

Limitation period for filing appeals under Consumer Protection Act: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION NEW DELHI

MARINA HEIGHTS & 3 ORS.

...Appellant

HARBHAJAN SINGH TAGARH & ANR.

...Respondent

Case No: REVISION PETITION NO. 2931 OF 2017

Date of Judgement: 01 January 2024

Judges:

SUBHASH CHANDRA – PRESIDING MEMBER

For Appellant: MS. SONAL SINHA, ADVOCATE

For Respondent: MR NIKHIL JAIN AND MS MONICA DHINGRA ADVOCATES

Facts:

Respondent 1 filed a consumer complaint against the petitioners and respondent 2 regarding deficiency in services for an apartment booking. Respondent 1 had booked an apartment in petitioners' project "Marina Heights" for Rs. 55.25 lakhs and paid Rs. 13.9.0 lakhs on 11.08.2012. The apartment was not handed over within the promised time frame. Respondent 1 sought refund with interest @ 9% p.a., compensation of Rs. 2.40 lakhs, litigation cost and compensation for mental agony. The District Forum allowed the complaint and directed refund of Rs. 13.90 lakhs with interest @ 12% p.a. from 11.08.2012 along with Rs. 25,000/- for mental agony, harassment and litigation

cost. Petitioners state an unwritten arrangement was reached with one Satpal Singh as per settlement talks with respondent 1. Respondent 1 filed an execution application (E.A) no. 111/16 before the District Forum. Appeal was filed before the State Commission along with an application for condonation of delay of 365 days.

Elaborate Opinion of the State Commission:

No reasonable explanation given for condoning delay of 365 days. Lamé excuse given that Satpal Singh agreed to purchase the disputed apartment and deduct complainant's paid amount. Without documentary proof, such oral settlement cannot be presumed. Applicant 1 admitted before District Forum that complainant paid Rs. 13.90 lakhs. Applicants 2 to 5 remained ex-parte before District Forum despite due service. Applicants were aware of the case before District Forum and took false plea of oral settlement to usurp complainant's money. Reliance placed on Anshul Aggarwal case that expeditious disposal is the purpose of Consumer Protection Act and highly belated petitions cannot be entertained. Specific limitation period prescribed in Consumer Protection Act would get defeated by allowing such delays. Inordinate delay of 365 days has no proper explanation or cogent reasons.

Arguments by Petitioners:

State Commission erred in dismissing delay condonation application. Reliance placed on N. Balkrishnan case that limitation ensures parties do not resort to dilatory tactics but seek remedy promptly. Reliance on Sangram Singh case that interpretation should provide reasonable elasticity if justice done to both sides. Order is without jurisdiction and suffered from material irregularity.

Arguments by Respondent 1:

Had a decree in his favor from District Forum. Well within rights to move for execution after period stipulated by District Forum. Purpose of limitation in Section 24A is to protect consumer rights. Inordinate delays harm interests of both consumers and objectives of the benevolent legislation. Period of limitation balances equities and is adequate for redressal. Any inordinate, unjustifiable delay is against justice.

Orders and Cases Referred:

Anshul Aggarwal Vs New Okhla Industrial Development Authority, (2011) CPJ 63 (SC)

N.Balkrishnan Vs. M. Krishnamurthy, (2008) 228 ELT 162 (SC)

Sangram Singh Vs Election Tribunal of India, (1955) 2 SCR 1

National Insurance Co. Ltd and Anr. Vs Akhtar Bano, IV (2013) CPJ 617 (NC)

Sections:

*Revision petition under Section 21(b) of Consumer Protection Act, 1986
Reference to limitation period stipulated in Section 24A*

Conclusion:

State Commission order is reasoned and detailed. Rejection of oral settlement plea without proof justified. Petitioners 2-4 aware of District Forum order yet remained ex-parte. Reliance on Anshul Aggarwal case regarding need for expeditious disposal as per Consumer Protection Act objectives correctly applied. 365 days delay is inordinate. No documentary evidence provided for alleged oral settlement. Purpose of limitation in Act is to balance equities of both parties. Any unjustifiable delay is detrimental to justice. Order of State Commission disallowing delay condonation and appeal does not warrant interference.

Download

Court

Copy <https://dreamlaw.in/wp-content/uploads/2024/01/task-30.pdf>

Full Text of Judgment:

1.This revision petition under section 21(b) of the Consumer Protection Act, 1986 (in short,the "Act') assails the order dated 10.04.2017 in Misc. Appeal No. 732/2017 in First Appeal No.251/2017 of the State Consumer Disputes Redressal Commission, Punjab (in short, the 'StateCommission') arising from the order dated 10.04.2017 of the District Consumer Disputes Redressal Forum, Mohali (in short, the 'District Forum') in Consumer Complaint no. 29/2015.MA 732/2017 is an application for the condonation of delay of 365 days in filing the First Appeal. The State Commission dismissed the Misc. Application.

2.The facts, as per the petitioner, are that respondent no.1 filed Consumer Complaint no.29/2015 against petitioners and respondent no. 2 alleging deficiency in services rendered by them in respect of a residential apartment allotted to them in their project, "Marina Heights" where respondent no. 1 had booked an apartment for a sale consideration of Rs 55,25,000/- with respondent 2 and petitioners for which he paid Rs.13,90,000/- on 11.08.2012. The apartment was not handed over to the respondent no. 1 within the promised period of time. Accordingly, he sought refund with interest @ 9% p.a. from the date of deposit till realization along with compensation of Rs 2,40,000/- and litigation cost and compensation for mental agony of Rs50,000/-. On contest, the District Forum allowed the complaint and held the petitioners jointly and severally liable to refund Rs 13,90,000/- with interest @ 12% p.a. from 11.08.2012 till actual payment with Rs 25,000/- towards mental agony, harassment and litigation cost. Petitioner states that prior to the order of the District Forum, as per settlement talks with respondent no. 1, an unwritten arrangement with one Satpal Singh had been agreed and therefore the District Forum's order was not acted upon.

3.However, respondent no. 1 filed an Execution Application (EA) before the District Forum (No. 111/16). An appeal was then filed before the State Commission along with a Misc. Application for condonation of delay which came to be dismissed on 10.04.2017 on grounds of there not being any cogent grounds. This order is impugned before us on the grounds that the State Commission erred in disallowing the application for delay, placing reliance on judgment of the Hon'ble Supreme Court in N.Balkrishnan Vs. M. Krishnamurthy, 2008 (228) ELT 162(SC) that limitation is not intended to destroy the right of the parties but to ensure that parties do not resort to dilatory tactics but seek their remedy promptly. Reliance was also placed on Sangram Singh Vs. Election Tribunal of India, (1955) 2 SCR 1 which called for reasonable elasticity of interpretation provided justice was done to both sides. The State Commission's order was contended to be erroneous in holding that petitioners did not deserve condonation of delay of 365 days and the order was without jurisdiction and suffered from material irregularity.

4.I have heard the learned counsel for both the parties and given thoughtful consideration to the material on record.

5.The order dated 10.04.2017 of the State Commission in MA 732/2017 reads as follows:

2. We have heard the counsel for the appellants/ applicants on the point of condonation of delay of 365 days in filing the appeal. Perusal of the application for condonation of delay reveals that no reasonable explanation has been given for condonation of inordinate delay of 365 days. It is only submitted that one Satpal Singh was interested to purchase the disputed flat and agreed to pay the entire consideration of the alleged flat after deducting the amount, so paid by the complainant. Without any documentary proof, we cannot presume that there was any oral settlement between the complainant and Satpal Singh regarding purchase of disputed flat and complainant did agree to the same. It is just lame excuse to seek condonation of inordinate delay of 365 days in filing the appeal. Moreover, applicant no.1 appears before the District Forum and admitted that complainant had paid Rs.13,90,000/- as earnest money of the alleged flat. However, applicant no.2 to 5 was ex parte and did not appear before the District Forum in spite of due service. Applicants very well knew about case before the District Forum and in the appeal took the false plea of oral settlement just to usurp the amount of the complainant.

The matter has settled by Apex Court in Anshul Aggarwal vs New Okhla Industrial Development Authority reported in IV (2011) CPJ 63 (SC), wherein it has been held by Apex Court that Consumer Protection Act, 1986 has been enacted for achieving a specific object. The object is expeditious adjudication of the consumer disputes. The very purpose of the Act will be defeated in case court was to entertain highly belated petitioners against the order of the consumer fora. There was delay of 233 days in the cited authority of the Apex Court, which was not condoned. We find that a specific period for filing the appeal has been prescribed in the Consumer Protection Act and the very purpose of the Act would be defeated. In case such state matter is allowed to be condoned. Hon'ble National Commission held in IV 2013 CPJ 617 (NC) National Insurance Co., Ltd., and Anr. Vs Akhtar Bano that merely by alleging that file moved from one office to another office cannot

constitute sufficient ground to condone the delay. Considering the fact that there was no proper explanation for the inordinate delay in filing the appeal and applicant miserable failed to give any acceptable and cogent reasons to condone the delay of 365 days in filing the appeal. We do not find any merit in the application of condonation of delay of 365 days, there for, the same is hereby dismissed.

4. Since the application for condonation of delay has been dismissed, hence, the appeal is ordered to be dismissed in limine being barred by time.

6. The order of the State Commission is reasoned and detailed and sets out reasons for disallowing the Misc. Application for the condonation of delay of 365 days. The plea of an oral settlement without any documentary proof has been rejected by the State Commission. Petitioners 2 to 4 remained ex parte despite notice before the District Forum although petitioner no. 1 was represented and was well aware of the orders. The reliance of the State Commission on Anshul Aggarwal (supra) and holding that expeditious adjudication of consumer disputes was essential to the achieving the specific objectives of the Act has been considered.

7. The delay in the present case is of 365 days or one year. The justification of the oral settlement has not been considered by the State Commission. The respondent no. 1 had a decree in his favour and was within his rights to move for its implementation after the lapse of the period provided by the District Forum. The objective of limitation being provided for in Section 24A of the Consumer Protection Act, 1986 is also with the objective to protect the rights of consumers. The Act is a benevolent legislation whose objectives cannot be allowed to be diluted through inordinate delays in the execution of orders to set right grievances in relation to goods and services. Inordinate delay or a prolonged lapse of time between an order and its execution harms both the interest of the consumer as well as the objective of the Act. At the same time, the period of limitation provided is adequate to enable an aggrieved party to exercise the option of appeal and redressal should it be considered. Hence, the

provision of limitation in the Act seeksto balance the equities of both parties equally. Any delay which is inordinate and is not justiciable would be deleterious to the cause of justice in a beneficial legislation and should notbe encouraged to the detriment of justice. In this view of the matter, the contentions of the petitioner cannot be appreciated. The period of 365 days in itself is an inordinately longduration. Further more, the cause shown is not based on any documentary evidence. The order of the State Commission in disallowing the Misc. Application for the delay and as a consequence thereof, the appeal in limine, therefore, does not warrant any interference.

8.For the foregoing reasons and in the facts and circumstances of this case, the revision petition is liable to fail. Accordingly, the revision petition is disallowed. Order of the State Commission is affirmed.

9.Pending IAs, if any, stand disposed of with this order.