

(2012) 07 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

Sahil Garden Co-Op. H. Society Ltd

APPELLANT

Vs

Paranjpe Estates And Development Company Pvt. Ltd

RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 819 : 2012 3 CPJ 604

Hon'ble Judges : V.B.GUPTA , VINAY KUMAR J.

Final Decision : Appeal dismissed

Judgement

1. IN this appeal there is challenge to order dated 6.5.2010, passed by Consumer Disputes Redressal Commission, Maharashtra, Mumbai (for short as "State Commission "),vide which consumer complaint of the appellant was dismissed.

2. BRIEF facts are that originally appellant/complainant had filed a complaint before District Consumer Disputes Redressal Forum, Ratnagiri (for short as "District Forum ") in the year 2009, whereas possession of the flats to the appellant-society members were given way back in the year 2003 by the respondent/opponent. When society was formed and deed of conveyance was executed as late as in the year 2009, only then consumer complaint was filed. District Forum took cognizance of some portion of the complaint and observed that rest of the claim is time-barred. District Forum also took cognizance in respect of some leakages and other deficiencies and appointed a Court Commissioner. The Court Commissioner gave estimation of more than Rs. 30 lakh. The District Forum allowed the complaint to be withdrawn, to be filed it in the original jurisdiction of the State Commission. State Commissionvide impugned order dismissed the complaint, being barred by limitation.

3. AGGRIEVED by the impugned order, appellant has filed this appeal along with application for condonation seeking condoning the delay of 94 days in filing of this appeal.

4. NOTICE of this appeal was issued to the respondent, who has filed its reply.

We have heard the learned Counsel for the parties and have gone through the records.

5. FIRST question which arises for consideration is as to whether there are sufficient grounds for condoning the delay in filing of this appeal.

6. THE grounds on which condonation has been sought have been enumerated in paras 3 to 6 of the application which read as under: "3. The appellants state that the said impugned order dated 6.5.2010, was collected by the Advocate on 7.6.2010, and sent to Chiplun. When contacted our Advocate said that an appeal will have to be filed in Delhi. He suggested that we contact some Advocate who will assist us in filing the appeal, in Delhi, whereas we were not aware of any such Advocate. After the vacations we met some Advocates in Mumbai who suggested the name of Advocate Anand Patwadhan. 4. We had to contact him and send him all the papers. He informed us that the said documents in Marathi will have to be translated in English the entire process took time and one document after another was being pointed out. 5. Hence, there is a delay in filing the appeal which was mainly on account of the translation that was required to be done of many documents which we came to learn quite late. The Appellants humbly state that they have to commute between Chiplun and Mumbai which is about 350 kms. from Mumbai during the period of heavy rains of this year which had disrupted the train services as well as the road on several occasions for several days at times, making travelling uncertain. 6. The Appellants state that they delay is not deliberate but due to circumstances beyond our control of the Appellants and hence in the interest of justice the delay of 94 days be kindly condoned. "

It is well settled that sufficient cause for seeking condonation of delay in each case is a question of fact.

7. REASONS stated with regard to the condonation of delay are absolutely vague. Impugned order was collected by the appellant from its Advocate on 7.6.2010, whereas appeal in question was filed on 12.10.2010. There is delay of more than 3 months in filing of this appeal. No specific dates have been mentioned as to when appellant contacted his Advocate, on which date the papers were sent and to whom translation work was entrusted and when the translation work was completed. The application is absolutely vague and silent on these material points.

8. IN *Ram Lal and Others v. Rewa Coalfields Ltd.*, AIR 1962 SC 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 Section 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. "

In R.B. Ramlingam v. R.B. Bhavaneshwari, I (2009) SLT 701=I (2009) CLT 188 (SC)=2009 (2) Scale 108, Supreme Court 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/petitioner. "

9. RECENTLY Supreme Court in Anshul Aggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC), has laid down 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. "

10. UNDER these circumstances, no ground is made out for condoning the delay in filing of this appeal as no sufficient ground has been shown to us. Thus, the appeal is barred by limitation. Now, coming to the merits, it is contended by learned Counsel for the appellant that it is a continuous cause of action as there was leakage after completion of the flats in question and as such present complaint is not time barred. In support, learned Counsel for appellant has relied upon a decision of this Commission, Mopar Builders and Developers Pvt. Ltd. v. Unity Co-op. Housing Society Ltd., I (2011) CPJ 71 (NC)=R.P. No. 2743 of 2010, decided on 17.3.2010.

11. IT is an admitted fact that possession of flats to the appellant 's society members were given way back in the year 2003 by the respondent. It has been nowhere stated in the entire complaint, as to from which date/period, alleged leakage started. Admittedly, the complaint was filed in the year 2009 before the State Commission.

12. STATE Commission, in this regard in its impugned order has observed: "We are finding that complaint as filed by the complainant is absolutely time barred. Possession was given to all the flat purchasers in March 2003. So, consumer complaint if any should have been filed within two years from March 2003 i.e. on or before March, 2005. Even Society was registered in 2005. So, assuming that the Society was proper authority to file consumer complaint, then it should have been filed within two years from formation of Society. So, latest by 2007, Society should have filed consumer complaint. But, present consumer complaint came to

be filed in the year 2009 without any condonation of delay application. In the circumstances, on the face of it, complaint filed is beyond the period of limitation. "

Since possession of flats were given in the year 2003 and complaint has been filed in the year 2009, as such, the complaint is hopelessly barred by limitation as prescribed under the Consumer Protection Act, 1986 (for short as "Act ").

13. IT is well settled principle of law that any relief can be claimed under the Act within two years from the date on which the cause of action accrues.

14. SECTION 24-A of the Act deals with this situation which is reproduced as under: "24-A. Limitation period -(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. (2) Notwithstanding anything contained in Sub-section (1) a complaint may be entertained after the period specified in Subġ 1/2-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period: Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay. "

The above provision is clearly peremptory in nature requiring the Consumer Fora to see at the time of entertaining the complaint, whether it has been filed within the stipulated period of two years from the date of cause of action.

15. HON "ble Apex Court in case of Kandimalla Raghavaiah and Co. v. National Insurance Co. Ltd. and Another, III (2009) CPJ 75 (SC)=2009 CTJ 951 (SC) (CP), took view of the observations made in case State Bank of India v. B.S. Agricultural Industries, II (2009) CPJ 29 (SC)=II (2009) SLT 793=2009 CTJ 481 (SC) (CP), as under: "12. Recently, in State Bank of India v. B.S. Agricultural Industries, 2009 CTJ 481 (SC) (CP), this Court, while dealing with the same provision, has held - "8. It would be seen from the aforesaid provision that it is peremptory in nature and requires consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The Consumer Forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. The expression, "shall not admit a complaint " occurring in Section 24A is sort of a legislative command to the Consumer Forum to examine on its own whether the complaint has been filed within limitation period prescribed thereunder. As a matter of law, the Consumer Forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the Consumer Forum to take notice of Section 24A and give effect to it. If the complaint is barred by time and yet, the Consumer Forum decides the complaint

on merits, the Forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside. "

In para No. 13, it has been held by the Hon "ble Supreme Court - "The term "cause of action " is neither defined in the Act nor in the Code of Civil Procedure, 1908 but is of wide import. It has different meanings in different contexts, that is when used in the context of territorial jurisdiction or limitation or; the accrual of right to sue. Generally, it is described as "bundle of facts ", which if proved or admitted entitle the plaintiff to the relief prayed for. Pithily stated, "cause of action " means the cause of action for which the suit is brought. "Cause of action " is cause of action which gives occasion for and forms the foundation of the suit. In the context of limitation with reference to a fire insurance policy, undoubtedly, the date of accrual of cause of action has to be the date on which the fire breaks out. "

16. ON the point of recurring cause of action reference may be made to the observation made by the Hon "ble Supreme Court in Raja Ram Maize Products etc. v. Industrial Court of M.P. and Other, III (2001) SLT 839=AIR 2001 SC 1676, wherein it has been held: "10. The concept of recurring cause of action arising in a matter of this nature is difficult to comprehend. In Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneswar Maharaj Sansthan, AIR 1959 S.C. 798 it was noticed that a cause of action which is complete cannot be recurring cause of action as in the present case. When the workers demanded that they should be allowed to resume work and they were not allowed to resume work, the cause of action was complete. In such a case the workers going on demanding each day to resume work would not arise at all. The question of demanding to allow to do work even on refusal does not stand to reason. "

Since, complaint was barred by limitation, the State Commission rightly dismissed the same. We do not find any illegality, infirmity in the impugned order passed by the State Commission. The decision of Mopar Builders (supra), of this Commission is not at all applicable to the facts of the present case.

17. THUS , present appeal filed by the appellant is not maintainable on the ground of limitation as well as on merits. The same has been filed just to waste the time of this Commission. Hence, the appeal stands dismissed with costs of Rs. 10,000 (Rupees ten thousand only).

18. APPELLANT is accordingly directed to deposit the costs by way of cross cheque for the sum of Rs. 10,000 (Rupees ten thousand only) in the name of "Consumer Legal Aid Account " within four weeks from today. Pending application, if any, stands dismissed.

19. IN case, costs are not deposited within the prescribed period, then appellant shall be liable to pay interest @ 9% p.a., till realization.

20. LIST on 24.8.2012 for compliance. Appeal dismissed.