
(2013) 07 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

The Managing Director, H.P. State Cooperative Housing Federation

APPELLANT

Vs

Shri Gian Chand And The Hamirpur Cooperative House Building Society Ltd. Through Its President

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2013) 07 NCDRC CK 0001

Hon'ble Judges : J.

Judgement

1. THIS revision petition has been filed by the petitioner/complainant against the order dated 17.04.2012 passed by the H.P. State Consumer Disputes Redressal Commission, Shimla (in short, "the State Commission") in M.A. No. 170/2011 in Appeal No. 91/2011 - The Managing Director, H.P. State Co -Op. Housing Federation Vs. Gian Chand & Anr. by which, appeal was dismissed as barred by limitation. Brief facts of the case are that learned District Forum allowed complaint of the complainant/Respondent No. 1 vide order dated 2.8.2001 and directed OP -1 Society to handover possession of the house to the complainant after receiving balance amount. In Execution Proceeding 15/2007 on account of compromise between the parties, Execution Petition was disposed of as partly satisfied against which, appeal filed by the petitioner was dismissed by learned State Commission vide impugned order against which this revision petition has been filed.

2. NONE appeared for Respondent No. 2. Heard the petitioner and Respondent No. 1 and perused record. Learned Counsel for the petitioner submitted that learned State Commission has committed error in dismissing appeal being barred by limitation, as delay occurred due to fault of Advocate; hence, impugned order be set aside and revision petition be allowed. On the other hand, learned Counsel for the Respondent No. 1 submitted that order passed by leaned State Commission is in accordance with law; hence, revision petition be dismissed.

3. IN application for condonation of delay filed before the State Commission,

petitioner submitted that appeal could not be filed in time, as their Counsel did not inform about the order. Further, it was submitted that petitioner came to know about the order only, when it received copy of the order dated 3.8.2010 on 3.9.2010. Then, petitioner issued letter to the Counsel on 19.10.2010 and called his explanation and Counsel assured that he will get the order modified, but as he had not taken any steps; hence, delay of 7 months was caused in filing appeal.

4. THERE appears to be no explanation at all for condonation of delay. When the petitioner came to know about the District Forum's order on 3.9.2010, petitioner should have filed appeal immediately before the State Commission, but appeal has been filed after a delay of 7 months that too without any affidavit of the Counsel, who orally assured to get the order modified. This application has also not been supported by letter calling explanation of the Advocate. Law does not permit review of order by District forum or State Commission and in such circumstances instead of waiting for the Counsel to get the order modified from the District Forum; petitioner should have filed appeal immediately. As appeal has been filed after 7 months, learned State Commission has not committed any error in dismissing application for condonation of delay in turn dismissing appeal being barred by limitation. As there is inordinate delay of 7 months, this delay cannot be condoned in the light of the following judgment passed by the Hon''ble Apex Court.

5. 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.

6. IN Ram Lal and Ors. Vs. Rewa Coalfields Ltd., : AIR 1962 SC 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.

Hon''ble Supreme Court after exhaustively considering the case law on the aspect of condonation of delay observed in Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation reported in : (2010) 5 SCC 459 as under; We have considered the respective submissions. The law of

limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay if sufficient cause is shown for not availing the remedy within the stipulated time.

7. HON "ble Apex Court in : (2012) 3 SCC 563 - Post Master General & Ors. Vs. Living Media India Ltd. and Anr. has not condoned delay in filing appeal even by Government department and further observed that condonation of delay is an exception and should not be used as an anticipated benefit for the Government departments.

8. HON "ble Apex Court in, 2012 (2) CPC 3 (SC) - Anshul Aggarwal Vs. New Okhla Industrial Development Authority observed 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 Foras.

Thus, it becomes clear that there is no reasonable explanation at all for condonation of inordinate delay of 7 months. Revision petition is liable to be dismissed on the ground of delay alone.

In the light of aforesaid judgments, revision petition is liable to be dismissed, as we do not find any infirmity, illegality, irregularity or jurisdictional error in the impugned order. Consequently, the revision petition filed by the petitioner is dismissed at admission stage with no order as to costs.