

**IN THE CIRCUIT BENCH CALCUTTA HIGH COURT
AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 163 of 2023

M/s. S.S. Constructions & Ors.

Vs.

Shri Bijan Patua & Ors.

For the petitioners

:Mr. Arun Kumar Sarkar, Adv.

Mr. Abhijit Sarkar, Adv.

Mr. S. M. Pradhan, Adv.

Mr. Satyan Lama, Adv.

Ms. Sagarika Sarkar, Adv.

For the Opposite Parties

:Mr. Ajoy Debnath, Adv.

Mr. Debasish Mukhopadhyay, Adv.

Mr. Bhaskar Das, Adv.

Mrs. S. Sarkar, Adv.

Heard On

:02.08.2024

Judgment On

:.04.09.2024

Bibhas Ranjan De, J. :

1. The instant civil revision application has been preferred against the impugned order dated 30.11.2023 passed by the Ld. National Consumer Disputes Redressal Commission, New Delhi (for short NCDRC) in connection with First Appeal No. 801 of 2023 which was preferred against the orders dated 10.01.2023 and 12.06.2023 respectively passed by the Ld. Siliguri, Circuit Bench of West Bengal State Consumer Disputes Redressal Commission (for short State Consumer Forum) in Consumer Case No. 11 of 2022. Further proceeding of that case pending before the State Consumer Forum, was placed ex-parte on the ground that none had appeared for the revisionist herein despite service of notice. Against this order the revisionist here filed a petition for vacating the order dated 10.01.2023 which was rejected by the State Consumer Forum vide Order dated 12.06.2023 on the ground that there was a statutory bar on the State Consumer Forum to review its own order. Thereafter, challenging the said order the revisionist preferred the aforesaid First Appeal being no. 801 of 2023 before the NCDRC which was rejected on the ground of limitation.

2. Being aggrieved by and dissatisfied with the impugned order of NCDRC the revisionist has preferred the instant revision application with a prayer for direction upon the NCDRC to here the matter afresh on merit.

Argument:-

3. Ld. Counsel, Mr. Arun Kumar Sarkar, appearing on behalf of the petitioners has mainly canvassed his argument on the point of duration of delay which is negligible and has argued that the delay from the date of the order declaring the appellant ex-parte is 164 days and in case of subsequent order dated 12.06.2023, when the petition of setting aside the order of ex-parte hearing was rejected, the delay sought to be condoned boils down to only 13 days which is prayed to be allowed on the ground that the Ld. Advocate appearing on behalf of the petitioner failed to take steps on the date fixed for appearance due to diary mistake which is a bona fide mistake and not a deliberate one.
4. Mr. Sarkar further contended that the NCDRC has not properly evaluated the explanation given by the petitioner before rejecting the appeal for condonation of delay and also has not considered the appeal on merit.

5. Before parting with, Mr. Sarkar has submitted that this Hon'ble High Court has ample jurisdiction to exercise the power under Section 227 of the Constitution of India by relying on the observation of the Hon'ble Apex Court in the case of ***M/s Universal Sompo General Insurance Company Ltd. versus Suresh Chand Jain & Anr.*** in connection with ***Special Leave Petition (Civil) No. 5263 of 2023.***
6. In opposition to that, Ld. Counsel, Mr. Ajoy Debnath, appearing on behalf of the opposite parties has vociferously contended that the present revision ought to have been filed before the Hon'ble Delhi High Court as this Hon'ble High Court has no territorial jurisdiction to entertain this matter.
7. Mr. Debnath has further contended that the petitioners in the prayer has prayed for issuance of appropriate writs against the impugned order passed by the NCDRC therefore the petition cannot be treated as revision but a writ petition. But, even if the nature of the petition is converted to a writ petition still that writ petition cannot be entertained as it does not lie against private individuals.
8. In his concluding argument, Mr. Debnath has supported the observation of the NCDRC made in the impugned order

wherein it was held that the explanation furnished by the petitioners herein in explanation for the delay was not sufficient and therefore he has opined that the impugned order suffers from no illegality or irregularity.

Analysis:-

9. Before delving into the merit of the case, I would like to discuss about the issue relating to jurisdiction and nature of the application raised by the opposite party herein. It is admitted position of fact that the suit property is situated in West Bengal and also the appeal which has been preferred by the petitioner is against the order promulgated by the Siliguri Circuit Bench of the Ld. State Consumer Forum. Therefore, it is amply clear that the Circuit Bench of the Hon'ble Calcutta High Court at Jalpaiguri is the Jurisdictional High Court wherein this petition should be entertained. As a sequel, the submission placed on behalf of the opposite party with regard to jurisdiction in terms of location of NCDRC is devoid of any merit.
10. Now coming to the issue relating to nomenclature of the petition at hand, Mr. Debnath has tried to make this Court understand that according to prayer of the petitioner issuance

of appropriate writs does not come within the purview of supervisory jurisdiction under Article 227 of the Constitution of India.

11. After careful perusal of the entire application as well as the order impugned in this application cannot even lead to any presumption that the same has been filed for issuing any writs. The nomenclature of the application also shows that the petition was filed under Article 227 of the Constitution of India. Therefore, by no stretch of imagination, I can presume that the application was filed with a prayer for issuing writs under Article 226 of the Constitution of India. That apart, even if the petition is filed under Article 226 of the Constitution of India involving a question of jurisdiction or legality of an order passed by Sub Ordinate Court or Tribunal, the Hon'ble High Court is sufficiently empowered to treat it as a petition under Article 227 of the Constitution of India.

12. Now, I propose to come to the impugned order challenged in this revision application.

13. In First appeal no. 801 of 2023, Ld. NCDRC recorded the order in paragraph 5 as follows:-

“5. It is seen that the Appellants were represented before the State Commission through a counsel who had put in appearance. No reason for not appearing on 10.01.2023 has been provided. It is only stated that the counsel had failed to mark his diary regarding appearance in CC No. 11 of 2012. The subsequent order of the State Commission dated 12.06.2023 has been passed in accordance with the statutory provision that does not permit the State Commission to review its own order. The counsel appearing for the Appellants should have been aware of this legal provision and should have filed an Appeal against the order dated 10.01.2023 rather than to spend time in seeking a remedy from the State Commission which was not within its jurisdiction. By its own admission, the appellant was aware of this order even in April 2023 but did not choose to pursue the matter till June 2023 when its review was rejected. The contentions of the Respondents in opposing this IA cannot be faulted.”

14. Aforesaid observation of the NCDRC clearly shows that the delay explained before the State Consumer Forum was taken up for adjudication of the First Appeal being no. 801 of 2023. Having gone through the entire order impugned in this revision application, it appears to this Court that Ld. NCDRC discussed the explanation of delay in the prayer for recalling the order of fixing date for ex-parte hearing which is the subject matter of the appeal.

15. Admittedly, this appeal was filed along with an application under Section 69 of the Consumer Protection Act, 2019 read with Section 5 of the Limitation Act for condonaiton

of delay in filing with the explanation specifically stated in paragraph no. 8 which stands as follows:-

“8. That, thereafter, the Appellants decided to file an appeal before this Hon'ble Commission and accordingly, they tried to contact with the present counsel in Delhi, but due to summer vacation, he was not in Delhi and after vacation, he arrived in Delhi on 02.07.2023 and after going through the documents and discussion with the Appellants through mobile phone, he prepared the aforesaid First Appeal along with a Stay application and the same was Notarized on 11.07.2023 at Siliguri and the same was sent to the counsel for the Appellants by courier and till then, 30 days were over from the last impugned order dated 12.06.2023. Hence, the counsel for the Appellants further drafted the present Application for condonation of delay in filing of the present First Appeal, and sending the same to the Appellants for its notarization at Siliguri and will receive the same after few days. Hence, this delay of few days has occurred which is not volunteered, deliberate.”

16. Nowhere in the order impugned it appears that Ld. NCDRC addressed the explanation of delay in filing appeal whereas appeal was dismissed on the ground of limitation and not on merit.

17. It takes me aback that Ld. NCDRC dismissed the appeal on the ground of limitation without addressing the explanation

of delay delineated in the petition under Section 69 of the Consumer Protection Act, 2019 read with Section 5 of the Limitation Act.

18. Ld. NCDRC ought to have taken up the petition for condonation of delay first and then take up appeal provided the delay was duly condoned.

19. Ld. NCDRC ought to have addressed the explanation of delay in the petition under Section 69 of the Consumer Protection Act, 2019 read with Section 5 of the Limitation Act for condonation keeping an eye on fundamental principle of condonation of delay which save guards the principle of natural justice after identifying the particular problem of the parties.

20. Regard being had to the above the observation made in the First Appeal being no. 801 of 2023 is not at all sustainable in the eye of law and therefore is liable to be set aside.

21. As a sequel, this Civil Revision Application being no. 163 of 2023 stands allowed.

22. The First Appeal bearing no. 801 of 2023 be remitted back to the Ld. National Consumer Disputes Redressal Commission with a request to consider the prayer for

condonation of delay in filing appeal and if the delay is condoned, then to rehear the appeal afresh and adjudicate the matter after giving ample opportunity of hearing to both the parties.

23. Department is directed to communicate this order to the Ld. NCDRC at once.

24. Interim order, if there be any, stands vacated.

25. Connected applications, if there be, also stand disposed of accordingly.

26. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

27. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]