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

Date of Decision: 28th October, 2024

+ W.P.(C) 15195/2024 & CM APPL. 63722/2024

MAHBOOB ALAM QURESHI & ANR.

.....Petitioners

Through: Mr. Rajesh Mahna, Mr. Nasir Aziz,
Mr. Mayank Kouts, Mr. Shiva Narang
and Ms. Shivani Kalra, Advocates.

versus

TDI INFRASTRUCTURE PVT. LTD.

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioners assert that they booked a plot measuring 350 sq. yds. in a project called 'TDI City' offered by TDI Infrastructure (the Respondent) and deposited an amount of Rs. 5,42,500/- *vide* cheque dated 27th August, 2005 towards 20% of the basic price of the Plot which was required to be paid at the time of booking as per the schedule of payment. The Petitioners opted for option-II wherein they were required to pay 20% of the basic price at the time of booking, 10% at the time of issuance of allotment of plot and then 10% every two months from the date of allotment with balance 10% at the time of offer for possession. The Petitioners were to pay 10% of basic price i.e. Rs. 2,71,250/- on or before 8th August, 2006 when the allotment



was to be made. However, the Respondent sent a letter as early as on 16th December, 2005 asking them to pay balance of Rs. 3,40,375/-. The said letter showed second instalment to be due on 10th December, 2005. The Petitioner approached the Respondent's executive who told them not to worry and said that it was by mistake. Respondent again sent reminder dated 25th January, 2006 demanding Rs. 3,40,375/-. The Respondent cited financial constraint for issuing said reminder and persuaded the Petitioners to pay Rs. 1,40,000/- on 03rd February, 2006 through cheque and 200,000/- in cash.

2. Respondent then issued revised communication dated 29th May, 2006 *vide* which balance due was shown as 10,16,160/- due on 10th February, 2006 and 10th April, 2006. The same included interest of Rs. 6590.87/-. On persuasion they again made payment of Rs. 2,00,000/- on 13th July, 2006 and Rs.375/- on 14th July, 2006. Another communication dated 27th June, 2006 showing amount due as Rs. 6,82,500/- was sent to the Petitioners. The Respondent allotted plot No.J-139 *vide* allotment letter dated 08th August, 2006 and showed balance of Rs. 14,03,312/-. Final reminder dated 05th September, 2006 showing balance of Rs. 16,95,070/- was also sent by the Respondents to the Petitioners. It is highlighted that it is only upon TDI's advice and insistence, that the Petitioners paid TDI a total amount of Rs. 8,16,000/- in cash (Rs. Eight lakhs Sixteen thousand only/-) against which Kachchi receipts were issued by TDI but the same were not reflected as TDI wanted to clandestinely hide these payments from the records, intending not to show them to the government. Thereafter, on the insistence of the Petitioners, the Respondent agreed to adjust the said amount by reducing the rate of plot from Rs. 7750/- per sq. yd. to Rs. 6150/- per sq. yd and still the



payment of Rs. 2,00,000/- paid in cash on 02nd February 2016 was not adjusted.

3. The Petitioners state that the Respondent unlawfully cancelled the allotment of their plot through a communication dated 13th December, 2012. In response, Petitioner No. 1 issued a legal notice on 4th September, 2014, which went unanswered. Petitioner No. 1 claims an initial intent to file a complaint under the Consumer Protection Act, 1986, in November 2014 but instead sought an amicable resolution with TDI, who allegedly offered a smaller plot in compromise. However, no resolution was reached, as Petitioner No. 2—the brother of Petitioner No. 1—was outside India at the time. By the time he returned, the smaller plot was no longer available, and the Respondent instead offered only a refund of the paid amount.

4. In the circumstances narrated above, on 2nd November, 2015, the Petitioners filed a complaint before the State Consumer Dispute Redressal Commission¹ seeking restoration of plot at original cost and interest @18% on the said amount and further compensation of Rs. 5,00,000/- towards mental agony and harassment. Along with the complaint, the Petitioners also filed an application for condonation of delay. In the said application, the Petitioners contended that although the Respondent had cancelled the allotment on 13th December, 2012, the cause of action did not fructify on the said date. The Petitioners were planning to file a complaint in November, 2014 but then they got a call from the Respondent to seek some resolution and thus the decision to file the petition was delayed. According to the Petitioners, the cause of action finally arose in August, 2015 when complainant met the Respondent to explore the possibility of better deal



from the Respondent but failed.

5. In the above background, the State Commission at the outset examined the question of condonation of delay but did not agree with the Petitioners and dismissed the complaint filed by the Petitioners *vide* order dated 1st May, 2017. In further appeal before the National Consumer Disputes Redressal Commission,² the question of condonation of delay was examined again and rejected *vide* order dated 19th August, 2024, thereby confirming the order passed by the State Commission.

6. In the above background, the Petitioners have filed the instant petition under Article 226 & 227 of the Constitution of India, 1950³ impugning the aforementioned two orders. On the issue of maintainability of the present petition, it is urged that since there is no further appeal remedy provided against the order passed by the NCDRC, while exercising appellate jurisdiction, the Petitioners are entitled to file a petition under Article 226 & 227 of the Constitution of India, 1950. To support this contention reliance has been placed on *M/s Universal Sompo General Insurance Co. Ltd. v. Suresh Chand Jain and another*.⁴ On merits, it is contended that both the State Commission as well as the NCDRC have erred in not accepting the Petitioners' case. There was in fact no delay in the matter and the application of condonation was filed by way of abandoned caution. They argue that the cause of action is a continuing one in the present case as the amount paid by the Petitioners, has not been refunded till date. Thus, there is no question of cause of action turning stale or being barred by limitation.

¹ "State Commission"

² "NCDRC"

³ "Constitution of India"

⁴ MANU/SC/0800/2023



7. The Court has considered the aforementioned contentions but is unpersuaded. The Petitioner's reliance on the judgment of the Supreme Court, to contend that a writ petition against an order of the NCDRC must be entertained is misconceived. The Supreme Court ruling in *Universal Somo* highlights that bypassing the High Court disrupts the hierarchy of judicial review established by law, which mandates that matters of this nature first be reviewed by High Courts under Articles 226 or 227 of the Constitution. Thus, undoubtedly, the Supreme Court has allowed the parties to first invoke the jurisdiction of the High Court under Article 226 & 227 of Constitution of India against such an order. However, this does not suggest that every NCDRC order is open to writ scrutiny in the manner of an appellate review. The legislative framework grants finality to the NCDRC's appellate orders, indicating that writ jurisdiction should only be invoked in cases of gross arbitrariness, patent illegality, or a clear violation of principles of natural justice.

8. Thus, in light of the decision in *Universal Somo* while this Court may entertain a writ petition under Articles 226 and 227 of the Constitution against a final order of the NCDRC, the principles governing the exercise of writ jurisdiction must be respected. The writ remedy is not intended to allow routine appellate scrutiny; rather, it should be invoked sparingly, only in instances where the order is grossly arbitrary or displays complete perversity. It is only in such exceptional cases that this Court may intervene through its writ jurisdiction.

9. In the instant case, none of the grounds raised by the Petitioners, nor the decisions rendered by the State Commission and the NCDRC, reveal any illegality or perversity warranting the exercise of this Court's writ



jurisdiction.

10. Furthermore, it must also be observed that the Petitioners' contention that the cause of action is continuing one, is also legally incorrect. With the cancellation of the allotment, in the opinion of the Court, the cause of action stood crystalized. The Petitioners' contention that their continuous requests or engagement with the Respondent extended the limitation period is both factually unsupported and legally untenable. Firstly, there is no evidence on record to substantiate any ongoing engagement or requests by the Petitioners that could have delayed the accrual of the cause of action. Unsupported assertions cannot be relied upon to circumvent statutory limitations. Secondly, under well-established legal principles, mere communication or attempted negotiation does not toll or extend the statutory period of limitation unless there is an express acknowledgment of liability by the Respondent within the meaning of Section 18 of the Limitation Act, 1963. The law is clear that limitation runs from the date the cause of action arises, and subsequent attempts to negotiate or resolve the matter informally cannot reset or extend this period in the absence of a clear, written acknowledgment of liability by the Respondent. Thus, the cause of action having crystalized in 13th December, 2012, the Petitioners' complaint as on 2nd November, 2015 was clearly barred by limitation.

11. The issue on condonation of delay was also examined by the NCDRC having regard to the judgments of the Supreme Court on this issue, which have been dealt extensively in the paragraphs reproduced hereinbelow:



8. On the point of limitation before the State Commission is concerned, learned counsel for the complainants has argued that after the cancellation of the said plot, the complainants rushed to the office of the builder company and explained about the payments made as per schedule but the officials insisted on for further payment of Rs. 2 lakhs as it was not reflecting in their account and on producing the receipt in original, they promised to resolve the issue. Thus, cause of action is a continuing one. He further argued that the complainant kept meetings with the officials who kept giving false promises but nothing fruitful came out of it and only in response of legal notice, they even offered a smaller plot. He further argued that the complainants wanted to get his complaint resolved without recourse to litigation and the promises made by the builder company kept the hope alive. Hence, the cause of action is continuing one and finally arose in August 2015 when the builder refused on personal visit to restore the allotment of plot.

9. The law of limitation requires delay for each day of delay to be explained after expiry of the period of limitation. It is necessary that this explanation is rational, reasonable and realistic and to be acceptable. In the instant case, the complainant has taken the ground that the cause of action is a continuing one.

10. In *State Bank of India vs B S Agriculture Industries* (I) (2009) 5 SCC 121 decided on March 20, 2009, it has been held by the Hon'ble Supreme Court that:

"It would be seen from the aforesaid provision that it is peremptory in nature and requires the consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The consumer forum, however, for the to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. **The expression, 'shall not admit a complaint' occurring in Section 24 A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within the limitation period prescribed thereunder.**



12. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24 A and give effect to it. If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside."

[Emphasis added]

11. The Hon'ble Apex Court has laid down that the settled legal proposition of law of limitation under the Consumer Protection Act has to be applied with all its rigour when the statute so prescribes, though it may harshly affect a particular party. The complainant has not been able to provide adequate and sufficient reasons which prevented him to approach the State Commission within the limitation.

12. The Hon'ble Supreme Court has also held that party who has not acted diligently or remained inactive is not entitled for condonation of delay. The Hon'ble Supreme Court in *R. B. Ramlingam vs. R. B. Bhavaneshwari*, 1 (2009) CLT 188 (SC) has also described the test for determining whether the petitioner has acted with due diligence or not and held as under:

"We hold that in each and every case the Court has to examine whether delay in filing the special appeal leave petitions stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition."

13. The Hon'ble Supreme Court in *Ram Lal and Ors. Vs. Rewa Coalfields Limited*, AIR 1962 Supreme Court 361 has held as under:

"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."

[Emphasis added]

14. The burden is on the complainants to show that there was sufficient cause for the delay. The expression 'sufficient cause' has been discussed and defined by the Hon'ble Supreme



Court in the case of *Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer*, 2013 AIR SCW 6510 as under:

"Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of *bona fide* on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is *bona fide* or was merely a device to cover an ulterior purpose. (See: *Manindra Land and Building Corporation Ltd. V. Bhootnath Banerjee & Ors*, AIR 1964 SC 1336; *Lala Matadin V. A. Narayanan*, AIR 1970 SC 1953; *Parimal V. Veena alias Bharti* AIR 2011 SC 1150 L2011 AIR SEW 1233; and *Maniben Devraj Shah V. Municipal Corporation of Brihan Mumbai*, AIR 2012 SC 1629: (2012 AIR SCW 2412).

It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "*dura lex sed lex*" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of *bona fide* on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an



inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature".

[Emphasis supplied]

15. Further, in *Anshul Aggarwal Vs. New Okhla Industrial Development Authority*, (2011) 14 SCC 578, the Hon'ble Supreme Court has advised Consumer Forums to keep in mind while dealing with such applications the special nature of the Consumer Protection Act. The Hon'ble Supreme Court has held as under:

"It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this court was to entertain highly belated petitions filed against the orders of the consumer foras."

[Emphasis supplied]

16. The purpose of Section 69 of the Consumer Protection Act, 2019 (corresponding to Section 24 A the Consumer Protection Act, 1986) is to ensure that the provisions of the Consumer Protection Act as a beneficial legislation are not diluted through challenges which cause cases to be prolonged through litigation even in Consumer Fora. The complainant has not been able to provide adequate and sufficient reasons which prevented them to approach the State Commission within the limitation. Condonation of delay is not a matter of right and the applicants have to set out the case showing sufficient reasons which prevented them to come to the Court/Commission within the stipulated period of limitation.

17. Based on the facts and circumstances in the present case and after perusal of evidences on record, it is seen that the complainant himself admitted that they received the cancellation letter dated 13.12.2012 regarding the said plot which gave rise to cause of action. The complainant filed the complaint along with application for condonation of delay in November 2015 which constitutes delay of about a year. The grounds mentioned in the application do not constitute sufficient cause to condone the delay.

18. In view of the above discussion, we are of the opinion that the complainant kept sleeping upon his rights when cause of action arose way back on 13.12.2012 with letter of cancellation of plot as received by the complainant. There is a clear delay of about a year in filing the complaint and any efforts thereafter to reconcile the matter cannot have the effect of extending the limitation. Hence, we are of the opinion that the State Commission has rightly dismissed the complaint as barred by limitation.

19. In the result, the present appeal is dismissed. All pending I.A.s shall stand disposed of accordingly.



12. Having regard to the aforementioned reasoning given by the NCDRC, in the opinion of the Court, there is no infirmity that warrants intervention of the Court. Thus, this Court is not inclined to entertain the present petition and accordingly the same is dismissed along with pending application(s), if any.

SANJEEV NARULA, J

OCTOBER 28, 2024

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