

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.36825 of 2015

12.07.2018

Between:

M/s.Anand Constructions,
represented by its Managing Partner,
Visakhapatnam and another

..Petitioners

and

The Andhra Pradesh State Consumer Disputes Redressal Commission,
represented by its Registrar, Hyderabad and others

..Respondents

Counsel for the petitioners: Mr.G.Rama Gopal

Counsel for respondent No.1: Government Pleader for Civil Supplies

Counsel for respondent No.2: Mr.Ramakrishna A.

Counsel for respondent No.3: --

The Court made the following:

ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for issue of *certiorari* to quash order, dated 17.06.2015, in F.A.I.A.No.215 of 2015 in F.A.(SR)No.98 of 2015 on the file of respondent No.1 Commission.

2. Respondent No.2 filed consumer complaint No.309 of 2012 on the file of the District Consumer *Forum*-I, Visakhapatnam, Andhra Pradesh (for short 'the District *Forum*') – respondent No.3 for the following reliefs.

- (a) to direct the opposite parties to refund the amount of Rs.3,50,000/- with 24% interest from the date of payment.
- (b) to pay Rs.25,000/- towards compensation, and
- (c) to pay Rs.25,000/- towards damages besides costs.

By order, dated 07.07.2014, the District *Forum* allowed the consumer complaint directing the petitioners to pay Rs.3,50,000/- with interest at 9% p.a. from 23.07.2009 till the date of payment and also to pay another sum of Rs.5,000/- towards compensation and Rs.1,500/- towards costs to respondent No.2 within one month from the date of the said order. In the preamble portion of the order, it is mentioned that the opposite parties were called absent and were set *ex parte*. Feeling aggrieved by the said order, the petitioners filed appeal i.e., F.A.(SR) No.98 of 2015 along with F.A.I.A.No.215 of 2015 for condonation of delay of 30 days in filing the appeal before respondent No.1 Commission. The petitioners pleaded before respondent No.1

Commission that notice in the consumer complaint was not served on them and that therefore, they had no knowledge of disposal of the consumer complaint on 07.07.2014 and that only on 22.11.2014, the date on which they received communication/notice in E.A.No.19 of 2014, they came to know about disposal of the consumer complaint and that immediately, an application was made by them on 05.12.2014 for supply of certified copy of the order in the consumer complaint, which was delivered on 09.12.2014. The petitioners, accordingly, reckoned the delay from the date of obtaining the certified copy of the order. Respondent No.1 Commission dismissed the application for condonation of delay on two grounds *viz.*, (i) that though the actual delay was 159 days, the petitioners sought for condonation of delay of 30 days only and (ii) that the District *Forum* made the endorsement “certified that true copy was already supplied on 15.07.2014. This copy is issued on copy application.” on the certified copy. Relying upon the said endorsement, respondent No.1 Commission concluded that the petitioners received the original copy of the order on 15.07.2014, but they did not use the same and that they obtained certified copy on 09.12.2014, based on which, they filed the appeal.

3. In the affidavit filed in support of the writ petition, the petitioners specifically pleaded that it is respondent No.2, who received the true copy of the order in the consumer complaint on 15.07.2014, and not the petitioners and that respondent No.1 Commission erroneously made the endorsement on the certified copy

that the true copy was already supplied on 15.07.2014 and the said certified copy was issued only on copy application and that without realizing that the said endorsement was not referable to the petitioners but only to respondent No.2, respondent No.1 Commission has dismissed the application. In support of this plea, the petitioners filed a copy of the order of the District *Forum*, which contained the relevant endorsement.

4. Opposing the above averments, Mr.Rama Krishna A., learned counsel for respondent No.2, has submitted that the writ petition is not maintainable as the petitioners have the effective alternative remedy of filing revision before the National Consumer Disputes Redressal Commission, Delhi under Section 21 of the Consumer Protection Act, 1986, while fairly conceding that the notices sent to the petitioners' addresses were returned with the endorsement "addressee left" and that therefore, the notice could not be served on the petitioners. He has, however, submitted that even assuming that the petitioners were not served with notice, they have to seek condonation of the entire delay, but not 30 days, which was reckoned from the date of receipt of the certified copy.

5. We have considered the respective pleadings and the submissions of the learned counsel for the parties and perused the record.

6. As regards the maintainability of the writ petition, the Rule of alternative remedy is not a Rule of Law but a self imposed restriction by the Constitutional Courts. One of the grounds on which a writ petition could be entertained in spite of availability of alternative remedy is that of serious failure of justice. In the instant case, it is not in dispute that the petitioners did not receive notice in the consumer complaint and without proper verification of the same, the District *Forum* proceeded on the premise that the petitioners were called absent and accordingly, they were set *ex parte*. Therefore, this is a case of serious failure of justice occasioned to the petitioners. Hence, we are inclined to entertain this writ petition in spite of the petitioners having the alternative remedy of filing revision before the National Consumer Disputes Redressal Commission, Delhi.

7. As regards the reasons pleaded by the petitioners for condonation of the delay, a perusal of the certified copy furnished to the petitioners shows that it bears the following endorsement.

“received copy
N.V.S.Nirmala,
Advocate for complainant,
15.07.2014”

At the bottom of the said certified copy, which was supplied to the petitioners, the office made the following endorsement.

“Certified that true copy was already supplied on
15.07.2014. This copy is issued on copy application”

The above noted two endorsements would clinchingly establish that the true copy was supplied to the Advocate for the complainant on 15.07.2014. There is no endorsement to show that either the petitioners or their Advocate have received the true copy of the order of the District Forum on 15.07.2014 or any other subsequent date till the certified copy was supplied to the petitioners on 09.12.2014. Unfortunately, respondent No.1 Commission did not notice this fact and proceeded on the premise that the petitioners had not filed the appeal based on the true copy and that they filed the appeal after obtaining the certified copy. If respondent No.1 Commission had noticed the said fact, we have no doubt that it would not have held that the delay is 159 days as the delay has to be reckoned from the date of supplying certified copy only. In view of the admitted fact that the petitioners did not receive notice in the consumer complaint, there are justifiable grounds to condone the delay.

8. In the above facts and circumstances of the case, order, dated 17.06.2015, in F.A.I.A.No.215 of 2015 of respondent No.1 Commission is set aside. F.A.I.A.No.215 of 2015 is allowed by condoning the delay in filing F.A.(SR)No.98 of 2015. Respondent No.1 Commission shall entertain and assign number to the appeal and dispose of the same on merits after hearing both sides.

9. The Writ Petition is, accordingly, allowed.

10. As a sequel to allowing the writ petition, W.P.M.P.No.47435 of 2015 filed by the petitioners for interim relief stands disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

12th July, 2018
GHN

