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**(1991) 10 NCDRC CK 0024**

**In the National Consumer Disputes Redressal Commission**

Rajasthan State Road Transport Corporation

APPELLANT

Vs

DISTRICT FORUM, BIKANER

RESPONDENT

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**Date of Decision :** 21-10-1991

**Acts Referred:**

**Citation :** 1992 2 CPJ 889

**Hon'ble Judges :** S.K.Mal Lodha , Damodar Thanvi , Saria Khan J.

**Final Decision :** Appeal dismissed

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**Judgement**

1. THE Rajasthan State Road Transport Corporation and the Divisional Manager, R.S.H.T.C, Bikaner who were opposite parties before the District Forum, Bikaner have filed this appeal under Section 15 of the Consumer Protection Act, 1986 ("the Act" herein) against the order dated 2.5.1991 passed in Complaint Case No. B/186/90. THE District Forum dismissed the complaint so far as award of compensation and refund of fare were concerned. It, however, gave certain directions to the opposite parties-respondents which are (1) that the appellants should not allow more passengers than the capacity of the bus and it should not issue more tickets beyond it; (2) that the driver and the conductor should wear the dresses which have been provided by the R.S.R.T.C and certain in other directions contained in clause 1(c) of the order. THE appeal was filed on 21.6.1991. Office reported that the appeal is barred by 20 days and even if the date of sending the certified copy by the opposite parties is taken into consideration it is still barred by 9 days. An application for condonation of delay was submitted with the appeal supported by affidavit of Shri S.K. Jaini, Divisional Manager, R.S.R.T.C, Bikaner. It may be stated that the affidavit has not been verified much less by a competent authority. THE contents of the affidavit were not sworn by the deponent. As the affidavit accompanying the application was not duly verified a notice was issued to the appellant to show cause why this appeal be not rejected as barred by time.

2. ON 9.8.1991 the Officer-in-charge prayed for time as the Counsel for the appellant has not come. The appeal was adjourned. The appeal has been listed

today for considering the question of limitation in presenting the appeal. The certified copy of the order appealed against which was sent by the District Forum, Bikaner to the complainant on 13.5.1991 bears the/endorsement that the copy is being sent to the Divisional Manager for information and compliance. The copy was not issued to the appellants on their applications. In the application for condonation of delay it has been stated by the appellants that the appellants received the certified copy on 13.5.1991 and that on receipt of the certified copy, it was sent to the Standing Counsel of R.S.R.T.C. for his opinion but on account of his pre-occupations as well as the file being tagged with another file, the opinion of the advocate was only received on 4th June, 1991 and thereafter the file was sent to the Head Office, Jaipur alongwith opinion of the advocate. It was further stated in the application that in the meanwhile the staff became busy in the election duty and no decision was taken as to whether the appeal was to be filed against the order or not. In para 3 of the application it was stated that delay in filing the appeal which according to the appellants is of 9 days may be condoned in the circumstances mentioned in the application as well as on account of administrative exigency. The application is in two pages and in the margin S.K. Jaini, Divisional Manager has put his signatures. Towards the close of the application where the learned Counsel for the appellant has signed, Shri S.K. Jaini has not put his signatures. Be that as it may the application was not supported by a verified affidavit. It cannot be considered as an affidavit in support of the application as envisaged by Rule 8(4) of the Consumer Protection (Rajasthan) Rules, 1987. Period of limitation prescribed under Section 15 of the Act is 30 days from the date of the order. Proviso to Section 15 of the Act lays down that if the State Commission is satisfied on sufficient cause being shown for presenting the appeal after the expiry of period of limitation, it can condone the delay. The two words used in proviso viz. "satisfied" and "sufficient cause" are the very same words which have been used in Section 5 of the Limitation Act, 1963 or its predecessor Statute Limitation Act of 1908. In AIR 1962 SC 361 the Supreme Court had an occasion to consider the question of Section 5 of the Limitation Act. It was observed therein as follows :- "...The context seems to suggest that "within such period" means within the period which ends with the last date of limitation prescribed. In other words, in all cases falling under Section 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed".

Further it was held in AIR 1977 SC 2221 as under : "Section 5 of the Limitation Act is a hard task master and judicial interpretation has encased it within a narrow compass. A large majority of case law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued

to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day's delay..."

It is clear from the above authorities that it is incumbent on the appellants to explain each day of default beyond the terminus line of the prescribed period of limitation. Section 5 of the Act is in pari materia with the proviso to Section 15 of the Act. Apart from the facts that the contents of the application had not been sworn by the deponent, Shri S.K. Jaini, Divisional Manager, there is a delay of 20 days or in any case from the date of the receipt of the certified copy for compliance there is a delay of 9 days. The appellants have to explain delay day by day. The only relevant averment made in the application is that after the receipt of the copy there was ample time for filing the appeal within the prescribed time. It was sent to the Standing Counsel of R.S.R.T.C. for his opinion. The opinion was received from the Counsel on 4.6.1991 as he was pre-occupied and the file being tagged with another file. One is left in darkness as to who was the Standing Counsel of the R.S.R.T.C. and whether the facts stated by the appellants in the application which are not supported by a proper affidavit are correct or not. It has not been stated as to when the prescribed period of limitation expired and the facts or factors from that point till the date of the filing of the appeal. The appellants have not acted with due care and attention. Even after the receipt of the opinion of the Advocate, the appeal was within limitation. But nothing was done by the appellants in this regard, Para 2 of the application is as under : "That immediately on receipt of the aforesaid certified copy of order of District Forum, Bikaner the same was sent to Standing Counsel, of R.S.R.T.C. for his opinion but on account of his pre-occupation as well as the file being tagged with another file the opinion of the advocate was only received on 4th June, 1991, thereafter file was sent to Head Office, Jaipur alongwith opinion of the advocate and in the meanwhile since the staff was busy in the Election duties no decision was taken as to whether the appeal was to be filed against the order of District Forum, Bikaner dated 2.5.1991 or not."

3. IT is difficult to accept all this for the simple reason that Head of the Department or the Officer-concerned has to take decision whether the appeal is to be filed in a particular case or not. IT is unfortunate that in the application it has been stated that the staff was to take decision as to whether the appeal was to be filed against the impugned order. This reason does not advance the cause of the appellants further. In the absence of the proper affidavit it is difficult to believe the reasons given by the appellants in the application. Even otherwise it appears to us that the appellant Corporation does not seem to be aware of the strict requirement of law and the burden which it has to be discharge to avail the benefit of condonation of delay under the proviso to Section 15 of the Act. For the foregoing reasons we find the least merit for condonation of the delay and dismiss the application. The appeal is also dismissed because of the bar of limitation. Appeal dismissed.