

(2012) 10 NCDRC CK 0030

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Santi Ranjan
Chatterjee

APPELLANT

Vs

Anuj Kumar Ray

RESPONDENT

Date of Decision: Oct. 5, 2012

Citation: 2012 0 NCDRC 620

Hon'ble Judges: J.M.Malik , Vinay Kumar J.

Advocate: Ram Ekbal Roy

Judgement

1. THERE is delay of 557 days " in filing this first appeal. The impugned judgment pertains to 27.02.2009.

2. WE have heard the learned counsel for the appellant/applicant. He submits that he has submitted two applications, one for restoration of appeal which was dismissed in default on 08.12.2011 and other for condonation of delay in filing this first appeal.

The appellant/applicant has explained the reasons for the delay in para No.3 of his application, which is reproduced below.

"3.That the Appellant herein handed over all the Briefs, documents and papers to the earlier Ld. Advocate, Biswajit Nag, Advocate to Calcutta High Court to file the instant Appeal before this National Consumer Disputes Redressal Commission, but noting has done on his part till dated 31st August, 2010, even the said briefs/ documents/papers have not handed over till dated 17.09.2010 to the appellant, therefore, due to unavoidable circumstance the Appellant has been filed the instant

Appeal before this National Commission by aforesaid period of delay and its may be condone for the ends of justice ".

It is noteworthy that the dates mentioned above, i.e. 31.08.2010 and 17.09.2010 are handwritten. The affidavit of Biswajit Nag, Advocate of Calcutta, has not been filed. There is no inkling in the evidence on record that any action, including the complaint against Sh.Biswajit Nag, was ever filed before the Bar Council. The above said ground does not constitute a good cause. It has become a fashion with the litigants to throw the blame of their negligence and inaction on their Advocates. The story propounded by the appellant/applicant is made out of whole cloth. He has blamed Sh. Biswajit Nag, Advocate, who may not be aware of such like allegations. It is the duty of the litigant to apprise him of the day to day hearing of every case. The delay of 557 days " has not been explained satisfactorily. The case of the appellant is hopelessly barred by time. This view taken by us neatly dovetails with the following authorities of the Apex court.

The Hon "ble Supreme Court in case Bikram Dass Vs. Financial Commissioner and others, AIR, 1977 SC 1221 has held that;

"Section 5 of the Limitation Act is a hard task-master and judicial interpretation has encased it within a narrow compass. A large measure of case-law has grown around S.5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain everyday's delay ".

3. RECENTLY this Commission presided over by Hon "ble Mr. Justice Ashok Bhan has dismissed the revision petition on the ground of delay and the delay of 104 days was not condoned, in case reference "Mahindra Holidays and Resorts India Ltd. Versus Vasantkumar H. Khandelwal and Anr. " [Revision petition No. 1848 of 2012 decided on 21.05.2012].

In Balwant Singh Vs. Jagdish Singh and Ors. (Civil Appeal No. 1166 of 2006), decided on 08.10.2010, in which it was held;

"The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P.Ramanatha Aiyar, 3rd Edition, 2005] ".

4. IN *Anshul Aggarwal v. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC), it has been held that "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 Foras".

In *Ram Lal and Others v. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361, it has been observed that "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 Section 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 bonafides may fall for consideration; but the scope of the inquiry 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."

In *Banshi Vs. Lakshmi Narain* 1993 (1) R.L.R. 68, it was held that reason for delay was sought to be explained on the ground that the counsel did not inform the appellant in time, was not accepted since it was primarily the duty of the party himself to have gone to lawyer's office and enquired about the case, especially when the case was regarding deposit of arrears of rent. The statute also prescribes a time bound programme regarding the deposit to be made.

5. IN *Jaswant Singh Vs. Assistant Registrar, Co-operative Societies* 2000 (3) Punj. L.R. 83, it was laid down that cause of delay was that the counsel of the appellant in the lower Court had told them that there was no need of their coming to Court and they would be informed of the result, as and when the decision comes, was held to be a story which cannot be believed.

6. IN Bhandari Dass Vs. Sushila, 1997 (2) Raj LW 845, it was held that accusing the lawyer that he did not inform the client about the progress of the case nor has he sent any letter, was disbelieved while rejecting an application to condone delay.

It is well settled that Qui facit per alium facit per se. Negligence of a litigant 's agent is negligence of the litigant himself and is not a sufficient cause for condoning delay. See M/s. Chawala and Co. Vs. Felicity Rodrigues, 1971 ACJ 92.

In view of these authorities, the first appeal is dismissed, as barred by time.