

S/L 1
17.11.2023
Court. No. 29
Sourav

CO 2622 of 2022

**Somnath Banerjee & Anr.
Vs.
Arati Mukherjee & Ors.**

*Mr. Srijan Nayak
Ms. Rituparna Maitra
Mr. Arindam Mitra*

...for the petitioners.

*Mr. Mohammed Amin
Mr. Ghulam Mustafa*

...for the opposite party nos. 1 to 3.

*Mr. Kishore Mukherjee
Mr. Soumyajit Mukherjee*

...for the opposite party no. 4.

1. Heard Mr. Nayak, learned advocate for the revisionists, Mr. Mohammed Amin, learned advocate for the opposite party nos. 1 to 3 and Mr. Kishore Mukherjee, learned advocate for the proforma opposite party no. 4.
2. In this revisional application as filed under Article 227 of the Constitution of India, the order dated 05.07.2022 as passed in First Appeal No. A/100/2022 by the State Consumer Disputes Redressal Commission, hereinafter referred to as the 'State Commission' in short has been impugned.
3. By the impugned order, learned State Commission has refused to condone the delay of the present petitioners (appellants therein) in filing the said appeal and thus, rejected their application for condonation of delay and consequently, the said first appeal as preferred by them was also dismissed being not admitted. The appellants

before the State Commission felt aggrieved and thus preferred the instant revisional application.

4. In support of the instant revisional application, Mr. Nayak, learned advocate for the revisionists/appellants at the very outset draws attention of this Court to the paragraph nos. 9, 10 and 11 of the impugned order. It is contended by Mr. Nayak that from the said three paragraphs, it would reveal that learned State Commission has divided the entire period of delay into three parts. It is further contended by Mr. Nayak, learned advocate for the petitioners that learned State Commission has rightly come to a conclusion that the delay as mentioned in Item Nos. 2 and 3 in the said paragraphs are condonable in view of waiving of period of limitation by the Hon'ble Apex Court due to COVID Pandemic.
5. Mr. Nayak, learned advocate for the petitioners further submits that learned State Commission has, however, failed to visualize the predicament of the present petitioners in between the period as mentioned in Item No. 1 in the said paragraphs i.e. from 03.03.2019 to 14.03.2020. It is further contended on behalf of the petitioners that learned State Commission has failed to visualize the physical ailments (cancer) of the present petitioner no. 1 and its direct and indirect effect upon the petitioner nos. 2 and 3 who are the close relatives of the petitioner no. 1.
6. Mr. Nayak, learned advocate for the petitioners thus submits that learned State Commission has unnecessarily

taken a stringent view in disposing an application for condonation of delay which ought to have been considered liberally in view of the recent trends of judgments of the Hon'ble Apex Court as well as different Hon'ble High Courts. Mr. Nayak thus submits that it is a fit case for allowing the instant revisional application by setting aside the impugned order

7. While opposing the prayer of the petitioners, Mr. Mohammed Amin, learned advocate for the opposite party nos. 1 to 3 also draws attention of this Court to the certified copy of the impugned order. It is submitted on behalf of the opposite party nos. 1 to 3 that learned State Commission has taken a correct view while disposing of the application for condonation of delay in view of the fact that the present opposite party nos. 1 to 3 after obtaining a favourable judgment from the consumer forum had duly communicated the copy of the said judgment to the opposite party nos. 1 to 3 for its compliance and in spite of such fact, the present petitioners have failed and neglected either to carry out such order or to prefer a statutory appeal within the period of limitation. It is further argued on behalf of the present opposite party nos. 1 to 3 that since no sufficient cause has been shown on behalf of the present petitioners before the learned State Commission, the learned State Commission by its reasoned order rightly rejected the petition for condonation of delay.
8. Learned advocate for the proforma opposite party no. 4 submits before this Court that his client should not be

made party in the instant revisional application since pursuant to the agreement entered into by the present opposite party nos. 1 to 3 and the profoma opposite party no. 4, the profoma opposite party no. 4 has duly complied with the terms of agreement as entered into by and between them.

9. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it appears to this Court that learned State Commission has taken a correct approach with regard to the condonation of delay as mentioned in Item nos. 2 and 3 in paragraph 9 of the impugned judgment. So far as the period of delay from 03.03.2019 to 14.03.2020 is concerned, it appears to this Court that the learned State Commission has declined to accept the justification as advanced by the present petitioners before him basically on the ground that even if it is presumed that the present petitioner no. 1 is ill, there was no justification on the part of the other petitioners as to what prevented them in preferring the appeal within the period of limitation as prescribed in Consumer Protection Act.
10. In considered view of this Court, since the present petitioners are close relatives and since present petitioner no. 1 is a patient of carcinoma one can very well understand the trauma and adverse effect as well as mental shock in the event one of the family members suffers from cancer or like diseases.
11. In considered view of this Court, learned State Commission could have taken a lenient attitude while

disposing the application for condonation of delay especially when the appeal preferred by the present petitioners before it was a statutory appeal.

12. Such being the position, this Court in exercise of its plenary power set aside the impugned order dated 05.07.2022 as passed in First Appeal No. A/100/2022 by the learned State Commission and as a result, the instant revisional application is hereby allowed on contest, however, subject to payment of cost of Rs. 20,000/- which is to be paid by the petitioners to either of the opposite party nos. 1 to 3 within a fortnight from the day of passing of this order. Such cost is to be paid by the petitioner to either of the opposite party nos. 1 to 3 either by postal money order or by depositing the same in the bank account of the either of the opposite party nos. 1 to 3 provided the particulars of the bank account is furnished by the learned advocate for the opposite party nos. 1 to 3 to the learned advocate for the petitioners herein within a week from the day of passing of this order.
13. Consequently, the application for condonation of delay as filed by the appellants in First Appeal No. A/100/2022 before the learned State Commission stands hereby allowed on contest subject to the compliance of the aforesaid condition i.e., subject to payment of cost. Both the parties are hereby directed to appear before the learned State Commission within 21 days from the day of passing of this order and on the said day, the appellants of the First Appeal No. A/100/2022 is required to file the

necessary proof regarding payment of cost as directed by this Court.

14. Immediately, after appearance of the parties before the learned State Commission, learned State Commission is hereby directed to list the First Appeal No. A/100/2022 for hearing on the point of admission within seven days from the day of appearance of the parties before it and, thereafter, shall proceed with the said appeal in accordance with law.
15. Parties are directed to act upon the server copy of this order duly downloaded from the official website of this Court.
16. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)