

GREAVES COTTON LTD V. M/S UMAASSOCIATES & ANR.

1. GREAVES COTTON LTD
UNIT NO. 1A 5TH FLOOR TPWER 3 EQUINOX BUSINESS
PARK LBS MARG KURLA MUMBAI
MUMBAI
MAHARASHTRA

.....Petitioner(s)

Versus

1. M/S UMAASSOCIATES & ANR.
B 20/56-10-2 SONAL SADAN CANTONMENT NEAR JHV
VARANASI UTTAR PRADESH
VARANASI
UTTAR PRADESH
2. KAPIL KUMAR JAIN
SHUBHAM CINEMA 5 CANTT ROAD LUCKNOE
LUCKNOW
UTTAR PRADESH

.....Respondent(s)

**Case No: REVISION PETITION NO. 2342 OF 2023(Against the Order dated
08/12/2022 in Appeal No. A/1167/2019 of the State Commission
Uttar Pradesh)**

Date of Judgement: 04 October 2023

Judges:

AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER

FOR THE PETITIONER : MR.CHETAN KANUNGO, ADVOCATE

Facts:

The case is a Revision Petition No. 2342 of 2023 filed by

Greaves Cotton Ltd against an order dated 08/12/2022 passed in Appeal No. A/1167/2019 by the State Commission Uttar Pradesh. The Revision Petition has been filed with a delay of 191 days. An application seeking condonation of delay of 196 days has been filed citing reasons such as change in internal management of the company, inability to contact previous lawyer, etc.

Arguments by Petitioner:

The impugned order was received on 12.12.2022 after which the Petitioner Company deliberated on challenging it. A lawyer was engaged in January 2023 for drafting and filing the Revision Petition. In February-March 2023, there were management changes in the Company leading to transition issues. Officials could not follow up with lawyer during this period. From April – July 2023, officials made numerous unsuccessful attempts to contact the lawyer. Finally in July, the lawyer expressed inability to file the petition and returned records in August 2023. New lawyers were engaged who have now filed the present petition. The delay was unintentional and despite due diligence. Grave injustice will be caused if petition is dismissed only on ground of delay.

Court's Opinion:

As per Regulation 14 of Consumer Protection Regulations 2020, limitation period of 90 days for filing Revision Petition starts from date of receipt of certified copy of impugned order. Sufficient cause needs to be shown and delay has to be explained properly. The test is whether the petitioner acted with reasonable diligence. The reasons given by petitioner such as change of legal personnel, inability to contact lawyer, etc. are very routine and does not constitute sufficient justification. All facts were already available to petitioner and no details have been provided regarding date-wise actions taken. Such routine reasons do not reflect petitioner took necessary timely actions. The Application seeking condonation of delay deserves to be rejected.

Referred Sections and Laws:

Section 5 of Limitation Act; Regulation 14 of Consumer Protection (Consumer Commission Procedure) Regulations, 2020; Referred precedents: Ram Lal and Ors vs Rewa Coalfields Ltd, RB Ramlingam vs RB Bhavaneshwari, Basawaraj and Ors Vs Spl Land Acquisition Officer, Anshul Aggarwal vs New Okhla Industrial Development Authority, Lingeswaran vs Thirunagalingam

Order:

The application seeking condonation of delay is disallowed for lack of sufficient cause. Consequently, Revision Petition No. 2342 of 2023 is also dismissed.

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Court

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Full Text of Judgment:

1. As per the record of the Registry, there is a delay of 191 days in filing of this Revision Petition. However, IA No. 12324 of 2023 has been filed by the petitioner seeking condonation of delay for 196 days. The petitioner averred in the said IA that the impugned order was passed on 08.12.2022. Thereafter, the Petitioner-Company, upon receiving the copy of order dated 08.12.2022, deliberated upon the matter and decided to question its correctness. In January 2023, the Petitioner engaged a lawyer for drafting and filing of the revision petition before the NCDRC. In furtherance of the same, the records of the case and certified copy of the order were supplied to the lawyer. During February-March 2023, some changes occurred in the internal management of the Petitioner Company, including the change of the then Manager (Legal) Mr. Prabal Dixit with Ms Richa Pachori, incumbent Manager (Legal). The change of personnel in internal management of the Petitioner Company led to consolidating data, status of ongoing litigations of the Petitioner Company. In the middle of this transition, the officials of the Petitioner-Company could not

follow up with the lawyer about the status of drafting and filing of the revision-petition.

2. During April 2023, the officials of the Petitioner tried to contact the lawyer over telephone. He did not respond. Thereafter, for next three months from April to July 2023, the officials of the Petitioner made numerous attempts and efforts to reach out. But it was without success. Ultimately, the lawyer informed the Petitioner's officials in the last week of July 2023 that on account of certain personal difficulties, he could not draft and file the revision petition before the NCDRC and assured to return the case records along with certified copy of the impugned order. The Petitioner received the records and certified copy of the impugned order in August 2023. They engaged Mr Chetan Kanungo and Mr Rohit Chandra (Advocates) to draft the revision petition, file the same and represent the Petitioner before the NCDRC. The present petition is consequently filed. The delay in filing the instant petition was not on account of any inadvertence or negligence of the Petitioner. Despite the due diligence and taking timely steps, it could not be filed within the limitation period. In the wake of the events that transpired, the Petitioner sought the leave of this Commission to condone the delay in filing the instant revision petition and afford opportunity to address the matter on merits. If the impugned order is not interfered, merely on grounds of delay, it will result in grave injustice to the Petitioner and cause upholding an otherwise, unlawful order passed without jurisdiction.

3. As regards period of limitation for filing of a Revision Petition, Regulation 14 of the CP (Consumer Commission Procedure) Regulations, 2020 inter alia stipulates that:

"Subject to the provisions of sections 40, 41, 50, 51, 60, 67 and 69, the period of limitation in the following matters shall be as follows:-

i. Revision Petition shall be filed within ninety days from the date of receipt of certified copy of the order..."

4. Therefore, the present revision petition was to be filed

within 90 days of the receipt of the order of the learned State Commission. From the perusal of records, it is clear that the impugned order was pronounced on 08.12.2022 and the order was received on 12.12.2022, the present Revision was filed on 19.09.2023 and its admitted position that, there has been a delay of 191 days in filing of the present Revision Petition.

5. Hon'ble Supreme Court in "Ram Lal and Ors. vs. Rewa Coalfields Limited, AIR 1962 Supreme Court 361", has observed as under:

"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."

6. The test which is to be applied while dealing with such a case is whether the petitioner acted with reasonable diligence. Hon'ble Supreme Court in "RB Ramlingam vs. RB Bhavaneshwari, I (2009) (2) Scale 108" has held:

"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."

7. Hon'ble Supreme Court in "Anshul Aggarwal vs. New Okhla Industrial Development Authority, (2011) 14 SCC 578" has also

observed as under:-

“while deciding the application filed, for condonation of delay, the Court has to keep in mind that the special periods of limitation have been prescribed under the Consumer Protection Act, for filing appeals and revisions in consumer matters and that the object of expeditious adjudication of the consumer disputes will get defeated, if the highly belated appeals and revision petitions are entertained”.

8. To condone such delay in filing, the Petitioner needs to satisfy this Commission that there was sufficient cause for preferring the Revision Petition after the stipulated period. The term ‘sufficient cause’ has been explained by the Apex Court in *Basawaraj and Ors. Vs. The Spl. Land Acquisition Officer* AIR 2014 SC 746 where it was held that:-

“9. Sufficient cause is the cause for which Defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, in as much as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory application is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.”

9. In Anil Kumar Sharma vs. United Indian Insurance Co. Ltd. & Ors reported in IV(2015)CPJ453(NC), the NCDRC held:-

"12..... we are not satisfied with the cause shown to justify the delay of 590/601 days. Day to day delay has not been explained. Hon'ble Supreme Court in a recent judgment of Anshul Aggawal 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 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 the appeals and revisions, which are highly belated are entertained."

10. The Hon'ble Supreme Court in Lingeswaran Etc. Vs Thirunagalingam in Special Leave to Appeal(C) Nos. 2054-2055/2022 decided on 25.02.2022 has held that:-

"5. We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. The approach adopted by the learned trial court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of PopatBahiruGoverdhane vs. Land Acquisition Of icer, reported in (2013) 10 SCC 765 is required to be referred to. In the said decision, it is observed and held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds.

The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same."

11. From the above orders of the Hon'ble Apex Court, it is clear that 'sufficient cause' means that the party should not have acted in a negligent manner or there was a want of bona fide on its part and that the applicant must satisfy that he was prevented by any "sufficient cause" from prosecuting its case. Unless a satisfactory explanation is furnished, a Court should not normally allow the application for condonation of delay under this Act.

12. From the examination of the material on record and forceful arguments advanced by the learned Counsel, it is clear that the impugned order in the case was passed on 08.12.2022 and the period of limitation commenced from the receipt of the order on 12.12.2022 lapsed on 11.03.2023. The Revision Petition was filed on 19.09.2023. The reasons stated are that the delay occurred due to changes in the internal management of the Petitioner Company including the engagement of a lawyer, change of the Manager (Legal) and that the Petitioner could not contact it's counsel till July 2023 due to personal difficulties. After the Petitioner received the records from him in August 2023, they engaged Mr Chetan Kanungo and Mr Rohit Chandra, Advocates for the case. They took some time in gathering necessary inputs. Thus, there was a delay of 191 days. The delay was neither intentional or due to negligence.

13. Even if it is considered that the impugned order was passed on 08.12.2022 and he received the copy on 12.12.2022 as mentioned in the Performa for revision petition, there was delay of 191 days in filing of the petition. In the circumstance also, the Petitioner was reasonably expected to file the same within the stipulated limitation period i.e. by 11.03.2023. Whereas, the Revision Petition was filed on 19.09.2023. Thus, there is delay of 191 days in filing the present petition which needs to be explained by the petitioner. However, no sufficient cause has been brought out.

The petitioner failed to show sufficient reason for delay of each day as required under the law. In the instant case, the cause shown for delay that the issue pertains to the delay in entirely departmental processes is very routine and grossly inadequate for such protracted delay. It is a matter of record that this is third layer of litigation of the same matter and thus all facts and records are readily available with the Petitioner. There is no apparent justification for such undue and protracted delay in taking necessary action in the matter while the facts of the case are otherwise already known to the Petitioner. The reasons explained are routine in nature which does not reflect that the Petitioner had taken the actions necessary under law in time.

14. With due regard to the statutory provisions, precedents discussed above and the facts of the case, the Applicant/Petitioner failed to show any sufficient cause for such protracted delay in filing the present petition. Therefore, the prayer in Application filed by the Petitioner seeking condonation of delay cannot be granted and accordingly, the same is disallowed on the above grounds.

15. In view of the foregoing, the IA No.12324 of 2023 filed by the Petitioner is disallowed. Consequently, the Revision Petition No.2342 of 2023 is dismissed.

16. All other pending Applications, if any, stand disposed of. There shall be no order as to costs.