

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 867 OF 2019

(Against the Order dated 03/12/2018 in Complaint No. 283/2012 of the State Commission
Delhi)

1. ETHIOPIAN AIRLINES

ALPS BUILDING FIRST FLOOR 56 JANPATH

NEW DELHI 110001

.....Appellant(s)

Versus

1. NITIN DEWAN

2/10, SHANTI NIKTAN

NEW DELHI 110021

.....Respondent(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE APPELLANT : MR. KAPIL KHER, ADVOCATE

FOR THE RESPONDENT : MR RAJAT BHALLA, ADVOCATE

Dated : 29 August 2024

ORDER

1. This Appeal under Section 21 of the Consumer Protection Act, 1986 (in short, the 'Act') is directed against the order dated 03.12.2018 of the State Consumer Dispute Redressal Commission, Delhi (in short, 'State Commission') in Complaint Case No. 283 of 2012 whereby the State Commission found deficiency in service on the part of the Appellant and directed it to pay Rs.5.50 lakhs to the Respondent towards damages on account of misplacement of bag booked by it.

2. Briefly put, the relevant facts are that the Respondent who is an NRI booked a ticket in Business Class with the Appellant for travel from Nigeria to India via Addis by a non-stop flight on 02.06.2012. He arrived in India through a flight operated by Appellant, Ethiopian Airlines, on 30.06.2012. The departure time was changed to 12.30 and one stop was added as per mail sent to him on 03.06.2012. The travel route was also altered without his consent with a short notice. He could not therefore change his travel under compulsion. It was alleged that due to change of schedule his further programs were delayed and he had suffered monetary loss. Moreover, on reaching Delhi, he found that his one bag booked with the airline containing important documents and other expensive belongings was missing. A complaint was lodged with the Airlines but no positive reply was given. It was stated that his business meetings got frustrated for want of business documents which were kept in the bag which was lost due to negligence on the part of the Appellant. The Appellant offered an amount of USD 20 per kg for the loss of baggage. The Respondent claimed Rs.20 lakhs alongwith compensation of Rs.20 lakhs for loss of business opportunity and Rs.1.5 lakhs towards cost of belongings.

3. We have heard the Learned Counsel for the parties and carefully gone through the application for condonation of delay.
4. The State Commission in its order recorded that “since complainant had made declaration that the value of articles in his bag was 1.5 lakhs, he is entitled to that much amount on account of loss of baggage”. It has further held that “the damages on account of loss of business opportunity due to missing of bag can be quantified at Rs.3 lakhs. The same is direct consequence of negligence of the OP.” Hence, the State Commission directed the OP/Appellant to pay Rs.5.5 lakhs in all to the Complainant/Respondent within 45 days.
5. This order is impugned before us with the prayer to set it aside and dismiss the complaint filed. It is contended by the Respondent o that that the State Commission had wrongly held that (i) Respondent is a ‘consumer’ despite the fact that he had travelled for commercial purpose; (ii) the Respondent had made declaration that the value of articles in his bag was Rs.1,50,000/- but no proof was given; (iii) the State Commission wrongly awarded Rs.5,50,000/- to the Respondent. On the other hand, Learned Counsel for the Appellant submitted that that there was no negligence on the part of the Appellant. He relied upon the following decisions of this Commission in support of his arguments:-
 - i. Egypt Air Vs. Sai Leelavathi, 2006 SCC Online NCDRC 14
 - ii. Captain G.N. Venkat Vs. American Airlines, 2018 SCC Online NCDRC 15
 - iii. Rajiv Malik Vs. KLM Royal Dutch Airlines, CC No.136 of 2016
 - iv. K.R. Balasubramanian Vs. The Singapore Airlines, RP No.1189 of 2012
 - v. Air India Vs. Arvind Pandalai, 2015 SCC Online NCDRC 1252
 - vi. Sujata Nath Vs. Polular Nursing Home, CC No.60 of 2011

In brief the contention of the Appellant is that the Respondent had purchased the ticket for commercial purpose and as such he is not a consumer as laid down in the Consumer Protection Act. Further, vide letter dated 28.06.2012, the Appellant offered a sum of 540 USD. However, the Respondent insisted for the payment of Rs.1,50,000/-. The State Commission had wrongly awarded damages on account of loss of business opportunity due to missing of bag.

6. Alongwith the Appeal, IA/7833/2019 an application has been filed by the Appellant seeking condonation of delay of 53 days. However, as per report of the Registry, there is a delay of 52 days.
7. Learned Counsel appearing on behalf of the Respondent strongly objected to the delay of 52 days. He vehemently contended that the appeal should be dismissed on the ground of limitation at the threshold on account of delay in filing the appeal before this Commission as no sufficient ground for condoning the delay had been given in the application. He submitted that the Appellant could not prove their diligence in filing the case within the period of limitation. He further submitted that as per provisions of Section 24A of the Consumer Protection Act, 1986, limitation of time is mandatory in nature and such mandatory limit of time cannot be ignored.
8. The contentions of the Opposite Parties on the preliminary issue of limitation under Section 24A have been considered at the outset. The only ground taken by the Learned

Counsel for the Appellant in the application was that the certified copy of the order dated 16.02.2019 was misplaced on account of shifting of the office of the Counsel and it was found only in 3rd week of April, 2019 when the shifting was completed which had taken a lot of time. It was submitted that there was sufficient ground for condoning the delay and the delay in filing the appeal may kindly be condoned.

9. The application of condonation of delay has been filed without providing details of dates to justify the delay sought to be condoned. The Counsel for the Appellant is also not able to give a plausible explanation based on extenuating circumstances warranting the delay. The application has been drafted without a reasonable explanation being given. The delay of 52 days has not been satisfactorily explained.

10. In *State Bank of India vs B S Agriculture Industries* (I) (2009) 5 SCC 121 decided on March 20, 2009, it has been held by the Hon'ble Supreme Court that:

“It would be seen from the aforesaid provision that it is peremptory in nature and requires the consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The consumer forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. **The expression, ‘shall not admit a complaint’ occurring in Section 24 A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within the limitation period prescribed thereunder.**

12. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24 A and give effect to it. **If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside.”**

[Emphasis added]

11. The Hon'ble Apex Court has laid down that the settled legal proposition of law of limitation under the Consumer Protection Act has to be applied with all its rigour when the statute so prescribes, though it may harshly affect a particular party. The Appellant has not been able to provide adequate and sufficient reasons which prevented it to approach this Commission within the limitation.

12. The Hon'ble Supreme Court has also held that party who has not acted diligently or remained inactive is not entitled for condonation of delay. The Hon'ble Supreme Court in *R. B. Ramlingam vs. R. B. Bhavaneshwari*, I (2009) CLT 188 (SC) has also described the test for determining whether the petitioner has acted with due diligence or not and 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.”

13. Condonation of delay is not a matter of right and the applicant has to set out the case showing sufficient reasons which prevented them to come to the Court/Commission within the stipulated period of limitation. The Hon’ble Supreme Court in *Ram Lal and Ors. Vs. Rewa Coalfields Limited*, AIR 1962 Supreme Court 361 has held as under:

“It is, however, necessary to emphasise 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 condition precedent for the exercise of the discretionary jurisdiction vested in the Court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay 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.”

[Emphasis added]

14. The burden is on the applicant to show that there was sufficient cause for the delay. The expression ‘sufficient cause’ has been discussed and defined by the Hon’ble Supreme Court in the case of *Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer*, 2013 AIR SCW 6510 as under:

“Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of *bona fide* on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever he court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. **The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.** (See: *Manindra Land and Building Corporation Ltd. V. Bhootnath Banerjee & Ors*, AIR 1964 SC 1336; *LalaMatadin V. A.Narayanan*, AIR 1970 SC 1953; *Parimal V. Veena alias Bharti* AIR 2011 SC 1150 L2011 AIR SEW 1233); and *ManibenDevraj Shah V. Municipal Corporation of Brihan Mumbai*, AIR 2012 SC 1629: (2012 AIR SCW 2412).

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It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “*dura lex sed lex*” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute.

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The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of *bona fide* on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. **In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature”.**

[Emphasis supplied]

15. Further, in *Anshul Aggarwal Vs. New Okhla Industrial Development Authority*, (2011) 14 SCC 578, the Hon’ble Supreme Court has advised the Consumer Forums to keep in mind while dealing with such applications the special nature of the Consumer Protection Act. The Hon’ble Supreme 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 foras.**”

[Emphasis supplied]

16. The Appellant was required to explain each and every day’s delay. They have not mentioned when they sought legal advice; date on which they decided to file the appeal; when the advocate prepared the file and sent it to them and on which date the Appellant sent back the Appeal to the Advocate for filing the same in the National Commission. It is thus clear that the reason stated by the Appellant is a weak excuse that cannot be justified. The day-to-day delay is also not explained.

17. The purpose of Section 24 A is to ensure that the provisions of the Consumer Protection Act, 1986 as a beneficial legislation are not diluted through challenges which cause cases to be prolonged through litigation even in Consumer Fora. The justification for the condonation of delay in the instant case is only an attempt to delay the implementation of an order of the State Commission as there is no evidence brought on record to substantiate the application for consideration. Cause shown is therefore not found to be sufficient.

18. In view of the above, I do not find any reason to condone the delay which has not been satisfactorily explained. The application for condonation of delay is accordingly dismissed. As a consequence, Appeal is also dismissed *in limine* being barred by limitation.

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**SUBHASH CHANDRA
PRESIDING MEMBER**