
(2014) 09 NCDRC CK 0105

In the National Consumer Disputes Redressal Commission

Sudha Shrotria

APPELLANT

Vs

Fortis Healthcare Limited

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 570 : 2015 0 AIR(CC) 24

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

Advocate : V.K.JAIN

Judgement

1. COUNSEL for the complainant present. Arguments heard. The complainant has filed an application for condonation of delay. It is not mentioned that when the cause of action had arisen. On 05.02.2008, Smt. Sudha Shrotria filed a complaint on the same cause of action on the unfair trade practices etc. under MRTP Act (since repealed) before the MRTP Commission (RTPE No. 4/2008). Thereafter, the proceedings were transferred to the Competition Appellate Tribunal. On 02.12.2013, the complainant moved an application for withdrawal of this case. The Hon "ble Chairperson, Competition Appellate Tribunal passed the following order: - ""After considerable arguments, the applicant seeks to withdraw this complaint with the liberty for approaching this matter with National Consumer Disputes Redressal Commission (NCDRC). It is opposed by the learned counsel appearing for the other side. However, considering the nature of evidence, nature of allegations and the proof supported by the complainant here, we deem it fit to give that permission. Needless to say that the pendency before this Tribunal is requested to be considered while considering the question of limitation. Sd/ - [Justice V.S.Sirpurkar] Chairman Sd/ - [Rahul Sarin] Member Sd/ - [PravinTripathi] Member "".

2. THIS is a case of medical negligence. It is explained that the Complainant had spent 5 years, 10 months, 27 days in the above said tribunals. The present matter falls within the purview of the Section 14 of the Limitation Act. It is explained that the said delay should be condoned.

3. WE have heard the counsel for the complainant at length. There is no problem

in condoning the delay before the MRTP and Competition Appellate Tribunal. The complainant is entitled to have condonation of that delay. However, it is noteworthy that the Competition Appellate Tribunal did not grant any time for filing this complaint before this Commission. Normally it is either 15 days or 30 days. We are bound to accept the order passed by the Competition Appellate Tribunal, but by no stretch of imagination, it can be laid down that the complainant has got as much time as she desires to file this complaint. She has no sweet will so far as question of limitation is concerned. The complaint should have been filed within reasonable time. Day to day delay should have been explained. As in the case of Revision Petition, one should have filed this Complaint, within 90 days, if no time was fixed by the Competition Appellate Tribunal. The Competition Appellate Tribunal passed the order on 02.12.2013. This case was filed before this Commission on 16.07.2014. Even if 90 days are deducted, there is a delay of 135 days (225 days minus 90 days). That delay was never explained. The application in question is conspicuously silent about this crucial aspect. Filing of this complaint is clearly barred by limitation.

4. IT must be borne in mind that as per Section 3 (a) of Section 13, this provision of Law envisages that complaint has to be decided within five months. Complainant has taken more than five months in filing this complaint. The complainant did not utter a word, whisper or syllable recording the delay of these days. The complainant does not have unlimited time to file the Complaint.

5. THIS view finds support from the authority reported in the case ""Anshul Aggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC), it has been held 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 "".

6. IN State Bank of India Vs. B.S. Agricultural Industries, 2009 CTJ 481 (SC) (CP) = JT 2009 (4) SC 191, the apex 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. ""

7. IN Dolphin Offshore Enterprises (I) Ltd. Vs. United India Insurance Co. Ltd. the Apex Court in Special Leave to Appeal (Civil) No. 9307 of 2013, decided on 08.03.2013, held: - ""We have heard learned counsel for the petitioner and perused the record. In our opinion, the reasons assigned by the State Commission and the National Commission for holding that the complaint was barred by time are correct. It is not in dispute that the claim made by the petitioner was repudiated by the respondent vide communication dated 30.10.2002 and the complaint was filed on 25.05.2006, i.e., after three years and five months of repudiation of the claim. Therefore, there is no escape from the conclusion that the complaint was barred by time. This view finds support from the judgments of this Court in HUDA vs. B.K. Sood (2006) 1 SCC 164, S.B.I. vs. B.S.Agricultural Industries (I) (2009) 5 SCC 121, Kandimalla Raghavaiah vs. National Insurance Company (2009) 7 SCC 768 and V.N. Shrikhande (Dr.) vs. Anita Sena Fernandes (2011) 1 SCC 53. ""

8. IN Balwant Singh (dead)Vs. Jagdish Singh and Ors. (Civil Appeal no. 1166 of 2006),decidedon 08.07.2010, it was held: ""The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005] ""

9. THERE is a huge delay of 235 days in filing this Complaint, which was not explained.

10. THE expression ""sufficient cause "" cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach, which would defeat the very purpose of Section 5 of Limitation Act. There must be some cause, which can be termed as "sufficient one " for the purpose of delay condonation. Therefore, it would seem settled beyond caisil; that it is incumbent on the complainant to explain each day of default beyond the terminus line of the prescribed period of limitation. The complainant has not given any reason.

11. THE complaint is hopelessly barred by time therefore, we hereby dismiss the complaint at the admission stage.