

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2636 OF 2019

Anoopsingh Mohansingh Parihar, Pandy Layout, Nagpur

-vs-

Arneja Institute of Cardiology Pvt. Ltd. Thr. Its Director Dr Jaspal Arneja and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Anoopsingh Mohansingh Parihar, Advocate and
petitioner in person.

Shri S. Dewani, Advocate for respondents.

CORAM : A. S. CHANDURKAR, J.

DATE : November 04, 2019

Rule. Heard finally considering the short issue involved.

The appeal filed by the petitioner under Section 15 of the Consumer Protection Act, 1986 (for short, the said Act) has not been entertained by rejecting the application for condonation of delay of one day in preferring the same. In the application for condonation of delay it has been stated that the District Consumer Forum decided the complaint on 06/08/2016. The certified copy of that order was received on 29/08/2016. The appeal therefore was required to be filed by 28/09/2016. As some technical compliance could not be done the appeal was presented on 29/09/2016. The learned Members of the State Consumer Forum have observed that the copy of the application for condonation of delay was not served on the respondent Nos.1 and 2. On account of absence of the petitioner the State Consumer Forum proceeded to pass the impugned order.

2. It is submitted by the petitioner in person that considering the delay of one day and the fact that the appeal could not be submitted within limitation on account of absence of a cover file, the writ petition be entertained so as to enable an adjudication on merits. It is submitted that since this fact is undisputed the writ petition deserves to be entertained.

3. Reply has been filed on behalf of the respondent opposing the prayers made in the writ petition. It is submitted that in view of provisions of Section 21 of the said Act remedy of filing revision application is available to the petitioner. Reliance is also placed on the decisions in *Harbanslal Sahnia and anr. vs. Indian Oil Corporation Ltd. and ors.* (2003) 2 SCC 107, *Shyam Sundar Sarma vs. Pannalal Jaiswal and ors.* (2005) 1 SCC 436, *Kirit Ramnaji Thakore vs. Vodafone Essar Gujarat Ltd. Thr. Ashesh Thakore Company* 2013(2) GCD 1157, *Bajirao s/o Dagduji Sirsat vs. Sanjay Prakashchand Kothari and ors.* 2015(1) Mh.L.J. 278, *Arenja Industries Ltd. vs. Jagdish* 2011(5) Mh.L.J. 904 and *Wasan Automotive Pvt. Ltd. Thr. Its General Manager and anr. vs. Subhash Rajaram Vande* 2019(4) Mh.L.J. 776 to urge that this Court may not entertain the writ petition.

4. On perusal of the documents on record it is clear that there was delay of one day in filing the appeal under Section 15 of the said Act. The ground for rejecting that application for condonation of delay is that copies of the said application were not served on the respondent Nos.1 and 2. Fact that there is delay of only one day itself is an exceptional case for not driving the petitioner in person to approach the National Consumer Forum to avail the statutory remedy. There can be no dispute with the ratio of decisions relied upon by the learned counsel for

the respondent. However since the application for condonation of delay has not been considered on its merits and that application has been rejected on the ground that the petitioner was absent and he had not furnished copies of the said application to the respondent, I am inclined to entertain the writ petition.

5. Accordingly the order dated 21/03/2018 passed by the State Consumer Forum is set aside. The application for condonation of delay is restored before the State Consumer Forum for its consideration in accordance with law.

Rule is made absolute in aforesaid terms. Writ Petition is disposed of with no order as to costs.

JUDGE