

(2014) 09 CAL CK 0057

Calcutta High Court

Case No: C.O. No. 2968 of 2013

Kanak Bala Mondal

APPELLANT

Vs

Anjali Karmakar

RESPONDENT

Date of Decision: Sept. 4, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Consumer Protection Act, 1986 - Section 21(b)

Citation: AIR 2014 Cal 220**Hon'ble Judges:** Ranjit Kumar Bag, J**Bench:** Single Bench

Advocate: Srijan Nayak, Bidyut Baran Biswas, Arindam Mitra and Biswajit Biswas, Advocate for the Appellant; Dilip Kumar Maiti and Uttam Kumar Kamila, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

R.K. Bag, J.

This revisional application under Article 227 of the Constitution of India at the instance of the petitioners/appellants arises out of order dated 2nd August, 2013 passed by the State Consumer Disputes Redressal Commission, West Bengal in F.A. No. 353 of 2013, by which the State Commission dismissed the application of the petitioners for condonation of delay in preferring the appeal against the order passed by the District Consumer Disputes Redressal Forum, North 24-Parganas in C.C. Case No. 290 of 2010.

2. Supplementary affidavit filed on behalf of the petitioners on this day is kept with the record. It appears from the materials on record that the petitioners challenged the order of the District Consumer Disputes Redressal Forum, North 24-Parganas by filing civil revision before this Court being C.O. No. 3714 of 2014. The said civil revision was disposed of on 15th January, 2013 by giving liberty to the petitioners to

prefer appeal against the order of the District Forum. Accordingly, the petitioners preferred the appeal being F.A. No. 353 of 2013 before the State Consumer Disputes Redressal Commission, West Bengal along with an application for condonation of delay for 75 days in preferring the said appeal. However, the State Commission rejected the application for condonation of delay after hearing of both parties on the ground that there is no merit in the application filed by the petitioners/appellants and that no specific cause is made out for the inordinate delay in preferring the said appeal. The said order of the State Consumer Disputes Redressal Commission is under challenged before this Court under Article 227 of the Constitution of India.

3. Relying on unreported decision of this Court passed by learned Single Judge on 21st March, 2013 in C.O. No. 2758 of 2012, learned counsel for the petitioners submits that the supervisory jurisdiction under Article 227 of the Constitution of India can be exercised to bring the Tribunal within the precincts of law. Learned counsel further submits that the State Consumer Disputes Redressal Commission did not take into consideration the fact that the petitioners had chosen the wrong forum for preferring revision before this Court without preferring appeal against the order of the District Forum and thereby inordinate delay took place for preferring the appeal before the State Commission against the order of the District Forum. The further submission of learned counsel for the petitioners is that the State Commission has failed to exercise the jurisdiction conferred on it by law and as such, this Court can exercise the jurisdiction under Article 227 of the Constitution of India, even when the petitioners did not prefer revision before the National Commission u/s 21(b) of the Consumer Protection Act, 1986 against the order of the State Commission.

4. On the other hand, learned counsel for the opposite party has relied on the decision in the case of "The Manager, Burdwan Co-operative Agricultural and Rural Development Bank Limited V. Anath Bandhu Dhara" reported in 2009(2) CLJ (Cal) 685 in order to put forward the argument that this Court will not exercise the jurisdiction under Article 227 of the Constitution of India for granting relief to the petitioner who has remedy by preferring revision against the order of the State Commission u/s 21(b) of the Consumer Protection Act, 1986.

5. Having heard learned counsels representing the respective parties and on consideration of the materials on record, I find that the decision of learned Single Judge of our High Court in the case of "The Manager, Burdwan Co-operative Agricultural and Rural Development Bank Limited V. Anath Bandhu Dhara" relates to the order of the State Commission which was decided on merit and the said order is the order of appeal. In the instant case, the State Commission has dismissed the application for condonation of delay and thereby the petitioners have been deprived of preferring the appeal against the order of the District Forum. Accordingly, the ratio of the decision of learned Single Judge in the case of "The Manager, Burdwan

Co-operative Agricultural and Rural Development Bank Limited V. Anath Bandhu Dhara" cannot be made applicable in the facts of the present case. However, on consideration of the decision of learned Single Judge passed on 21st March, 2013 in C.O. No. 2758 of 2012, I find that learned Single Judge has exercised the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India for setting aside the order of the State Consumer Disputes Redressal Commission which rejected the application for condonation of delay in preferring the appeal. Since the delay took place in preferring the appeal against the order of the District Forum for choosing wrong forum of revision of this High Court by the petitioners and since this fact was not taken into consideration by the State Commission at the time of rejecting the application of the petitioners for condonation of delay in preferring the appeal, I am inclined to exercise the supervisory jurisdiction of this High Court under Article 227 of the Constitution of India in spite of existence of alternative remedy of preferring revision against the said order u/s 21(b) of the Consumer Protection Act, 1986.

6. In view of my above findings, the impugned order dated 2nd August, 2013 passed by the State Consumer Disputes Redressal Commission, West Bengal in F.A. No. 353 of 2013 is set aside. The revisional application is disposed of. The interim order, if any, stands vacated.

The department is directed to send down a copy of this judgment to the State Consumer Disputes Redressal Commission, West Bengal for favour of information and necessary action.

The department is directed to supply urgent certified xerox copies of this order to the parties, if applied for, after compliance with all necessary formalities.