(2013) 01 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

The Dean Chhatrapati Shivaji Maharaj Hospital APPELLANT

Vs

Ramesh Gaikwad RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Citation : 2013 2 CPJ 136

Hon'ble Judges : J.M.MALIK J.

Final Decision : Petition dismissed

Judgement

1. THERE is delay of 514 days in filing the instant revision petition before this Commission. The appeal filed before the State Commission was dismissed in default because of non -appearance on 19.10.2010. The petitioner''s Advocate learnt about the same. It is note -worthy that no dates are mentioned as to when the petitioner''s Advocate learnt it about the same and when the information was given to the petitioner. Thereafter, the application for restoration was filed on behalf of the petitioner on 21.11.2011. That is not within 30 days. That application was also barred by time. In the meantime, the Apex court delivered a judgment in the case of Rajeev Hitendra Pathak & Ors. Vs. Achyut Kashinath Karekar & Anr., : (2011) 9 SCC 541, wherein it was held that the State Consumer Disputes Redressal Commissions are not armed with the power to review their own orders or set aside the ex -parte orders and the same power is vested within the realm of National Consumer Disputes Redressal Commission, under Section 22(2) and 22(A) of the Consumer Protection Act, 1986. The application for setting aside the ex parte was dismissed by the State Commission on 20.4.2012. The alarm bells should have rung by then but the petitioner was so negligent that he did not file the revision petition immediately. The revision petition was filed on 08.08.2012, i.e. about almost two years. The petitioner has explained that their counsel had informed the petitioner''s hospital. The petitioner is working under the Thane Municipal Corporation and as such its decisions are taken only after the modalities and procedures prescribed under the usual rules of procedure of the Thane Municipal Corporation, after the intimation of the order that application was not maintainable. The petitioner

accordingly informed the authorities of the Corporation and requested for taking steps for approaching this Commission. The Law Department of the Thane Municipal Corporation procured all the papers from the Advocate and contacted another Advocate who represents the Thane Municipal Corporation in the Hon''ble Supreme Court. However, at that time, the said Advocate was out of India. He came back on 29.06.2012. The name of either of Advocates did not see the light of the day. The papers were sent to him. The Advocate called for information on two specific aspects, namely, the date of filing of application for restoration of appeal and whether there was an order passed by the Hon''ble State Commission holding that the application was not maintainable. The counsel of the Law Department met that other counsel. The details were sent to the Advocate, thereafter, this petition was filed.

2. WE have heard the counsel for the petitioner. He reiterated the above stand. The above stand does not constitute "sufficient cause". First of all, there was delay in moving the application for restoration. No explanation is forthcoming. Secondly, the Hon''ble Supreme Court of India merely reiterated the provisions of law already mentioned in the Consumer Protection Act, 1986. There is no provision for review by the District Forum or the State Commission. The authority of the Hon''ble Supreme Court in Rajeev Hitendra Pathak''s case (Supra) had come in August, 2011. It was the duty of the counsel for the petitioner to withdraw the application for restoration immediately. The delaying tactics in this case are apparent. They should have approached the revisional court immediately. Above all, there is no explanation as to why there was delay from 24.04.2012 to 08.08.2012. There is unexplained delay. It is now well settled that departmental and official procedural delays do not constitute the "sufficient ground". It must be borne in mind that the Consumer Protection Act, 1986 lays down its own period of limitation under the Limitation Act. This a Special Act which prescribes the summary procedure and its provisions should be strictly followed. The consumer foras are directed to dispose of the appeal within a prescribed period of 45 days of its filing. The following authorities neatly dovetail with the facts of the above said case. In 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.

3. IN Balwant Singh (Dead) Vs. Jagdish Singh & 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].

4. IN Ram Lal and Others v. Rewa Coalfields Ltd., : AIR 1962 SC 361, it has been observed that "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 Section 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 bonafides may fall for consideration; but the scope of the inquiry 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." Recently, the Apex court in the Office of the Chief Post Master General & ors. Vs. Living Media India Ltd. & Anr., decided on 24.02.2012, in Civil Appeal No. 2474 -2475 of 2012, arising out of SLP(C) No. 7595 -96 of 2011, was pleased to observe: 13. 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. Accordingly, the appeals are liable to be dismissed on the ground of delay.

5. IT is, thus, clear that there is inordinate delay in filing this revision petition and, therefore, the same is barred by period of limitation.

6. LET us now turn to the merits of this case. The case of the complainant/ respondent is that he was admitted in the hospital on 03.03.2004. His right ear was operated on 04.03.2004. The surgery was performed under local anesthesia. After the operation, he was taken on trolley to the recovery room by the hospital staff/wardboy as per the directions of the doctors. As the complainant was waiting for his shifting to the ward, suddenly, another trolley got dashed against his trolley which collided heavily against his head. The said impact was so painful that he started screaming and the blood started oozing out from the operated right ear. When the complainant made a complaint to the hospital, they refused to lend a ear to this complaint. Attempt was made by the authorities to hush -up

the entire event of injury/incident. Thereafter, various medical tests were conducted but he was informed that he will not be discharged from the disability caused to him. He was further informed that he will have to be operated again. The complainant suffered hearing loss, almost to the extent of 70%. He was discharged on 02.04.2004. The District Forum accepted his complaint partly and awarded Rs. 7,00,000/ -, payable within two months from the date of receipt of the order and in default to pay interest @ 9% p.a. We find no flaw in this order and therefore, the revision petition is dismissed. Counsel for the petitioner stated that the award given to the petitioner is on higher side and it should be reduced. We find no force in his argument but at the same time refrain ourselves to impose further costs under Rule 10(A) of the Consumer Protection Rules.

