(2015) 05 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

Case No : 1227 of 2015

Santosh Saini — APPELLANT

Vs

Sbi Life Insurance Co Ltd — RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Citation : 2015 2 CPR 801

Hon'ble Judges : J.M.MALIK , S.M.Kantikar J.

Advocate : Kamal Chamaria

Judgement

1. COUNSEL for the petitioner present. Arguments heard. There is a delay of 500 days in filing this Revision Petition. However, it is surprising that the petitioner has not mentioned the number of days. The Registry has wrongly reported that there is delay of 58 days. Registry is hereby warned and directed to file explanation about the same till Monday, i.e., 18.05.2015.

2. THE impugned order was passed on 09.10.2013. The delay has been explained in Para No. 2 of the application for condonation of delay, which is reproduced here as under: - "2. That since after receiving of the notice in appeal no. 1863/2011 preferred by Respondent no. 1 (SBI Life Insurance) the humble petitioner contacted her counsel at Hanumangarh who also conducted her case before forum, and entrusted her Vakalatnama to represent her before the commission Jaipur but for the reasons best known to the counsel he didn''t appear before the commission and the appeal was decided Ex -parte against the petitioner. That the humble petitioner has come to know about the fate of the appeal only after receiving of the notice u/s 13(4) of the SARFAESI Act 2002 sent by Respondent No. 2 (SBBJ Bank) on 19.11.2014 for secured assets. Thereafter, petitioner filed for certified copy of order dated 09.10.2013 on 02.12.2014 which was received on 08.12.2014 therefore in these circumstances delay occasioned".

3. THE excuse put forward by the petitioner is fragile. Such like stories can be created at any time. It does not go to satisfy this Commission. Day -to -day delay was not explained. The expression "sufficient cause" cannot be erased from

Section 5 of the Limitation Act by adopting the excessive liberal approach, which would defeat the purpose of section 5 of the Limitation Act and C.P. Act. The following authorities apply to this view to a hair. Anshul Aggarwal v. New Okhla Industrial Development Authority, 2011 4 CPJ 63 , R.B. Ramlingam v. R.B. Bhavaneshwari, 2009 1 CutLT 188 , Ram Lal and Others v. Rewa Coalfields Ltd., 1962 AIR(SC) 361 and Office of the Chief Post Master General and Ors. Vs. Living Media India Ltd. and Anr. [2012]. The latest view was taken by the Apex Court in the case "Sanjay Sidgonda Patl Vs. National Insurance Co. Ltd. and Ors.", decided by the Apex Court while dismissing the Special Leave to Appeal (Civil) No. 37183 of 2013, decided on 17.12.2013, upholding the order of this Commission wherein delay of 13 days was not condoned.

4. SIMILAR view was taken by the Apex Court while dismissing the Special Leave to Appeal (Civil) No. 33792 of 2013 in Chief Officer, Nagpur Housing and Area Development Board and Anr. V. Gopinath Kawadu Bhagat, decided on 19.11.2013, upholding the order of this Commission where 77 days delay was not condoned and again delay of 78 days was not condoned in the case reported in M/s Ambadi Enterprises Ltd. Vs. Smt. Rajalakshmi Subramanian, in Special Leave to Appeal (Civil) No. 19896 of 2013 decided on 12.07.2013.

5. IN Banshi Vs. Lakshmi Narain, 1993 1 RLR 68, it was held that reason for delay was sought to be explained on the ground that the counsel did not inform the appellant in time, was not accepted since it was primarily the duty of the party himself to have gone to lawyer''s office and enquired about the case.

6. IN Jaswant Singh Vs. Assistant Registrar, Co -operative Societies, 2000 126 PunLR 83, it was observed that cause of delay was that the counsel of the appellant in the lower Court had told them that there was no need of their coming to Court and they would be informed of the result, as and when the decision comes, was held to be a story which cannot be believed.

7. IN Bhandari Dass Vs. Sushila, 1997 2 RajLW 845, it was held that accusing the lawyer that he did not inform the client about the progress of the case nor had he sent any letter, was disbelieved while rejecting an application to condone delay.

8. THE case is hopelessly barred by time. We have also gone through the merits of this case as well. The State Commission rightly held that heart -attack cannot be equated with an accident. Heart -attack is not an accident but tantamounts to natural death. Again, as per the exclusion clause of 45 days, the policy comes into force after the expiry of 45 days. Even on merits the petitioner does not have a good case, therefore, the case is dismissed. However, liberty is given to the petitioner to ask the Insurance Company to refund the premium.

