filed this revision petition challenging order dated 09-08-2010 along with application for condonation of delay of 1321 days.

3. Respondent filed reply to application for condonation of delay.

4. Heard learned counsel for the parties on application for condonation of delay and perused record.

5. Learned counsel for the petitioner submitted that on account of communication gap between different offices, delay occurred in filing revision petition, which may be condoned. On the other hand, learned counsel for the respondent submitted that no reasonable explanation has been given for condonation of inordinate delay of 1321 days in revision petition, hence application be dismissed.

6. Petitioner has mentioned delay of 1321 days in application for condonation of delay, whereas as per office report there is delay of 1234 days in not filing revision petition.

7. Perusal of order sheets of State Commission reveals that on 09-08-2010 none appeared for opposite party - Insurance Company though notice was served on 03-05-2010 and he was proceeded ex-parte. Learned counsel for the petitioner has drawn my attention towards order sheet dated 06-07-2010 of the State Commission in which it was mentioned that as none was present for the respondent, matter to be listed on 09-08-200 after issuing SPC to the respondent. He further submitted that no fresh notice was issued to the respondent for 09-08-2010. At this stage I am not concerned with the aspect whether State Commission was right in proceeding ex-parte against opposite party or not but I have to see whether delay in filing revision petition is to be condoned or not.

8. admittedly, counsel for opposite party appeared before State Commission on 11-03-2011 but he filed application for setting aside ex-parte order dated 09-08-2010 on 01-03-2012 before the State Commission meaning thereby he filed application for setting aside ex-parte order after almost one year of appearance before State Commission.

9. Para 4 to 7 of application for condonation of delay runs as under:-- "4. That after the application for setting aside the ex-parte order was dismissed, the matter was taken up by the Mumbai Office with the Advocate and the Bhopal Office and they were requested to send the complete order sheet of the case for proceeding further in the matter. Since the same were not received, reminders were sent. It appears that there was some communication gap between different offices of the petitioner insurance company as four offices were involved namely, Divisional Office, Bhopal, Regional Office, Indore, Regional Office-II, Mumbai and Divisional Office, Ghatkopar.

5. That the Mumbai Office after collecting the complete details from Bhopal Office and the Indore Office of the petitioner forwarded the file to the Head Office of the petitioner at New Delhi with the recommendations to file appropriate petition before this Hon"ble Commission for setting aside ex-parte order.

6. That the Head Office of the petitioner on receiving the file noted that there was an inordinate delay in sending the file and therefore matter was taken up with the Mumbai Office to explain the delay and to send the copies of the complete correspondences exchanged between different offices and the

Advocate. On receipt of the same the matter was put up before the competent authority at Head Office, who approved filing of the Revision Petition before this Hon"ble Commission and directed the inquiry to be conducted for the lapses vide notice dated 12-03-2014. The file was thereafter sent to the advocate to file the revision petition on 14-03-2014.

7. That the Advocate unfortunately suffered an injury on his eye and fracture of nasal bone on 15-03-2014 and therefore could not immediately attend the file. However, as soon as his condition improved, the file was attended and the Revision Petition was drafted and sent to the petitioner for approval and signature. Hence is a delay in filing the present Revision Petition."

In this application petitioner has not mentioned on which date Mumbai office asked Bhopal Office to send record of the case and when reminders were issued and when they received complete order sheets of the case. It has also not been mentioned when Mumbai Office sent all collected record to Indore Office and when Indore office forwarded record to New Delhi for filing revision petition against the order. No reasonable explanation has been given for condonation of inordinate delay of 1234 days in filing this revision petition. Learned counsel for the petitioner has placed inquiry report dated 08-11-2014 before me in which only this fact has been mentioned that there was poor handling of the case by the advocate and it was further observed that as dealing officer has either retired or no longer with insurance company, no disciplinary action against them is feasible. Merely on the basis of aforesaid inquiry report there is no justification to condone inordinate delay of 1234 days.

10. I do not find any reasonable explanation for condonation of inordinate delay of 1234 days in filing revision petition and in such circumstances application is liable to be dismissed in the light of following judgments of Hon"ble Apex Court:--

11. In *Ram Lal and Ors . Vs. Rewa Coalfields Ltd .*, AIR 1962 Supreme Court 361 , it has been observed; "It is, 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."

12. In *R.B. Ramlingam Vs. R.B. Bhavaneshwari* 2009 (2) Scale 108 , it has been observed: "We hold 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."

13. Hon"ble Supreme Court after exhaustively considering the case law on the aspect of condonation of delay observed in *Oriental Aroma Chemical Industries Ltd . Vs. Gujarat Industrial Development Corporation* reported in (2010) 5 SCC 459 as under; "We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time."

14. Hon"ble Apex Court in 2012 (2) CPC 3 (SC) - *Anshul Aggarwal Vs. New Okhla Industrial Development Authority* observed as under: "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".

15. Hon"ble Apex Court in (2012) 3 SCC 563 - *Post Master General & Ors. Vs. Living Media India Ltd. and Anr .* has not condoned delay in filing appeal even by Government department and further observed that condonation of delay is an exception and should not be used as an anticipated benefit for the Government departments.

16. Thus, it becomes clear that there is no reasonable explanation at all for condonation of inordinate delay of 1234 days. In such circumstances, application for condonation of delay is liable to be dismissed. As application for condonation of delay is to be dismissed, revision petition being barred by limitation is also liable to be dismissed.

17. Consequently, revision petition filed by the petitioner is dismissed as barred by limitation at admission stage with no order as to costs.