

(2003) 10 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

SANYOG CHITS PVT. LTD.

APPELLANT

Vs

CENTRAL DISTRICT CONSUMER REDRESSAL FORUM And
NEW INDIA ASSURANCE CO. LTD.

RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Citation : 2004 2 CLT 565 : 2004 2 CPJ 260

Hon'ble Judges : Lokeshwar Prasad , Rumnita Mittal , Mahesh Chandra J.

Final Decision : Appeal dismissed

Judgement

1. THE present appeal, filed by the appellant, under Section 15 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") is directed against order dated 7.10.2002, passed by District Forum (Central), Maharana Pratap Bus Terminal, ISBT, Kashmere Gate, Delhi in Complaint Case No. 1370/2000 entitled M/s. Sanyog Chits Pvt. Ltd. v. THE New India Assurance Company Limited.

2. THE facts, relevant for the disposal of the present appeal, briefly stated, are that the appellant had filed a complaint under Section 12 of the Act before the District Forum, averring therein that the appellant had purchased a Maruti Car, bearing registration No. DNB-6485 from one Shri Shyam Khimani, r/o K-101 F, Sheikh Sarai-II, New Delhi on 18.2.1996. It was stated that the above said vehicle, so purchased by the appellant, was duly transferred by the concerned Transport Authority in the name of the appellant on 26.2.1996. THE above said vehicle, as per the case of the appellant, was duly insured from 12.5.1995 to 11.5.1996 in the name of previous owner Shri Shyam Khimani, who had paid a premium of Rs. 3,949/- and had taken an insurance policy, bearing No. 31323201200192/176/71591 which was issued by respondent No. 2, the New India Assurance Company Limited. It was stated that on the night falling between 19th and 20th April, 1996 the above said vehicle was stolen from outside the residence-cum-office of the appellant by some unknown person. Report regarding the theft of the vehicle was lodged with the concerned police authorities and a claim under the policy was preferred by the appellant with the

respondent on 17.3.1997. THE grievance of the appellant, in the complaint filed before the District Forum, in nutshell was that despite repeated requests the appellant received no positive response from the Insurance Company (respondent No. 2). Alleging deficiency in service on the part of the respondent No. 2 (the Insurance Company), the appellant in the complaint filed before District Forum had prayed that respondent No. 2, the Insurance Company, be directed to pay the insured amount of Rs. 1,00,000/- to the appellant together with interest @ 18% p.a. and another sum of Rs. 10,000/- as Advocate's fees and a sum of Rs. 3,000/- as cost of litigation. The claim of the appellant in the District Forum was resisted by the respondent Insurance Company and in the reply/written version, filed on behalf of the respondent Insurance Company, certain preliminary objections were taken to the effect that the appellant had no locus standi to file that complaint as there was no privity of contract between the appellant and the respondent Insurance Company; that the complaint had not been filed by the appellant within the prescribed period of limitation; that the complaint, filed by the appellant, involved complicated issues of law and fact which cannot be decided in summary procedure. On merits it was stated that since the insured had sold the vehicle, there was no insurable interest of the insured in the vehicle in question and as such the appellant had no right or claim against the respondent. It was stated that as the vehicle was not insured in the name of the appellant and the policy was also not got transferred, the appellant had no right to approach the respondent Insurance Company for the claim under the policy. It was stated that there was no deficiency in service on the part of respondent No. 2, the Insurance Company and that the appellant was not entitled to any relief.

The learned District Forum vide impugned order has dismissed the complaint, filed by the appellant, on the ground that the complaint, filed by the appellant, was barred by limitation.

3. FEELING aggrieved, the appellant has preferred the present appeal under Section 15 of the Act. We have heard the learned Counsel for the appellant at length on the question of admission of the present appeal and have also carefully gone through the documents/material on record. In terms of the provisions contained in Section 15 of the Act, a person, aggrieved by an order, made by the District Forum, can prefer an appeal against such order to the State Commission within a period of 30 days from the date of the order. However, proviso to Section 15 of the Act provides that the State Commission may entertain an appeal even after the expiry of the above said period of 30 days, if it is satisfied that there was "sufficient cause" for not filing the same within the above said period. The words "sufficient cause" occurring in proviso to Section 15 of the Act, are of utmost significance. As per settled law, culled out from various judicial decisions, the above expression "sufficient cause", though deserves to receive a liberal interpretation, yet, a just and equitable balance has to be maintained between the right secured by the respondent as a result of expiry of the prescribed period of limitation and the injustice of depriving the appellant of

adjudication of his grievances on the merits of his appeal for causes beyond his reasonable control, which means the cause is bona fide and beyond the control of the appellant. Though, no hard and fast line can be drawn as to what affords "sufficient cause" in a given case, yet, again, as per settled law, any cause which prevents a person from approaching the Court within time is "sufficient cause". In doing so, it is the test of a reasonable man in normal circumstances which has to be applied.

4. ADMITTEDLY, the present appeal has not been filed by the appellant within the prescribed period of 30 days because the order being impugned in the present proceedings was passed by the learned District Forum on 7.10.2002 and the present appeal has been filed by the appellant on 8.4.2003. Therefore, the question requiring consideration at the very threshold is as to whether the appellant has shown "sufficient cause" for not filing the appeal in time within the meaning of proviso to Section 15 of the Act. The appellant, along with the appeal, has filed an application seeking condonation of delay in filing the present appeal. The reasons for not filing the appeal in time have been stated in paras 2, 3 and 4 of the above said application which read as under: "2. That the appellant first of all was shocked to see the adverse order as he never could have imagined that it could go against him despite of fool-proof case, however, accepting it as his fate he once again consoling himself go determined to go in appeal against the said order as such after a long inquiry regarding the genuineness of the Counsel and the corresponding rule as well he could hand over the case file to the present file in mid February as in the earlier occasion while the applicant/appellant had to file the complaint case he was misguided by some of the Counsels as such this time he wanted to be sure that the case should go to the right and knowledgeable person.

3. That unfortunately by the time the present Counsel could make up his mind after going through the case file he had to rush out of station for quite a long time due to the death of some of his close relative. Thereafter, when he returned from attending the last rituals the present Counsel himself fell sick leading to further delay in filing the present appeal.

4. That the said delay has been caused due to the bona fide reason assigned above and not because of any negligent and deliberate delay on the part of the applicant/appellant. It is humbly submitted that "sufficient cause" should receive a liberal construction so as to advance substantial justice".

On a perusal of the contents of the above said application it is apparent that certified true copy of the order being impugned in the present proceedings was received by the appellant on 15.1.2003 and if the period of limitation for filing the appeal is to be computed, as commencing from the date of communication of the order, as has been held by the Hon'ble Supreme Court in case Housing Board, Haryana v. Housing Board Colony Welfare Association and Others, reported as III (1995) CPJ 28 (SC), the present appeal should have been filed by 15.2.2003. The same, as already stated, has been filed much beyond the

prescribed period of limitation on 8.4.2003.

5. THE reasons assigned for not filing the appeal in time are no reasons in the eyes of law. One of the reasons stated in the above said application is that the Counsel had to rush out of station for a quite long time due to death of some of his close relative and thereafter he fell sick. No details have been given as to from which period to which period the Counsel for the appellant had gone out of station. Not even the name of that close relative of the Counsel for the appellant, who is alleged to have died and his relationship with the Counsel for the appellant has been mentioned. No details of the alleged illness which prevented the Counsel from filing the appeal in time have been given. Even the affidavit of the concerned Advocate has not been filed. Delay in filing the appeal cannot be condoned as a matter of generosity. Proof of "sufficient cause" is a condition precedent for the exercise of such discretion by the Appellate Authority. In our above views, we stand fortified by a decision of the Hon"ble National Commission in case Vice-Chairman, Delhi Development Authority v. O.P. Gauba, reported as III (1995) CPJ 18 (NC)=1986-96 CONSUMER 2731 (NS).

6. IN the presence of the above facts and the position explained above, in our opinion, whatever liberal interpretation might be put on the words "sufficient cause" it would be impossible for us to hold that there was no negligence on the part of the appellant. IN our opinion, as a matter of fact, the appellant has miserably failed to show "sufficient cause" for condoning the delay in filing the present appeal and, therefore, the present appeal is hopelessly barred by limitation. The present appeal, filed by the appellant, besides being barred by limitation is also devoid of substance on merits. As already stated, the learned District Forum has dismissed the complaint, filed by the appellant, on the ground that the same was barred by limitation. In terms of provisions contained in Section 24-A of the Act, it has been provided that a Redressal Agency, established under the Act, shall not admit the complaint unless it is filed within two years from the date on which the cause of action has arisen. Sub-section (2) of Section 24-A provides that a complaint may be entertained even after the specified period provided the complainant satisfies that he had "sufficient cause" for not filing the same within the specified period. Proviso to Section 24-A provides that no such complaint shall be entertained unless the Redressal Agency, established under the Act, records its reasons for condoning such delay. On the basis of documents/material on record it is not in dispute that the vehicle in question was stolen on the night falling between 19th and 20th April, 1996 when the same was lying parked in front of the residence-cum-office of the appellant. It is also not in dispute that report regarding the above theft was lodged by the appellant with the authorities of the police on 20.4.1996 at 6.45 a.m. vide FIR No. 124/1996. It is also not in dispute that the complaint under Section 12 of the Act was filed before the District Forum much after the expiry of the prescribed period of limitation on 17.2.1999 without any application under Section 24-A(2) of the Act. In the presence of the above facts, no fault can be found with the findings of the learned District Forum to the effect that the

complaint, filed by the appellant, was barred by limitation. The order, passed by the District Forum being impugned in the present proceedings, as a matter of fact suffers from no infirmity so as to call for any interference by this Commission in exercise of its appellate powers. The present appeal, filed by the appellant is, therefore, devoid of substance. The same merits dismissal. Accordingly the same is dismissed in limine with no order as to costs. Appeal dismissed.