

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 336 OF 2020

(Against the Order dated 08/05/2019 in Complaint No. 8/2011 of the State Commission
Delhi)

1. SUNITA KUMAR ALIAS SUNITA CHANDRA & ANR.
W/O. SH. RAJEEV KUMAR, R/O. H NO. 4/2368, GALI NO.
9, BIHARI COLONY, DELHI-110032
2. SH. RAJEEV KUMAR
S/O. LATE SH. CHARAN SINGH, R/O. HOUSE NO. 4/2368,
GALI NO. 9, BIHARI COLONY,
DELHI-

.....Appellant(s)

Versus

1. ST. STEPHEN'S HOSPITAL
THROUGH ITS DIRECTOR, AT-TIS HAZARI,
NEW DELHI-110054

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER, MEMBER**

FOR THE APPELLANT : MR. BISHWAJEET BHATTACHARYYA, SR. ADVOCATE
WITH MR. ABHINAV PRAKASH, ADVOCATE
MR. ARVIND WISHWABANDHU, ADVOCATE
FOR THE RESPONDENT : MS. SHRUTI SHARMA, ADVOCATE

Dated : 05 April 2024

ORDER

1. The present appeal has been filed under Section 19 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") against the Order dated 08.05.2019 passed by the State Consumer Disputes Redressal Commission, Delhi (hereinafter to be referred to as "State Commission) in complaint No. 08 of 2011 whereby the complaint was dismissed.
2. Heard the learned counsel for the appellants (hereinafter referred to as the 'complainants') and the learned counsel for the respondent (hereinafter referred to as the 'hospital') and perused the record.
3. The brief facts of the case, as narrated in the complaint, are that the complainant no. 1, Mrs. Sunita Kumar (hereinafter referred to as the 'patient'), who is the wife of complainant no. 2, Mr. Rajeev Kumar, got herself registered with the hospital on 04th month of her first pregnancy. The patient got herself examined by the doctors in the hospital from 28.01.2010 to 25.06.2010. The complainants deposited all medical expenses as raised by the hospital from time to time. During the said period of pregnancy the hospital conducted all the tests

including ultrasound etc. and subsequent to the tests done, the doctors of the hospital found and reported everything as normal. The patient got admitted in the hospital on 25.06.2010 and delivered a male child on 26.06.2010. It is alleged that the delivery was forced and there were complications, the fact which was never brought home either to the complainants or to their family members. The complainants or any family member was never informed that the newly born child has been shifted to nursery owing to the deficiency of oxygen. It is only three days after delivery, the doctors of the hospital informed the complainants that the condition of the child is not good and he has suffered with brain hemorrhage.

It is alleged that during the process of delivery there was fatal distress as the doctors of hospital did not decide to abort the process of delivery and to take up the patient for LSCS. It is further alleged that the doctors at hospital did not monitor the patient as the fetus later developed distresses. The child has Perinatal Asphyxia and the cause of Asphyxia is non-availability of Pediatrician at the time of delivery or non-competence or negligence of the pediatrician. The Asphyxia has led to brain damage causing a spastic child. The brain damage of the child has been detected as revealed by the CT scan. Hence, alleging medical negligence on the part of the hospital, the complainants have filed the complaint before the State Commission.

4. The hospital contested the complaint by filing reply and stating that the complaint is misconceived and malafide and the complaint had been filed with the sole intention of covering up her criminal act of abandoning her new born baby. The hospital had contended that during the delivery the fetus had suffered slight distress. Active resuscitative measures were taken and the child was revived. It was further alleged that the medical board was constituted and on examination they came to the conclusion that the child was fit to be discharged from the hospital and thus there was no negligence on their part.

5. The State Commission, vide its Order dated 08.05.2019, dismissed the complaint observing that the negligence as alleged in the complaint against the treating doctor or the hospital could not be substantiated.

6. Aggrieved by the order of the State Commission, the complainants have filed the instant appeal before this Commission.

7. As per report of the Registry, there is a delay of 213 days in filing the appeal.

8. An application no. 3240 of 2020 for condonation of delay has been filed by the complainants.

9. In the first instance, the matter was heard on the point of delay. Learned counsel for the complainants filed the following decisions in support of the proposition that the courts have discretion to condone the delay while dealing with the application for condonation of delay.

1. G. Ramegowda, Major and Ors. Vs. Special Land Acquisition Officer, Bangalore (1988) 2 SCC 142

2. Shakuntala Devi Jain vs. Kuntal Kumar and Ors. AIR 1969 SC 575.

3. State (NCT of Delhi) vs. Ahmed Jaan (2008) 14 SCC 582

4. Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and Ors.
AIR 1987 SC 1353

10. Learned counsel for the hospital vehemently opposed the application for condonation of delay and filed the following decisions:

1. Anshul Aggarwal vs. New Okhla Industrial Development Authority

(2011) 14 SCC 579

2. Lingeswaran Etc. vs. Thirunagalingam, SLP No. 2054-2055 of 2022, decided on decided on 25.02.2022

3. Basawaraj and another vs. Special Land Acquisition Officer,

Civil Appeal No. 6974 of 2013, decided on 22.08.2013.

The application for condonation has been perused.

11. The reasons advanced by the complainant to justify the delay caused have been considered. The complainant has contended that the delay in filing the appeal was that the complainants were in a state of distress after passing of the State Commission's Order. It is further contended that the child of the complainants is subject to continuous medical treatments and attention, which is taking a toll on financial and mental well-being and that the understanding the technical and procedural aspect of medical science was necessary and seeking medical opinion from the experts and books of gynaecology and obstetrics was time consuming.

It is further contended that the delay was *bona fide* and beyond the control of the complainant. It has also been contended that a liberal approach to the condonation of the delay be adopted. The complainants ought to have taken steps on priority to challenge the same on priority at the earliest since the period prescribed for filing an appeal under the Act is 30 days. The explanation provided does not explain as to why it took so much time at various stages for them to decide and finalise the appeal since the delay is of 213 days.

12. The law of limitation requires delay for each day of delay to be explained after expiry of the period of limitation. It is necessary that this explanation is rational, reasonable and realistic and to be acceptable.

13. 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]

14. 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 complainant has not been able to provide adequate and sufficient reasons which prevented him to approach this Commission within the limitation.

15. 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.”

16. 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]

17. The burden is on the complainants 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 the 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]

18. 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]

19. 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. In the instant case, the order of the State Commission that is impugned is dated 08.05.2019. The appeal against it is dated 03.03.2020. The delay of 213 days is not satisfactorily explained.

20. In view of the above, we do not find any reason to condone the delay which has not been explained. Appeal is dismissed *in limine* being barred by limitation.

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**SUBHASH CHANDRA
PRESIDING MEMBER**

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**DR. SADHNA SHANKER
MEMBER**