

(2013) 10 NCDRC CK 0084

In the National Consumer Disputes Redressal Commission

RAM BHAGAT

APPELLANT

Vs

M/S New Holland Fiat (India) Pvt. Ltd

RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : 2013 0 NCDRC 683 : 2013 4 CPR 58

Hon'ble Judges : V.B.GUPTA , R.GUPTA J.

Final Decision : Revision Petition is dismissed

Judgement

1. REVISION petition no. 2088 of 2013 has been filed under 21 of the Consumer Protection Act, 1986 against the judgment/ order dated 14.09.2012 passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula ("the State Commission ") in First Appeal no. 341 of 2012.

2. AS per the facts of the case as gleaned from the District Consumer Disputes Redressal Forum, Fatehabad ("the District Forum") the petitioner had purchased one tractor New Holland 5500 from respondent no. 2 against its price of Rs.5,40,000/ on 20.02.209 and at the time of purchase he was assured of two year warranty/ guarantee. It is further stated that two after purchase of the tractor, the petitioner approached respondent no. 2 with the complaint of excess consumption of diesel. This defect in tractor was repaired but that was not up to the standard of company. Ultimately engine of the tractor stopped working due to inadequate supply of diesel and there were many more defects in the tractor such as leakage in silencer, excess of smoke etc. On complaint, the engineer of the respondents had checked the tractor on 22.11.2009 who after some repair stated that now the tractor will function properly. As per version of the petitioner, tractor was not in working position and he again brought the tractor to the respondent no. 2 on 12.02.2010 where service of the same was provided but service book and other documents were kept by the respondent no. 2 with the excuse that same are to be sent to the company. The petitioner repeatedly requested the respondents to rectify the fault in his tractor but the respondents were postponing the matter under one pretext or the other. Ultimately he served

the respondents a legal notice to this effect but same was not replied. The petitioner had got checked his tractor from another mechanic who reported that engine of the tractor is not working properly due to dust as dry air cleaner is fitted inside and cracks also appeared in the tyres due to manufacturing defects. The petitioner prayed for getting necessary repair and replacement of two big tyres of tractor besides compensation of Rs.50,000/ from the respondents for harassment and Rs.1,00,000/ on account of expenses regarding hire of alternative tractor for his agricultural work. Upon notice the respondent no. 1 did not appear and was proceeded ex parte, however, Shri V K Mehta, Advocate appeared on behalf of respondent no. 2 and filed the written statement by taking preliminary objections of maintainability, cause of action, locus standi and jurisdiction. On merit the version of the petitioner was contested but at the same time it was admitted that defect in tractor was removed by the Engineer of the company by changing the old pump and satisfaction letter was got signed from the son of the petitioner to this effect and no other complaint was received. As regards Form 22 is concerned, duplicate of same is to be given against the affidavit of the petitioner, it was duly communicated to the petitioner over the telephone and personally as well but petitioner has not given any such affidavit while denying the rest of contents of the complaint, it is submitted that complaint in hand be dismissed with costs.

3. THE District Forum came to the conclusions that "the petitioner has proved the deficiency in service on the part of the respondents, resultantly instant complaint is hereby allowed. The respondent no. 1 M/s New Holland Fiat (India) Pvt. Ltd., is directed to remove all the defects in tractor including replacement of two big tyres enabling the petitioner to use the same in perfect condition and to pay a sum of Rs.50,000/ as compensation on account of being deficient in service and for the loss cause to the complainant for arranging an alternate mode including the harassment of all counts and to provide the petitioner duplicate Form 22. Respondent no. 1 is further directed to comply with the order within a period of one month failing which the petitioner shall be entitled for replacement of tractor with the new one along with compensation amount of Rs.50,000/".

4. AGGRIEVED by the order of the District Forum, the respondent no. 1/ opposite party no. 1 filed an appeal before the State Commission. The State Commission having considered the arguments of the counsel had observed that, "in this case the complainant had made allegation with regard to breakage in silencer axel smoke, cracks in tyres. But complainant not produced any expert evidence on record. On the other hand appellant has also not moved any application for expert evidence. Court has also not appointed any expert for evidence. We find that on most of such like cases where the expert evidence is required generally that is not called because neither the parties move such application under section 13 of the Consumer Protection Act. The District Consumer Forum decides such technical issues merely on assumptions and presumption. It is duty of District Consumer Forum in such like cases where expert evidence is required to appoint an expert to examine such defect in goods. I, therefore, set aside the order

passed by the District Consumer Forum and direct the District Consumer Forum to take the expert evidence on the defects in tractor. Further suggest that Consumer Forum shall appoint a person who will be normally of a Government Agency and with requisite qualification and background to enable them to submit the report as natural organisation. In view of the above discussion, as in this case, patent illegality had been committed by not considering above said fact, therefore, the order dated 06.12.2011 passed by the District Forum, Fatehabad is set aside and the case is remanded back to the District Forum, Fatehabad to decide the same afresh in accordance with law within three months". Hence, the present revision petition. Along with the present revision petition an application for condonation of delay of 176 days has been filed. The reasons given in the application are that: The State Commission, Haryana by misinterpretation of provisions contained in section 13 of the Consumer Protection Act, 1986 vide the judgment impugned has set aside the well reasoned judgment dated 06.12.2011, passed by the District Forum, Fatehabad, Haryana and remanded the matter back to be heard afresh. On account of ill formed advice, petitioner was misguided by local counsel Mr Mahender Kumar Dharnia to appear before District Forum, Fatehabad as the complaint is being heard afresh as directed by State Commission. It was only now that on advice of present filing counsel that petitioner is challenging the judgment impugned, as the same is contrary to law and facts on records and inconsistent with legal precedents, besides being violative of principles of natural justice. It is only on account of wrong advice given by the petitioner 's local counsel that petitioner could not challenge the judgment impugned and hence, delay has occurred which is neither intention nor deliberate. The certified copy of the impugned judgment was issued by the registry of the State Commission, Haryana. On 23.10.2012 and there is a delay of 176 days in filing the present revision petition. Applicant has a good case on merits and it will be in the interest of justice that the delay in filing present petitioner be condoned.

5. WE have heard the learned counsel for the petitioner and have gone through the records of the case carefully. The application contains absolute no dates or reasons to explain the day today delay or give "sufficient cause " to condone the delay of 176 days except that he has been misguided by the local counsel Mr Mahender Kumar Dharnia to appear before the District Forum, Fatehabad as the complaint is being heard afresh as directed by the State Commission. Counsel for the petitioner admitted that no action has been taken against the Advocate for his wrong advice.

6. THE petitioner is supposed to explain the day to day delay, but the needful has not been done. Moreover, petitioner has failed to provide "sufficient cause " for the delay of 176 days. This view is further supported by the following authorities. The apex court in the case of In Anshul Aggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC), it has been 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".

In *Balwant Singh Vs. Jagdish Singh and Ors.*, (Civil Appeal no. 1166 of 2006), decided by the Apex Court on 08.07.2010 it was held: "The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005]".

7. 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."

8. 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."

Accordingly, we find that there is no "sufficient cause" to condone the delay of 176 days in filing the present revision petition. The application for condonation of delay is without any merit as well as having no legal basis and is not maintainable. Consequently, the present revision petition being time barred by limitation and is dismissed with cost of Rs.5,000/ (Rupees five thousand only).

9. PETITIONER is directed to deposit the cost by way of demand draft in the name of "Consumer Legal Aid Account of this Commission" within four weeks from today. In case the petitioner fails to deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation.