

SWAPNA SURYA DEVELOPERS v. MR. D. VIJAY KUMAR & ORS.

SWAPNA SURYA DEVELOPERS

...Appellant

MR. D. VIJAY KUMAR & ORS.

...Respondent

Case No: FIRST APPEAL NO. 1041 OF 2023

Date of Judgement: 11 December 2023

Judges:

SUBHASH CHANDRA
PRESIDING MEMBER

For Appellant: MS SHWETA SINGH PARIHAR

For Respondent: None

Facts:

Appeals filed against order dated 14/02/2023 of Telangana State Consumer Disputes Redressal Commission in CC no. 51 & 50 of 2016. Appeals filed with 216 days delay. Appellant contends previous counsel was not diligent or responsive, failed to appear since 2019 or file any affidavits/arguments. Appellant learnt of execution proceedings in August 2023 through another counsel. Appellant shifted residence from registered address to new address. Seeks condonation of 216 days delay.

Court's Opinion:

No documents to support contentions of counsel's non-responsiveness or change of address. Delay has to stand properly explained as per Supreme Court judgments (cites Ram Lal and Anshul Aggarwal cases). True test is whether petitioner acted with reasonable diligence (cites

R.B. Ramlingam case). Nature of Consumer Protection Act requires expeditious disposal which gets defeated by highly belated appeals (Anshul Aggarwal case). Reasons shown insufficient without evidence to merit condonation.

Arguments by Parties:

Appellant:

Previous counsel negligent, gave assurances but did not appear since 2019. Came to know late due to shifting houses. Seeks condonation of 216 days delay.

Respondents:

No arguments recorded.

Sections:

Section 5 – Condonation of delay under Consumer Protection Act 1986.

Outcome:

Applications for condonation of delay in FA no. 1041 & 1042 of 2023 dismissed. Appeals also dismissed as barred by limitation.

Case Laws Referred:

Ram Lal and Ors vs Rewa Coal fields Ltd – on discretion for condonation.

R.B Ramlingam vs R.B Bhavaneshwari – test of reasonable diligence.

Anshul Aggarwal vs NOIDA – nature of Consumer Act needing expeditious disposal.

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Court

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Full Text of Judgment:

1.This appeal assails the order dated 14.02.2023 of the Telangana

State Consumer Disputes Redressal Commission, Hyderabad in CC no. 51 of 2016. This appeal will also dispose of FA no.1042 of 2023 by a common order.

2. As per IA Nos.14288 and 14293 of 2023 there was a delay of 216 days in filing of the present Appeal. For the sake of brevity, the facts are taken from IA no.14288 of 2023 in FA no. 1041 of 2023.

3. The reasons stated in the application that the appellant organisation is being completely managed and operated by the authorised signatory Mr N Srinivas who was handling all the affairs of the company including overseeing the issues related to litigation and other things. Mr Rao had been handling the proceedings related to the complaint filed against the organisation before the State Commission as well as coordinating with the counsel. The application further states that no one else was in contact with the counsel for the appellant other than Mr Rao.

4. It is stated that the previous counsel of the applicant/appellant kept assuring the applicant about the matter and the case. However, he had not appeared in the matter since 2019 and hence, evidence affidavit, list of witnesses, written arguments or cross examination to the evidence affidavit was filed by the complainant.

5. The applicant learnt of the execution proceedings initiated in August 2023 and tried to reach the counsel who did not respond. Appellant entered appearance through another counsel in September 2023 when it was learnt that the State Commission had closed the right of the applicant to file evidence affidavit. Appellant contends that the applicant had shifted his residence from the registered address to a new address. It was further stated that the orders have not been uploaded on the website of the State Commission, however, some day to day orders sheets are provided which clearly shows that since 2017-2018 the counsel for the applicant had not been appearing.

6. Therefore, the delay is ascribed to the previous counsel and it is prayed for to:

i. Condone the delay of 216 days in filing the present first appeal

against the order dated 14.02.2023 passed by the State Commission, Telangana in CC no. 51 of 2016;

ii. Pass any other or further orders or relief which this Court may deem fit and proper in the facts and circumstances of the case be also passed/granted in favour of the appellant and against the respondent.

7. We have heard the proxy counsel Ms Shweta Singh Parihar appearing on behalf of the appellant on authority. No documents to support any of the reasons for condonation have been brought on record with regard to the non-responsiveness of the counsel or even change of address.

8. In Ram Lal and Ors. vs. Rewa Coalfields Limited, AIR 1962 Supreme Court 361, the Hon'ble Supreme Court 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."

9. The Hon'ble Supreme Court in another case of R. B. Ramlingam vs. R. B. Bhavaneshwari, I (2009) CLT 188 (SC), has stated that a court has to apply the basic test while dealing with the matters relating to condonation of delay, whether the Petitioner has acted with reasonable diligence or not. The court has held as under:

"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.”

10. While dealing with the matters under the Act, it has been held in the case of Anshul Aggarwal vs. New Okhla Industrial Development Authority, (2011) 14 SCC 578, by the Hon’ble Supreme Court that the special nature of the Act has to be kept in mind while dealing with the special period of limitation prescribed therein. The court has held 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 Fora.”

11. The cause shown for condonation of delay are insufficient and not supported by evidence. IA No.14288 of 2023 in FA no. 1041 of 2023 and IA no. 14293 of 2023 in FA no.1042 of 2023 are therefore, not considered maintainable and are accordingly dismissed. Consequently, the appeals are also dismissed in limine as being barred by limitation.