NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 1364 OF 2023

(Against the Order dated 01/02/2023 in Appeal No. 524/2014 of the State Commission Delhi)

1. ORIENTAL INSURANCE COMPANY LTD. .....Petitioner(s)

Versus

1. VASHISHT MANPOWER PVT LTD. .....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE,PRESIDING MEMBER

FOR THE PETITIONER : : MR. ARVIND GUPTA, ADVOCATE WITH
MS. SUMAN SHARMA, ADVOCATE

Dated : 02 November 2023

ORDER

1. This revision has been filed under section 58(1)(b) of The Consumer Protection Act, 2019 in challenge to the impugned Order dated 01.02.2023 passed by the State Commission in appeal no. 524 of 2014 arising out of Order dated 16.08.2013 passed by the District Commission in complaint
no. 173 of 2013.

2. Heard the learned counsel for the petitioner and the perused the record including, *inter alia* the Order 16.08.2013 passed by the District Commission, Order dated 01.02.2203 passed by the State Commission and the memo of petition.

3. It appears that the District Commission had passed its Order on 16.08.2013 whereby it allowed the Complaint.

4. Feeling aggrieved by the same an appeal was filed in the State Commission but it appears that the same was filed with huge delay which was dismissed on the point of limitation.

Therefore, feeling aggrieved by the same, the present petition has been filed in this Commission.

5. Submission of the learned counsel is that as in the District Commission, the petitioner had not appeared and, therefore, it did not have the knowledge of the impugned Order which resulted in the delayed filing of appeal. Submission is that notice was sent to the petitioner on different address and as such the petitioner could not know about its case. Subsequently, when the account of the petitioner was attached and the same was withdrawn, it was only then that the knowledge of the impugned Order could be acquired. Thereafter, certified copies were applied and necessary papers were collected which took some time and therefore, the delay in filing the appeal took place which deserves to be condoned as the same is not intentional.

6. The bench has perused the impugned Order in the light of the submissions made by the learned counsel but it finds that the submission made by the learned counsel have been adequately dealt with in the impugned Order and the State Commission did not find any good reason to accept the same. It was taken a note by the State Commission that the District Commission had passed its Order on 16.08.2013 while the appeal in the State Commission was filed on 24.05.2014 with a delay of 201 days. The District Commission's Order shows that despite service through registered post, none appeared for the petitioner and that is why the petitioner / opposite party was ordered to be proceeded *ex parte*. The State Commission was of the view that cogent reasons for the unawareness of the pronouncement of Order were not forthcoming and it has also taken note of the fact that as per the petitioner's own admission, it did come to know about the passing of Order on 18.03.2014 when its account was attached and the money was withdrawn. But then thereafter how and why it took 67 days in filing of the appeal before the State Commission remains unexplained. Relevant portion from the State Commission's Order in this regard may be quoted herein below:

> Reverting to the material available before us, we find that the time for filing the present appeal had expired on 16.09.2013. The Appellant had failed to give any cogent reasons for the unawareness of the pronouncement of the impugned order by the District Forum. The Appellant failed to explain as to why no immediate steps were taken by it when the impugned order was known to them on 18.03.2014. It is not explained by the Appellant as to why it took about 67 days to file the present appeal from 18.03.2014 i.e. the date on which the Appellant came to know about the impugned order. It was for the appellant to disclose the specific date as to when the pronouncement of order was known to it, how much time it took them to obtain the certified copy, how much time it took to draft the appeal, how much time it took to take approvals from concerned department etc. However, no specific dates have been mentioned in the application seeking condonation of delay filed by the applicant/appellant. Therefore, it is abundantly clear from the above that the appellant was moving at his own pace unmindful that the appeal is to be filed within 30 days from the date of order.

7. The State Commission has also taken note of the case law laid down by the Hon'ble Apex Court while discussing the circumstances of the case.

8. Normally, the Bench adopts a condescending indulgence in favour of the defaulting petitioner who fails to file the petition within the limitation period. It is ordinarily preferred to decide the case on merits rather than to thwart the cause at the very threshold on the ground of limitation. But while saying so it does not imply that the law of limitation wherever it is provided can either be blissfully ignored or soft paddled at will. Such kind of approach will entirety frustrate and defeat the very purpose which inspires the enactment on law of limitation. The statutory law regarding limitation, wherever it is provided has a salutary purpose to serve, and has to be respected and complied with. In no case can any forum judicial or quasi-judicial can ride roughshod on the solemn provisions regarding the law which provides limitation period. It goes without saying that when a particular order attains finality it simultaneously gives rise to a right to the other side and unless there is sufficient cause, which may justify the condonation of delay and satisfy the Bench that there were justifiable reasons which explain as to why the petition was not filed within the stipulated period of time, the Bench cannot act either whimsically or capriciously. The

judicial discretion which this Bench exercises in the matters of condonation of delay is not an exercise of some kind of privilege or prerogative, it is a judicial discretion and has to be exercised judiciously. The availability of sufficient cause has to be seen in perspective of the conspicuous facts and circumstances of each case and the onus of showing such factual basis from which may emanate the convincing grounds to vindicate the delayed filing has to be discharged by the petitioner who seeks judicial indulgence in this regard.

9. Though learned counsel for the petitioner has once again reiterated the submissions made before the State Commission but has simply failed to point out any substantial reasons on the basis of which impugned Order may be reproached or be castigated for being afflicted with any kind of jurisdictional error. Learned counsel has also not been able to show any material irregularity in the impugned Order and he has once again tried to persuade the Bench to reappraise all the facts and re-enter into them afresh. Even though such approach is not warranted under the law but in order to satisfy itself the Bench has gone through the entire record all over again but does not see any element of perversity in the impugned Order or any such kind of error which may go to vitiate the same. The law relating to the revision is well settled. Unless it is found that the forum below has exceeded the jurisdiction vested in it or where it is found that the State Commission has failed to exercise the jurisdiction vested in it, the Court of revisional jurisdiction has to be loath in meddling with the findings arrived at by the forum below.

10. The lawful discretion exercised in order to determine whether there was a good, justifiable or sufficient cause to explain the delay appears to have been properly and judiciously exercised by the fora below. E*x facie* this Bench finds the Order of the State Commission to be well-appraised and well-reasoned, the Bench does not notice any jurisdictional error or material irregularity as may go to vitiate the conclusion arrived at or any such ground to justify interference in the findings returned in the impugned Order or to take a different view of the matter regarding the condonation of delay as has been taken by the State Commission.

11. The present Petitioner being bereft of merits stands dismissed as such.

12. The Registry is requested to send a copy each of this Order to the parties in the petition and to the learned counsel for the petitioner as well as to the fora below within three days. The stenographer is requested to upload this Order on the website of this Commission within three days.

.....J
KARUNA NAND BAJPAYEE
PRESIDING MEMBER