

(2012) 07 NCDRC CK 0099

In the National Consumer Disputes Redressal Commission

RAMDHARI DEVNARAYAN MISHRA

APPELLANT

Vs

Dilip S Gada , Superior Builder , Kailash Khedkar , Jagannath
Bhikaji Khadkar

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 380

Hon'ble Judges : V.B.Gupta , Vinay Kumar J.

Advocate : Pradeep Aggarwal , U.P.Singh , Ram Niwas

Judgement

1. REVISION petition No.2359 of 2007 was filed in this Commission on 09.07.2007. Thereafter on 27.7.2007 this Commission accepted the application of the petitioner for interim stay of the operation of the impugned order. The same was stayed subject to deposit of the decreed amount including interest with the State Commission, within a period of two weeks.

2. WHEN the matter came up for hearing on 25.7.2011, the revision petitioner remained unrepresented, though notice had been issued from this Commission on 12.5.2011 itself. The Commission noted that the registered A.D. has been received back after service. Again when the matter was taken on 01.11.2011, the revision petitioner remained unrepresented. Taking into account the non-appearance of the petitioner or his counsel on two consecutive date of hearing this Commission dismissed the revision petition in default.

3. MISC. Application No.239 of 2012 has been filed against the above dismissal of the revision petition in default with the prayer to allow the application of the applicant/petitioner and restore the revision petition to its original number. This application is dated 23.3.2012, but was actually received in this Commission on 4.4.2012. Evidently, the application for restoration has been filed more than five months after the order of dismissal was passed by this Commission. Under the Consumer Protection Regulations, 2005 the period of limitation prescribed for filing of such an application is 30 days. Hence, the application for restoration also carries an application for condonation of delay.

4. A perusal of this application shows that the main justification tendered for this delay is that Shri R.O.Pathak, Advocate, who was representing the revision petitioner had since expired on 12.8.2011 and the petitioner came to know of his death only in the first week of March, 2012. Records of the Commission show that the petitioner was represented jointly by Shri R.O.Pathak and Shri A.P. Jain. Moreover, the last appearance of Shri R.O. Pathak in this revision petition was on 23.11.2007. Therefore, we are unable to accept this part of the explanation. If the late counsel had last appeared in the case in November, 2007, his death in August, 2011 would have had no relationship with anything concerned with the present proceedings since 01.11.2011.

5. THE petitioner has further stated in the Misc. Application that he came to know through Mr. A.P.Jain, Advocate that the revision petition has been dismissed in default on 01.11.2011. But, the application maintains a studied silence on when exactly he was informed by Mr. Jain and how much time was taken thereafter in filing the restoration application.

6. WE therefore, feel that the delay has not been satisfactorily explained and find no reason for acceptance of the restoration application. Accordingly, Misc. Application No.239 of 2012 is dismissed. No order as to costs.