

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Writ Petition No.7542 of 2013

Date: 02.08.2018

Between:

Sindhura Residency Welfare Association
Rep. by its President B.Koteswara Rao

... Petitioner

and

The Andhra Pradesh State Consumer
Redressal Commission, Khairatabad,
Hyderabad and another

... Respondents

Counsel for the Petitioner:

Mr.PSP.Suresh Kumar

Counsel for respondent No.1:

GP for Civil Supplies

Counsel for respondent No.2:

Sri Josyula Bhaskara Rao

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 calling for records from respondent No.1 and to quash Order, dated 09.03.2012, in FAIA.No.699 of 2012 in FA(SR) No.1269 of 2012.

The petitioner is a Welfare Association pertaining to the flats constructed by respondent No.2. On the ground that respondent No.2 has left the flat owners in the lurch by not completing the construction as per the agreement, it has approached the District Consumer Forum, Visakhapatnam II, *vide* CC.No.36 of 2011 claiming compensation/damages. The said Case was dismissed on merits. Aggrieved by the said dismissal, the petitioner has filed an Appeal being FASR.No.1269 of 2012 before respondent No.1- Andhra Pradesh State Consumer Disputes Redressal Commission at Hyderabad. As there was a delay of 133 days in filing the same, the petitioner has FAIA.No.699 of 2012 seeking condonation of delay. Respondent No.1, however, dismissed FAIA.No.699 of 2012 *in limini* by holding that the petitioner failed to offer satisfactory explanation for condoning the delay. Feeling aggrieved by the said order, the petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

Mr.Josyula Bhaskara Rao, learned Counsel for respondent No.2, submitted that the petitioner has an alternative remedy of revision under Section 21 of the Consumer Protection Act, 1956, before the National Consumer Disputes Redressal Commission.

We are not inclined to throw away the Writ Petition on the ground of availability of an alternative remedy for two reasons *viz.*, (1) That the Writ Petition was entertained; a notice was ordered as far back as 14-03-2013; the Writ Petition is pending for five years; and dismissing the same on the ground of availability of alternative remedy at this stage, therefore, would cause serious prejudice to the interests of the petitioner; and (2) That the rule of alternative remedy is a self imposed one but not a rule of law; and whenever a writ Court feels that patent injustice will be caused, if it does not interfere with the order impugned in the Writ Petition, it can entertain the Writ Petition despite availability of an alternative remedy to the petitioner.

In the instant case, respondent No.1 has refused to condone the delay of 133 days terming the same as 'whopping' as though the petitioner has not offered any explanation. In his affidavit, the President of the petitioner- Association had offered the following explanation:

“In submit that I have approached my counsel during last week of January 2012 and obtained the orders dated 09-09-2011 passed in CC.No.36 of 2011 on the file of Hon’ble District Forum, Visakhapatnam II, Visakhapatnam District. Till such time I was not aware about the disposal of the case in the District Forum. I submit that my counsel has advised me to approach the Hon’ble State Commission. I submit that as I have no knowledge about the Counsels at Hyderabad, I could not approach immediately and I have approached the Counsel at Hyderabad by arranging the required money from our Association members to file the Appeal. As such, there was a delay of (133) days in filing the Appeal. The delay in filing the Appeal is neither wanton nor intentional and happened only due to the said reasons.”

Nowhere in the impugned order, respondent No.1 assigned specific reasons for rejecting the explanation offered on behalf of the petitioner. It has made certain generic remarks as to the consequences of condonation of delay and the effect it would have on the opposite party. In our opinion, the intendment of law is to decide the disputes on merits as far as possible. The Courts or the *Fora* shall not display a pedantic approach in considering the applications for condonation of delay. While the applications filed without proper explanation for condonation of long delays need to be dismissed, the applications involving short and moderate delays cannot be thrown out by adopting a rigid approach even without considering the explanations and assigning specific reasons for rejecting the same. On a close analysis of the order of respondent

No.1, we have no hesitation to hold that it has not properly guided itself in considering the explanation offered by the President of the petitioner- Association and refused to condone the delay on vague and unconvincing reasons. As the petitioner was denied opportunity of contesting the Appeal on merits with the rejection of its application filed for condonation of delay at the threshold, we feel that the impugned order has resulted in serious failure of justice. Hence, the impugned order is liable to be set aside.

Accordingly, Order, dated 19-03-2012, in FAIA.No.699 of 2012 in FASR.No.1269 of 2012 is set aside and FAIA.No.699 of 2012 is allowed. Respondent No.1 is directed to register FASR No.1269 of 2012 and dispose of the same on its own merits after hearing both the parties.

The Writ Petition is allowed.

As a sequel, WPMP.No.9467 of 2013, filed by the petitioner to expedite the hearing of the Writ Petition, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 2nd August, 2018
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