

Sl.381
28.08.2025
Court No.6
BP

C.O. 3604 of 2024

Medical Super, Medical College
and Hospital, ENT Department
-versus-
Smt. Uma Mondal & Anr.

Mr. Rabindra Narayan Dutta
Mr. B.P. Vaisya
Mr. Arkoday Mukherjee
... for the petitioner

Mr. Rishad Medora
..for the opposite party no.1

Mr. Purnasish Gupta
Mr. J.K. Mukhopadhyay
..for the opposite party no.2

This application under Article 227 of the Constitution of India is at the instance of Medical Super, Medical College and Hospital, ENT Department and is directed against an order dated November 21, 2023 passed by the National Consumer Disputes Redressal Commission, New Delhi in F.A. No. 1079 of 2023.

By the order dated November 21, 2023 the application for condonation of delay in filing the First Appeal stood rejected. Consequently, the First Appeal stood dismissed being barred by limitation.

The petitioner filed a Review Application being No. 83 of 2024 which stood rejected by the order dated 4th April, 2024.

The opposite party no.1 filed a Complaint Case No. CC/291/2013 before the State Consumer Dispute

Redressal Commission, West Bengal which stood allowed by final judgement and order dated September 20, 2022 by holding that the opposite parties in the complaint case/doctors are jointly and severally liable for the act done by them and they were directed to pay compensation of Rs. 10,00,000/- to the complainant/opposite party no.1 herein within the time limit mentioned in the said order and it was further observed that in default of payment, the whole awarded amount shall carry interest @ 8% per annum till full realization. Challenging the said final judgement and order, the petitioner preferred a First Appeal being No. 1079 of 2023 before the Consumer Dispute Redressal Commission, New Delhi. Since the said appeal was filed beyond the statutory period of limitation the appeal was accompanied by an application praying for condonation of delay of 279 days. The National Consumer Dispute Redressal Commission (for short “the National Commission”) by the order dated November 21, 2023 rejected the prayer for condonation of delay and accordingly dismissed the appeal being barred by limitation. The petitioner preferred a review application which stood dismissed. Petitioner thereafter challenged the order dated November 21, 2023 passed by the National Commission by filing a writ petition before the Hon’ble Delhi High Court. the Hon’ble Delhi High Court, by an order dated August 29, 2024, allowed the petitioner to withdraw the writ petition being no. CM(M) 2623/2024

with liberty to the petitioner to invoke the jurisdiction of the concerned jurisdictional High Court. Thereafter the petitioner has approached this Court with the present application under Article 227 of the Constitution of India.

Mr. Dutta, learned advocate appearing for the petitioner assisted by Mr. Vaisya, learned advocate contended that the reason for the delay is that the learned advocate who was representing the petitioner fell sick and for such reason he could not take effective steps and also did not inform the petitioner about the steps required to be taken by the petitioner.

Mr. Medora, learned advocate appearing for the opposite party no.1 submits that there has been an inordinate delay in filing the first appeal before the National Commission. He submits that such delay has not been explained by the petitioner. He further submits that the National Commission, by a reasoned order, rejected the prayer for condonation of delay and for such reason this Court should not interfere with such order in exercise of the powers of judicial review.

Heard Mr. Gupta, learned advocate for the opposite party no.2.

After going through the application for condonation of delay this Court finds that it has been stated that the advocate who was looking after the case had fallen severely sick and no communication was made by the counsel to the petitioner. It was further stated therein that

the counsel failed to appear in the case and also could not take steps and due to lack of information the petitioner could not take proper steps in the matter before the learned State Consumer Dispute Redressal Commission (for short “the State Commission”) for which the complaint case was decided ex parte against the petitioner. It has been further stated that the petitioner became aware of the order passed only in the month of January, 2023 when the opposite party no.1 herein moved an execution petition and notice in the said petition was served upon the petitioner. Thereafter, the petitioner took immediate steps to locate the file and papers which resulted in the delay.

Petitioner is a Government Hospital. Petitioner engaged an advocate to contest the proceedings before the State Commission. Petitioner also led evidence in the said proceedings. However due to absence of the learned advocate, arguments on behalf of the petitioner could not be advanced before the State Commission.

It is the specific case of the petitioner that the learned advocate fell sick and no communication was made by the learned advocate to the petitioner in this regard. Petitioner became aware of the Final Order passed by the State Commission after being served with the notice of the Execution Application.

The National Commission rejected the prayer for condonation of delay on the ground that the petitioner did not engage another counsel in view of the prolonged illness

of its counsel. Thus it is evident that the National Commission did not disbelieve the illness of the Counsel of the petitioner.

The ground for condonation of delay was the illness of the counsel. Since the National Commission did not disbelieve the illness of the counsel, the Court is of the considered view that the petitioner explained the delay satisfactorily. It is well settled that the length of the delay is not material and what is relevant is the sufficiency of the cause. That apart, First Appeal being a statutory appeal, it is desirable that the same should be decided on merits. The petitioner cannot be said to be negligent. Though the petitioner could have been more vigilant, but the prayer for condonation of delay ought not to have been rejected merely on the ground that the petitioner failed to show extra vigilance. To the mind of this Court, the petitioner has explained the delay satisfactorily in preferring the First Appeal before the National Commission.

It is well settled that the litigant should not be penalized for the delay and laches, if any of its learned Advocate.

However, the opposite party no.1/complainant has to be compensated for the belated filing of the First Appeal.

For such reasons, this Court is inclined to condone the delay subject to certain conditions.

The delay in filing the First Appeal being No. 1079 of 2023 before the National Consumer Dispute Redressal Commission is condoned subject to payment of cost of Rs. 30,000/- by the petitioner to the opposite party no.1 within a period of two weeks from date.

The National Commission is requested to dispose of the First Appeal No. 1079 of 2023 as expeditiously as possible but preferably by the end of December, 2025 without granting any unnecessary adjournments to either of the parties.

It is, however, made clear that if the cost as directed hereinbefore is not paid within the time limit mentioned hereinbefore this order shall stand automatically recalled and the civil revisional application shall stand dismissed without any further reference to this Court.

Mr. Dutta, learned advocate appearing for the petitioner submits that the amount as directed to be paid to the opposite party no.1 on account of cost shall be paid by the petitioner to the opposite party no.1 by way of electronic transfer in the bank account of the opposite party no.1.

Mr. Medora, learned advocate appearing for the opposite party no.1 is requested to furnish the particulars of the bank accounts standing in the name of the opposite party no.1 as well as other particulars necessary to facilitate electronic transfer of the amount by the

petitioner to the bank account standing in the name of the opposite party no.1 by tomorrow.

The learned advocate on record of the petitioner is directed to communicate through Mr. Medora, learned advocate immediately after the aforesaid amount is transmitted to the bank account of the opposite party no.1.

There shall be an unconditional order of stay of all further proceedings in Execution Case No. EA/4/2023 pending before the State Consumer Dispute Redressal Commission, West Bengal till the end of the month of September, 2025 or until further orders whichever is earlier.

It will be open to the petitioner to approach the National Commission for extension of the interim order. The opposite parties will also be at liberty to raise objection with regard to extension of the order of stay of the execution case.

The National Commission shall be free to decide the prayer for extension of stay in accordance with law without being influenced by the fact that this Court has passed an unconditional order of stay of the execution case for a limited period.

With the above observations and directions, C.O. 3604 of 2024 stands allowed.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)