

(2024) 11 NCDRC CK 0065

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 498 Of 2021

One School Goa

APPELLANT

Vs

Vibha Singh

RESPONDENT

Date of Decision: Nov. 25, 2024

Acts Referred:

- Consumer Protection Act, 2019 - Section 58(1)(b)

Hon'ble Judges: Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

Bench: Single Bench

Advocate: B.S. Sharma, Deepinder Kaur, Mallika Prabhakar

Final Decision: Allowed

Judgement

Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

1. This Revision Petition has been filed under Section 58(1)(b) of the Consumer Protection Act, 2019 (the 'Act') against impugned order dated 16.03.2021, passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai ('State Commission') in Misc. App. No. MA/20/294 in A/20/573 wherein the State Commission dismissed the Appeal being barred by limitation due to delay in filing.

2. As per report of the Registry, there is a delay of 9 days in filing the present Revision Petition. As the delay occurred during the suspended period of limitation due to Covid-19, the present Revision Petition is treated to have been filed within limitation.

3. Heard the learned counsels and examined the records.

4. The learned counsel for the petitioner reiterated the grounds taken in the Application seeking Condonation of delay filed before the State Commission and he contended that the

325 days delay in filing the First Appeal on was neither intentional nor deliberate. The learned State Commission ought to have condoned the marginal delay in filing the Appeal and decided the matter on merits. As there was a delay of 325 days in filing the appeal and the State Commission dismissed the Appeal on the grounds of limitation. He contended that the petitioner has a very strong case on merit and therefore, sought to allow the present Revision Petition and the impugned order passed by the State Commission be set aside.

5. The learned Counsel for the Respondent/Complainant argued in favour of the impugned order passed by the State Commission. He sought dismissal of the Revision Petition with costs. He has relied upon *Buddhist Mission Dental College and Hospital Vs. Bhupesh Khurana and Ors.*, I (2009) CPJ 25 (SC) and *Regional Institute of Cooperative Management Chandigarh (An Institution of National Council or Cooperative Training, New Delhi.) vs. Naveen Kumar Chaudhary.*, FA No.390 of 2013, decided on 01.10.2013 by the State Commission U.T. Chandigarh.

6. The reasons given by the Appellant in MA/20/294 in A/20/573 filed before the State Commission as under:

“1. The above named Appellant/Applicant, have filed the captioned Appeal, against the impugned order dated 28/03/2019, passed by the Hon'ble Consumer Disputes Redressal Forum South Mumbai District, at Mumbai, in O/Complaint No: 195 of 2014, a certified copy of which was received by the Appellant for the first time only on 06/11/2019, collected by hand by the Applicant.

2. The Applicants states that the order was communicated to the Applicant and therefore the Applicant took [an impugned first certify copy of order dated 28/08/2019 on 06.11.2019 by hand delivery.

3. The Applicants states that after receipt of an impugned order, the order was sent to Goa being the head department for further suggestions and action.

4. The Applicant No 1 being the Head of School was also busy in conducting functioning of the school including exams, student's projects work, and other administrative work of school, so there was delay in taking action.

5. The Applicants states thereafter, applicant decided to challenge an impugned order dated 28/08/2019 as the trial court failed to consider the Written Version filed by the Applicants.

6. The Applicants states that therefore Applicants engaged Advocate Mr. Anand Patwardhan for filing an Appeal before the State Commission.

7. The Applicants states that after going through with the papers Advocate asked for some more information, but since the Applicant was also busy in routine functioning of the school as mentioned above including exams, student's projects work, and other administrative work

of school, and hence it took some more time to give full instruction for preparing appeal. The Applicant states that after providing full information Advocate Anand Patwardhan has prepared appeal and forwarded to the Applicant through email for approval. The Applicant state that after approval the said draft was resent to the office of Adv. Patwardhan for finalization. Accordingly the said draft was finalized and kept ready for filing in Third week of March 2020. Thereafter the nationwide lockdown was declared. The said lockdown has continued till today where the offices of advocates have remained locked as the courts have not opened.

8. The Applicant states that they were in regular touch with Mr Patwardhan on phone his office is not functional as yet, due to no staff attending his office, however he has drafted the appeal and prepared it for filing despite there being no staff to assist him.

9. The Applicant states that owing to the Central Government notification no 40-3/2020DM-I(A) dated 24/03/2020 and the State Government notification No.DMU/2020/CR.92/Dis. M-1, dated 25/03/2020, there was complete shutdown of all activities including the shutting of the court, tribunals, and quasi judicial Authorities, due to the pandemic condition which was beyond control of the Appellant, which needs to be considered.

10. The Applicant states that considering the pandemic situation the Hon'ble Supreme Court, has in the Suo Motu Writ Petition (Civil) No(S). 3/2020 extended the period of limitation in all such proceedings, irrespective of the limitation prescribed under General or Special Laws, whether condonable or not shall stand extended w.e.f. March 15, 2020 till further order/s are made by the Hon'ble Supreme Court in this regard. It was also declared that the said order is a binding order within the meaning of Article 141 on all courts/ tribunals and authorities thus the said appeal filed cannot be said to be out of limitation period. However this application is made as abundant precaution, so that delay if any can be condoned as per the order (supra) of the Hon'ble Supreme Court of India. The Applicants states that the Applicant has good case on merit, and if delay is not condoned, it will cause loss to the applicant and will also amount to miscarriage of justice.

11. The Applicants states that first time he received certified copy of the order on 06.11.2019 after making application for the same. The Applicant states that from the date of receipt of certified copy of the order there is delay of 325 days in filing the present appeal which is not deliberate or intentional. Hence this application seeking condonation of delay of 325 days in filing the appeal which is not intentional or deliberate and in any case beyond the scope of the Applicant and hence the same be kindly condoned, more so in the light of incorrect facts that have got recorded.

12. The Applicants states that the Applicant has good case on merit, and if delay is not condoned, it will cause loss to the applicant and will also amount to miscarriage of justice.

13. *The Applicant therefore most humbly prays that in the interest of justice, the Hon'ble State Commission be pleased to condone the delay of 325 days in filing the present Appeal and oblige."*

7. Hon'ble Supreme Court in suo-motu Writ Petition (Civil) No. 3 of 2020 in re: Cognizance for Extension of Limitation suspended the period of limitation for filing proceedings before any Courts/ Tribunals or any Authority due to Covid-19 Pandemic from 15.03.2020 till 28.02.2022. Limitation would be further extended by 90 days from 01.03.2022, i.e. till 29.05.2022. Since 29.05.2022 is Sunday, the matter filed on 30.05.2022 would be considered to have been filed within time.

8. Considering the submissions made, arguments advanced and perusal of records the delay in filing the Appeal before the State Commission is condoned and the order of learned State Commission dated 16.03.2021 in MA/20/294 in A/20/573 is set aside, subject to the Petitioner paying Rs.25,000/- to the Respondent/Complainant and depositing Rs. 5,000 in the Legal Aid Account of the State Commission within a period of four weeks from the date of this order. Subject thereto, the Revision Petition No.498 of 2021 is allowed and the First Appeal before State Commission is restored to its original number. The State Commission is requested to consider the Appeal as per law.

9. All parties are directed to appear before the learned State Commission on 30.12.2024. The Petitioner is directed to file the proof of payment of cost before the State Commission on that date.

10. All pending Applications, if any, stand disposed of accordingly.