
(2014) 08 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

The Branch Manager New India Assurance Company Ltd

APPELLANT

Vs

Mamta Thappa

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Citation : 2014 0 NCDRC 506 : 2014 3 CPJ 554

Hon'ble Judges : AJIT BHARIHOKE , Rekha Gupta J.

Advocate : Sudhir Bisla , ROHIT CHAUDHARY , PREETI KHIWANI

Judgement

1. PETITIONER being aggrieved by the order of the Sikkim State Consumer Disputes Redressal Commission, Gangtok ("the State Commission ") dated 17.08.2013 has preferred this revision petition. The revision petition, however, has been filed after the expiry of period of limitation of 90 days as provided under Regulation 14 of the Consumer Protection Regulations, 2005. The delay is 65 days as per the report of the Registry whereas according to the petitioner the delay is 33 days. Petitioner, therefore, has filed an application seeking condonation of delay in filing the present revision petition.

2. WE have heard the learned counsel for the parties. Shri Sudhir Bisla, Advocate for the petitioner has contended that the delay caused in filing the revision petition is unintentional. Petitioner all through has been diligently pursuing this matter and, if the delay is not condoned the petitioner shall suffer irreparable loss and justice. Learned counsel for the respondent on the contrary has vehemently urged for dismissal of the application of condonation of delay. He has contended that the petitioner has been grossly negligent and he has not even given a reasonable explanation for the cause of delay in filing the revision petition.

3. BEFORE advertng to the submissions made on behalf of the parties it would be useful to look into the law relevant for condonation of delay.

4. IN BalwantSingh Vs. Jagdish Singh and Ors., (Civil Appeal no. 1166 of 2006), decided by the Apex Court on 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] "".

Inram Lal and Ors. Vs. Rewa Coalfields Ltd., AIR 1962 Supreme Court 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 S.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. ""

5. SIMILARLY in Oriental Insurance Co. Ltd., vs Kailash Devi and Ors. AIR 1994 Punjab and Haryana 45, it has been laid down that: ""There is no denying the fact that the expression sufficient cause should normally be construed liberally so as to advance substantial justice but that would be in a case where no negligence or inaction or want of bona fide is imputable to the applicant. The discretion to condone the delay is to be exercised judicially i.e. one of is not to be swayed by sympathy or benevolence. ""

6. IN R.B. Ramlingam Vs. R.B. Bhavaneshwari, 2009 (2) Scale 108, it 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/petition. ""

Recently, Hon "ble Supreme Court in Post Master General and others vs. Living Media India Ltd. and another (2012) 3 Supreme Court Cases 563 has held; ""After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and Government Undertaking, this Court observed as under;

""It needs no restatement at our hands that the object for fixing time -limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy. Public interest undoubtedly is a paramount consideration in

exercising the courts" discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation /resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest. ""

The Court further observed; ""It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red -tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates,

according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. In view of our conclusion on Issue (a), there is no need to go into the merits of Issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs "".

7. COMING to the merits of the application, the explanation given for the delay in filing the revision petition is detailed as under: * The impugned order was passed on 17.08.2013. The certified copy of the impugned order was prepared by the registry of State Commission on 19.08.2013 and dispatched on dated NIL. * After getting the certified copy by the petitioner/ department approached to higher authorities to file revision petition before this Commission. Due to transfer of the dealing person and the concerned officer the petitioner/ department got the permission in the end of October 2013. * After receiving the certified copy of impugned order petitioner approached the present counsel on 1st week of December 2013 and delivered the case file for the purpose of filing the present revision petition before this National Commission. * In the meantime, the present counsel wrote a letter to the concerned department for some other documents, the petitioner collected the same as soon as possible and supplied to the counsel. * The delay caused in filing the present revision petition before the National Commission is neither deliberate nor intentional but due to collect the sufficient documents from the petitioner/ department which restrained him from filing the present revision petition on time.

8. A bare reading of the above application makes it clear that the explanation is highly vague and it is devoid of basic particulars. Therefore, we find it difficult to accept the application for condonation of delay. It may not be out of place to mention that even the Consumer Appeal no. 01 of 2013 was also filed before the State Commission by the petitioner, with a delay of 167 days. The State Commission vide its impugned order dated 17.08.2013 has declined to condone the delay. The above -mentioned circumstances clearly show that the petitioner, at every stage of the litigation has been negligent in pursuing this lis. In our view delay based on such gross negligence cannot be condoned. In the matter of AnshulAggarwal vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC), the Apex Court has highlighted the object of Consumer Protection Act particularly expeditious and in expensive remedy to the consumers. ""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 "".

9. THE present case is fully covered under the case laws cited above Supra.

10. ACCORDINGLY , we find that there is no "sufficient cause " to condone the delay of 65 days in filing the present revision petition. The application for condonation of delay is without any merit as well as having no legal basis and is not maintainable. Consequently, the present revision petition being time barred by limitation and the same is dismissed with no order as to costs.