

(2013) 05 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

Shri Ravi Shankar Maharaj , SATYA NARAYAN SHARMA

APPELLANT

Vs

Guru Ram Dass College Of Technical Education

RESPONDENT

Date of Decision : 06-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 335 : 2013 3 CPJ 321

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : A.P.DHAMIJA , AMARJEET SINGH

Judgement

1. BEING aggrieved by order dated 28.11.2011 passed by State Consumer Disputes Redressal Commission, Punjab (for short, "State Commission ") Petitioners/Opposite Parties no.1 and 2 have filed this revision.

2. RESPONDENT /complainant filed a consumer complaint under Section 12 of the Consumer Protection Act, 1986 (for short, "Act ") against petitioners before the District Consumer Disputes Redressal Forum, Sangrur (for short, "District Forum "). In the complaint, it is alleged that petitioners have failed to fulfill their obligation and have no right to retain any fee paid by the respondent. Petitioners were proceeded exparte before the District Forum. Thereafter, vide judgment dated 09.01.2007, District Forum allowed the complaint.

3. BEING aggrieved by the order of the District Forum, petitioners filed an appeal before the State Commission. Alongwith it, an application seeking condonation of delay of 835 days was also filed.

4. STATE Commission, vide impugned order held that the delay of 835 days has not been properly explained. Therefore, it dismissed the application for condonation of delay and consequently appeal was dismissed as barred by limitation. Aggrieved by the order of the State Commission, petitioners have filed this revision.

5. WE have heard the learned counsel for parties and gone through the record.

6. GROUNDS on which condonation of delay was sought before the State

Commission, read as under; " 3. That the present appeal is filed against order dated 9.1.2007 passed by the Ld. Consumer Forum, Sangrur. The said order was passed exparte against the appellants. The appellants are ordinarily resident in Chhattisgarh. The appellants were not aware about the existence of any such orders or any information nor did the appellants have knowledge regarding the exparte order or subsequent execution orders. The appellants did not receive any certified copy of the impugned order. 4. That the appellants were shocked when they came to know about the pendency of execution proceedings of the impugned order before the Ld. Forum Sangrur on 31.3.2008. The counsel for the appellant applied for the certified copy of the impugned order on the same day and the Ld. Forum supplied the certified copy to the counsel on 8.4.2009. Thereafter, the counsel for the appellant appeared in the execution proceedings. The contentions of the appellant are further substantiated with the fact that the appellants operate from their registered office at Raipur Chhattisgarh and the area being far away from Sangrur where the impugned order was passed there was no way for the appellants to come to know about the existence of any proceedings before the Ld. Forum Sangrur. 5. That thereafter the counsel for the appellant approached the appellants about the future course of action and the appellants approached an Advocate at Chandigarh on 20.5.2009 alongwith the certified copy of the impugned order. 6. That the instant appeal was filed on 2.6.2009. So there is delay of 835 days in filing appeal is unintentional and bonafide as the appellants were not aware about the existence of any such order prior to 31.3.2009. 7. That the appellants have prima-facie good case in their favour, which in the humble submission of the appellants is likely to succeed on the basis of the grounds taken therein. 8. That the delay of 835 days in filing the Appeal is neither intentional nor as per will but the delay has been caused due to reasons mentioned above ".

As per petitioners, District Forum has no territorial jurisdiction. Secondly, petitioners came to know only on 29.3.2009 about passing of the order by the District Forum, when some policemen came with bailable warrants at the residence of petitioner no. 2. Prior thereto, none of the petitioners were aware of the proceedings filed against them nor any notice was served upon them. Thus, there are sufficient grounds for condonation of delay.

7. RESPONDENT in its reply to this petition has stated that petitioners have taken contradictory stand in the petition as well as in the application for condonation of delay filed before the State Commission. Petitioners cannot take any new ground before this Commission. In revision petition, petitioners have stated that they came to know about the proceedings only on 29.3.2009, when some policemen came with bailable warrants at the residence of petitioner no.2. Whereas in application for condonation of delay, petitioners took the plea, that they were shocked when they came to know about the pendency of execution proceedings of the order before the District Forum on 31.3.2008.

8. STATE Commission, in the impugned order observed; "The appellants have

admitted in the application that they had come to know of the impugned order on 31.3.2008 in the execution application on which they through their counsel had applied for a certified copy of the impugned judgment dated 9.1.2007. The appellants received the certified copy of the impugned judgment dated 9.1.2007 on 8.4.2009. It is very surprising that when the appellants had come to know in the execution proceedings on 31.3.2008 about the passing of the impugned order dated 9.1.2007 then there was no justification for the appellants to take a period of one year in getting a certified copy of the impugned judgment dated 9.1.2007 on 8.4.2009 i.e after more than one year. Similarly when the certified copy of the impugned judgment dated 9.1.2007 had become available to the appellants on 8.4.2009 they were not justified in taking the time of about 54 days in filing the appeal when they already knew that it is belated by time. The facts of the present case are peculiar which do not show if the appellants have been able to make out a case of sufficient cause. The appellants had come to know about the passing of the impugned judgment dated 9.1.2007 on 31.3.2008 and still the appellants took more than one year and obtained a certified copy of the impugned judgment dated 9.1.2007 on 8.4.2009. It was clearly intentional delay and even after getting certified copy of the impugned judgment dated 9.1.2007 the appellants spent about 52 days in filing the appeal. This delay is totally unexplained by the appellants and, therefore, the grounds pleaded by the appellants do not constitute sufficient cause. In the present case the appeal was required to be filed within a period of thirty days from the date of order but the appeal was filed after 835 days. Delay has not been properly explained. Therefore the application for condonation of delay is dismissed ".

The main ground on which condonation of delay has been sought by the petitioners as per application filed before the State Commission is, that they came to know about the pendency of the execution proceedings of the impugned order on 31.3.2008. The counsel for the petitioners applied for certified copy of the impugned order on the same day and District Forum supplied the certified copy on 8.4.2009. Thereafter, counsel for petitioners appeared in the execution proceedings. The appeal before the State Commission was filed on 2.6.2009. Further, it is stated that petitioners were not aware about the existence of any such order prior to 31.3.2008.

9. HOWEVER , in the grounds of revision filed before this Commission, petitioners have taken a new plea that date mentioned in the application for condonation of delay as 31.3.2008 is a typographical error. In fact, the date of knowledge is "30th March,2009 ". At the same time, petitioners have taken another plea in the revision that :- "The Petitioners only came to know only on 29.3.2009 when some policemen came with bailable warrants at the residence of petitioner no.2. Prior thereto, none of the petitioners were aware of the proceedings filed against them nor any notice was served on them as stated in the proceeding paragraph "

10. THUS , as per Petitioners own case, there are three different dates when they came to know about passing of the order by the District Forum. The first date is

31.3.2008, when Petitioners came to know about pendency of the execution proceedings. The second date is 29.3.2009, when some policemen came to the residence of Petitioner no. 2 with bailable warrants and third date of knowledge is that of 30.3.2009. It is well settled that "sufficient cause " for condoning the delay in each case is a question of fact.

11. UNDER the Consumer Protection Act, 1986(for short, "Act ") a special period of limitation has been provided to ensure expeditious disposal of cases. Complaint has to be disposed of within 90 days from the date of filing where no expert evidence is required to be taken and within 150 days where expert evidence is required to be taken. The inordinate delay of 835 days in filing of the appeal before the State Commission could not have been condoned without showing sufficient cause.

12. SUPREME Court in Anshul Aggarwal vs. New Okhla Industrial Development Authority -IV (2011) CPJ 63 (SC) has held that while deciding the application filed for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Act for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if the appeals and revisions which are highly belated are entertained. Relevant observations made by the Court are as under; "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 fora ".

We find that State Commission came to the right conclusion in rejecting the application for condonation of delay of 835 days in filing of the appeal before it and consequently dismissing the appeal being time barred. We do not find any infirmity or illegality in the impugned order. 19. Accordingly, present petition having no merits at all is hereby dismissed with cost of Rs.10,000/-(Rupees Ten Thousand only). 20. Petitioners are directed to deposit the cost of Rs.10,000/-(Rupees Ten Thousand Only) by way of demand draft in the name of "Consumer Welfare Fund " as per Rule 10A of Consumer Protection Rules,1987, within eight weeks from today. In case, they fail to deposit the cost within prescribed period, then they shall be liable to pay interest @ 9% p.a. till its realization. 21. List on 12.07.2013 for compliance.