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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 25th September, 2024***

+ **CM(M) 3471/2024 & CM APPL. 56434/2024**

SIS IMPORTS

.....Petitioner

Through: Mr. Samar Bansal with Mr. Krishna
Datta Multani, Mr. Zeeshan Diwan,
Mr. Ahmed Faraz and Mr. Joes James,
Advocates.

versus

CHAITANYA KALBAG & ORS.

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner was arrayed as Opposite Party No.2 in the complaint filed by the complainant before the learned State Consumer Disputes Redressal Commission, Delhi (in short 'State Commission').
2. There were two opposite parties in such complaint i.e. M/s Gaggenau Hausgerate GMBH (Opposite Party No.1) and M/s SIS Imports (Opposite Party No.2).
3. When the aforesaid Complaint Case was pending before the learned State Commission, as far as OP No.1 - M/s Gaggenau Hausgerate GMBH was concerned, its name was dropped from the array of parties.
4. As far as OP No.2 – M/s SIS Imports is concerned, it was



proceeded against *ex-parte* on 09.12.2019.

5. According to OP No.2, M/s BSH Household Appliance Manufacturing Pvt. Ltd. had owned up the liability in question and, therefore, OP No.2 was under *bonafide* impression that he would take care of the complaint in question on its behalf before the learned State Commission and under such *bonafide* impression, it did not defend the aforesaid complaint.

6. However, fact remains that when said entity i.e. M/s BSH Household Appliance Manufacturing Pvt. Ltd. moved application seeking its impleadment before the learned State Commission, such application was dismissed by the learned State Commission way back on 21.05.2019.

7. Since the aforesaid application had been dismissed on 21.05.2019, it was expected that OP No.2, who remained the sole contesting respondent in the above said complaint, would ensure that there was due representation from its side before the learned State Commission.

8. But, as noticed above, it was harboring under the impression, *albeit* a totally unfounded one, that said Company was taking care of its interest.

9. Be that as it may, eventually, the aforesaid complaint was allowed *vide* order dated 28.11.2023.

10. The petitioner herein filed an appeal against said order before the



learned National Consumer Disputes Redressal Commission (NCDRC). However, the same has been dismissed solely on the ground that the appellant has not been able to show any cause justifying the delay in lodging said appeal.

11. Such order is under challenge.

12. Admittedly, the delay is of around 236 days.

13. According to petitioner herein, he was informed about the aforesaid order passed by the learned State Commission when it received an e-mail from OP No.1, who had, as noticed, already been dropped from the array of parties. Such e-mail was, purportedly, received on 18.06.2024. According to petitioner herein, the period should have started from 18.06.2024 only and, therefore, if the period is calculated from such date then the appeal was within time.

14. I have seen the order dated 05.09.2024 passed by the learned NCDRC. Reference may be made to para 3, 4 & 5 of said order, which read as under: -

“3. The question before us to is whether this is a sufficient cause to condone the delay in filing of the Appeal. The ground of having handed over the matter to a third party on oral assurance and then ignoring further proceedings before the State Commission is to be carefully noted. In our opinion, this shows the utter casual approach of the Appellant to leave the matter midway in a Complaint Case, knowing fully well that the other Opposite Party had not been served and had been removed from the array of parties and that he was the only Opposite Party in the case. The correct procedure should have been to ensure that the Respondent No.3 should have been impleaded as an Opposite Party and the Appellant should have sought discharge from the matter. It is to be noted that the Respondent No.3 was never



made a party but the Appellant stopped attending the hearings of the State Commission. The State Commission cannot be faulted for eventually proceeding ex parte.

4. *In view of the aforesaid, we are of the considered opinion that the grounds mentioned in the Application for Condonation of Delay in filing the Appeal do not have any sufficient cause for consideration.*

5. *In our opinion, the Application for Condonation of Delay does not contain any sufficient cause and, therefore, is not allowed. The Consumer Complaint needs to be disposed of in a time bound manner. Condonation of Delay without sufficient cause would go against the letter and spirit of the Consumer Protection Act, 1986/2019.”*

15. This Court is conscious of the limited scope of appreciation and judicial interference in such type of matters while entertaining any petition under Article 227 of the Constitution of India.

16. As per, *Puri Investments Versus Young Friends and Co. and Others*: 2022 SCC OnLine SC 283, the duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be also made to *Estralla Rubber v. Dass Estate (P) Ltd.* : (2001) 8 SCC 97; *IDFC First Bank Limited v. Hitachi MGRM Net Limited* : 2023 SCC OnLine Del 4052; *Garment Craft vs. Prakash Chand Goel*: (2022) 4 SCC 181 and *Ibrat Faizan v. Omaxe Buildhome Private Limited*: (2023) 11 SCC 594.

17. I do not find any kind of perversity in the impugned order.

18. For all purposes, the petitioner itself is to be blamed for its miseries.



19. It did not choose to defend the complaint before the learned State Commission, Delhi for its own fanciful reasons and on some self-styled assumption. Moreover, even if some cause is shown, any such party cannot assert to seek condonation, as a matter of right. In *Ramlal vs Rewa Coalfields Ltd.:1961 SCC OnLine SC 39*, it was observed as under:-

“12. It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it.

.....”

20. The entity on which the entire blame has now been shifted by the petitioner was itself unsuccessful in its impleadment way back in the year 2019 and, thereafter, there was no one in the world to have stopped OP No.2 from participating in the aforesaid complaint before the learned State Commission.

21. During course of the arguments, learned counsel for the petitioner has drawn attention of this Court towards order dated 12.09.2022 wherein it is mentioned that when the matter was taken up by the learned State Commission that day, the complainant was directed to file written synopsis within four weeks and there was also a direction that the advance copy of the same be handed over to the learned counsel for the opposite parties.



22. According to learned counsel for the petitioner, there is no compliance of the abovesaid order and, therefore, a right has accrued in its favour and without supplying such written synopsis, the learned State Commission should not have disposed of the matter.

23. However, such argument also does not cut any ice as the above said direction does not create any kind of vested right in favour of OP No.2, who had apparently shown total disinterest in defending its matter and had been proceeded against *ex-parte*.

24. The respondent No.1 had filed the complaint before the learned State Commission wherein following prayers were sought:-

“In the light of above facts and circumstances, the complainant humbly prays that this Hon' ble Commission may kindly be pleased to order/direct the opposite party No. 1 & 2;

(a) to replace the defective appliances (as mentioned in the complaint) with new one of the same specifications; i.e. full modular Poggen Pohl kitchen as well as "Gaggenau" appliances (two Refrigerators, Coffee Maker, Oven, Cooking Range, Hood and Hob, Teppanyaki Grill, and Dishwasher)

and/or

to refund the entire cost of the kitchen and appliances i.e. Rs.37,50,012/- (Rupees Thirty Seven Lacs Fifty Thousand Twelve only) to the complainant alongwith interest @ 18% per annum w.e.f. 17.02.2009 upto date; and

(b) to pay a sum of Rs.10 Lacs to the complainant towards damages/compensation towards the mental pain, agony & harassment and other losses suffered by the complainant due to negligence and deficiency in service on the part of the opposite party;

(c) award the litigation expenses in favour of the complainant and against the opposite party;

(d) pass any such other or further order in favour of the complainant and against the opposite party, which this Hon 'ble Court deem fit and proper under the facts and circumstances of the case as well as in the interest of justice.”



25. When the complaint was allowed, the following directions were passed by the learned State Commission:-

“28. We had even given opportunity to the counsel for the Complainant to show the bank statement of the Complainant wherein it had been specifically stated that an amount of Rs.37,50,012/- had been paid by the Complainant to the Opposite Party No. 2. Thereafter, the counsel for the Complainant had filed some documents (including emails, statements, invoices) vide diary no. 10930 dated 20.07.2023. Perusal of the bank statement (annexed at page no. 9, 10 & 11) reveals that the Complainant had paid an only amount of Rs. 10,66,125/- to the Opposite Party No. 2. In view of foregoing, we hold that the Complainant had paid an amount of Rs. 10,66,125/- to the Opposite Party No. 2 for purchase of the aforesaid modular kitchen and appliances.

29. As the Opposite Party No. 2 is deficient in providing its services to the Complainant, we direct the Opposite Party No. 2 to refund the amount of Rs.10,66,125/- (within 60 days) which had been paid by the Complainant for purchase of the aforesaid modular kitchen and appliances.

30. In addition to the aforesaid and taking into consideration the facts of the present case, the Opposite Party No. 2 is directed to pay a sum of:

A. Rs.1,00,000/- as cost for mental agony and harassment to the Complainant; and

B. The litigation cost to the extent of Rs.50,000/-.”

26. As a last ditch effort, learned counsel for the petitioner states that even if, the complainant had been held liable to refund of Rs.10,66,125/-, the learned State Commission should have, at least, directed that the articles in question, which were, presumably, defective and which were of no use to the complainant, to be returned to the petitioner herein.

27. This Court cannot come to the rescue of the petitioner with respect to the aforesaid aspect as, for the reasons best known to the petitioner, it was not diligent enough and is guilty of laches and inaction. The lackadaisical



approach shown by petitioner, does not permit him to seek any kind of interference. It did not bother to defend the complaint before the learned State Commission and thus, it is now too late in the day to grant any such relief to the petitioner.

28. Consequently, this Court does not find any reason to interfere with the order passed by learned NCDRC.

29. The petition is, accordingly, dismissed *in limine*.

(MANOJ JAIN)
JUDGE

SEPTEMBER 25, 2024
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