



Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.514 OF 2024

NIRAJ B. KANNURE

...PETITIONER

VERSUS

**M/S MILROC GOOD EARTH
PROPERTY & DEVELOPERS
LLP & ORS.**

... RESPONDENTS

Mr. Parag Rao with Mr. Ajay Menon, Advocates for the Petitioner.
Mr. Vilas P. Thali with Mr. Nikhil Angle, Mr. Sachit Mauskar and
Mr. Rasik Borkar, Advocates for Respondent Nos. 1 and 3.

**CORAM:- M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

DATE : 20th JANUARY 2025

ORDER (Per Nivedita P. Mehta, J.)

1. This Writ Petition is directed against the order passed by the National Consumer Disputes Redressal Commission at New Delhi in I.A. No.3272/2019 in First Appeal No. 330/2019 dated 27/05/2024 rejecting to condone the delay of 82/84 days.

2. Brief facts are that the Petitioner and other persons entered into an individual agreement with the Respondent Nos. 1 to 3 for purchase of respective Flats/Units in Milroc Kadamba situated in Bainguinim Village of Tiswadi Goa in the year 2009-2010. On

14/10/2016, the Petitioner along with other residents filed consumer complaint no. 25/2016, before the State Consumer Disputes Redressal Commission, Goa (hereinafter referred to as State Commission, Goa) sought directions against Respondent Nos. 1 to 3 to allow them and their family members unrestricted use of the Club House and Spa facilities in the Milroc Kadamba Complex. The State Commission, Goa vide order dated 23/10/2018 dismissed the consumer complaint.

3. On 18/02/2019, the Petitioner and other residents preferred First Appeal No. 330/2019 against the Goa State Commissions' order dated 23.10.2018, along with an application for condonation of delay in filing the appeal (IA No. 3272/2019) before the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as National Commission). Additionally, the Petitioner submitted two interlocutory applications (Nos. 6988/2023 and 6989/2023) for deletion of Appellant No.3 and Appellant No. 5 from the array of parties before the National Commission. The Petitioner is the original appellant no. 9, Capt. Ajay Sareen -original appellant no.1 since deceased his wife Mrs. Smita Sareen has been arrayed as respondent no.4, Mr. Dion W. Fernandes and Mr. Glen W. Fernandes -original appellant nos. 3

and 6 have sold their respective flats in respondent no.1 and have individually withdrawn their appeal/complaint and hence they are not arrayed as respondents in the present petition. The appellant no.10 Mr. Paresh Kamat is no more and the Petitioner avers that the details of his legal heirs could not be procured and therefore not impleaded as party respondent at its own risk. The Petitioner in their I.A.No.3272/2019 (application for condonation of delay) has averred that in pursuance of the order of the State Commission, Goa the Petitioner and the respondents 4 to 23 could not immediately analyse and decide the future course of action. They contacted various advocates to prepare and file an appeal. Ultimately they engaged an Advocate who regularly appeared before the National Commission. After reviewing the papers while drafting the appeal memo, the Advocate noticed that all the documents filed before the State Commission Goa were unavailable and therefore advised to obtain from the records of the State Commission, Goa. After applying for the same; necessary documents were received. The copies of the application preferred for obtaining the necessary documents from the record of the State Commission Goa were filed as proof before the National Commission. The draft was then finalized by the Advocate and was forwarded to the National Commission on 18.02.2019. Considering

the various activities, it took time which was not deliberate. The Petitioner submits that without taking into consideration that the circumstances as spelled out was not in the control and delay as explained was genuine and not a concocted story. The National Commission by order dated 27/05/2024 rejected the application for condonation of delay and dismissed the First Appeal No.330/2019 in limine. Aggrieved by this order, the Petitioner has preferred the present petition.

4. The learned counsel Mr. Parag Rao for the Petitioner submitted that the Writ Petition, against the order dated 27/05/2024 rejecting the application for condonation of delay is maintainable citing the observations made by the Hon'ble Supreme Court in *M/s Universal Sompo General Insurance Company Ltd. V/s Suresh Chand Jain and Anr. reported in 2023 SCC OnLine SC 877*. He contended that the National Commission failed to appreciate the true import of Section 5 of the Limitation Act, 1963 adopting a hyper-technical and pedantic view in considering the application for condonation of delay. According to the counsel for the Petitioner, the National Commission has failed to appreciate that the delay in filing of First Appeal was sufficiently explained and the reason set out in the application answered the requirement of

sufficient cause which phrase the Hon'ble Supreme Court time and again has held in a catena of judgments, that the same shall be construed liberally. The genuine cause of a party should not be defeated by refusing to condone the delay.

5. The learned counsel for the Petitioner asserted the delay of 82/84 days was not inordinate or mala fide and that the National Commission failed to exercise positive discretion in favour of the Petitioner by rejecting the application for condonation of delay.

6. The Respondents filed their reply raising objections regarding the maintainability of the petition under Article 227 of the Constitution of India. They contended that the impugned order passed by the National Consumer Commission is well-reasoned, neither capricious nor perverse, and not so unreasonable that the person could not come to such conclusions. The Respondents further state that the Petitioner has not demonstrated an error apparent on the face of the record that warrants correction by this Court, which, if not addressed would result in a miscarriage of justice or serious prejudice. The respondents stated that the Petitioner has not disclosed the dates on which day they referred the case for advice to their Advocate, on which day they were

advised to file an appeal and on which day consensus was obtained. Accordingly, each day's delay has not been explained and the cause as stated is unreasonable. The Respondents submit that the petition is liable to be dismissed on this count alone.

7. The respondent contended that Mr. Dion Fernandes and Mr. Glen Fernandes have withdrawn from pursuing the appeal further. The appeal having been filed jointly stood abated because of the withdrawal and there cannot be two contrary orders in the same First Appeal no. 330/2019. Moreover, the Petitioner has not impleaded the assignees of Mr Dion Fernandes and Mr. Glen Fernandes and the legal heirs of Mr. Paresh Kamat though they are necessary parties. The Milroc Kadamba Cooperative Housing Society Ltd., of which the Petitioner and the respondent nos. 4 to 23 are members, has filed an Original Complaint before the National Commission for the same reliefs which is pending adjudication. The Respondents in reply have further stated that the order dated 27/05/2024 rejecting the application for condonation of delay is just and proper and does not call for any interference.

8. The learned counsel Mr. V. Thali representing the contesting Respondents argued that the petition is not maintainable and the

judicial review under Article 227 of the Constitution of India is limited to the Wednesbury Principles of Law and no grounds in the present case are available for this Court to interfere. ~~He contended that there exists an alternate remedy against the orders of the National Consumer Redressal Commission.~~

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9. Furthermore, he stated that the land on which the flats are constructed still belongs to Respondent no. 1 and has not yet been transferred to the Milroc Kadamba Cooperative Housing Society Ltd. and the same was registered on 27/11/2019 during the pendency of the said appeal. The respondents also pointed out that the assignees of Mr. Dion W. Fernandes and Mr. Glen W. Fernandes and the legal heirs of Mr. Paresh Kamat are not impleaded as parties though they are necessary parties. He further argued that the original complaint and the appeal were filed jointly and therefore, the withdrawal has attained finality. Consequently, First Appeal no. 330/2019 and I.A. No 3272/2019 stand abated due to the impossibility of having two contrary orders regarding the same complaint/proceedings. Moreover, the story regarding obtaining of necessary documents and time consumed for engaging an Advocate are vague to the core and no dates are mentioned which indicates a concocted and false story. Thus Petitioner has

failed to supplement sufficient cause for the delay of 82/84 days in filing the First Appeal No. 330/2019.

10. The counsel for the Respondents relied on the following judgments to support their contention.

(a) Anshul Aggarwal Vs. New Okhla Industrial Development Authority, (2011) 14 SCC 578;

(b) Mohd. Yunus Vs. Mohd. Mustaqim and others, (1983) 4 SCC 566;

(c) Surya Dev Rai Vs. Ram Chander Rai and Others (2003) 6 SCC 675;

(d) Shalini Shyam Shetty and Anr. Vs. Rajendra Shankar Patil, (2010) 8 SCC 329.

11. This Court refrains from entering into the prolixity of facts and citations given the nature of the order being passed infra.

12. After hearing the respective parties, the primary consideration regarding the maintainability of the petition is examined. It is relevant to consider Sections 21 and 23 of the Consumer Protection Act, 1986. Section 21 of the Act reads thus: -

21. Jurisdiction of the National Commission. — Subject to the other provisions of this Act, the National Commission shall have jurisdiction, —

(a) to entertain, —

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees [one crore]; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

Section 23 of the 1986 Act provides for an ‘Appeal’. The same reads thus: -

23. Appeal. —Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of Section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order;

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

[Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty percent of that amount or rupees fifty thousand, whichever is less.]

13. A bare perusal of the aforementioned provisions would demonstrate that the remedy of appeal under Section 23 of the Act 1986 to the Hon'ble Supreme Court is available only in cases wherein the orders are passed by the National Consumer Redressal Commission in the exercise of its powers conferred by Section 21(a) (i) and 21(a) (ii) of the Act of 1986.

14. The order which is under challenge in the present petition cannot be termed as an order passed by the National Commission under Section 21(a) (i) and 21(a) (ii). The Hon'ble Supreme Court in *M/s Universal Sompo General Insurance Company Ltd. V/s Suresh Chand Jain and Anr (Supra)* in paragraph 38 has held as follows: -

“38. In the aforesaid view of the matter, we have reached to the conclusion that we should not adjudicate this petition on merits. We must ask the petitioner herein to first go before the jurisdictional High Court either by way of a writ application under Article 226 of the Constitution or by invoking the supervisory jurisdiction of the jurisdictional High Court under Article 227 of the Constitution. Of course, after the High Court adjudicates and passes a final order, it is always open for either of the parties to thereafter come before this Court by filing a special leave petition, seeking leave to appeal under Article 136 of the Constitution.”

15. The Hon’ble Supreme Court disposed of the Special Leave Petition with liberty to the Petitioner therein to approach the jurisdictional High Court and challenge the order passed by the National Consumer Redressal Commission. In view of the above observation, this Court following the Judgment of the Hon’ble Supreme Court concludes that the Writ Petition is maintainable.

16. The next contention of the parties relates to the law regarding the condonation of delay. The Supreme Court recognised the need for flexibility when there is a valid reason for delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the Legislature. At the same time, the Courts are empowered to condone the delay provided that sufficient cause is shown by the

applicant for not availing the remedy within the prescribed period of limitation. No hard and fast rule has been or can be laid down for deciding the applications for condonation of delay. A liberal approach should be adopted so that the substantive rights of the parties are not defeated merely because of delay. It is to be noted that between substantial justice and technical consideration, substantial justice should be preferred before, since the other side cannot contend to have a superior right in injustice being done under a bona fide mistake.

17. The question that arises for our consideration is whether the order passed by the National Consumer Disputes Redressal Commission rejecting the application for condonation of delay is justified. The Petitioner, in their application for condonation of delay, has explicitly mentioned reasons for the delay, including the fact that there were 21 parties involved in the appeal, coordinating with all the parties for their contribution which inherently caused delay. Further, the Petitioner had to engage Advocate and thereafter when the Advocate brought to the notice of the Petitioner to apply for certified copies which was a necessary prerequisite for filing the Appeal. The certified copies were applied and the appeal was thereafter filed promptly and without further delay.

Additionally, the Petitioner made efforts to trace the legal heirs of the deceased party, these facts demonstrate that the delay was neither wilful nor due to negligence but was caused by unavoidable procedural requirements and logistical challenges warranting a liberal approach for condonation.

18. In *Ram Lal and Ors. Vs. Rewa Coalfields Ltd., reported in AIR 1962 Supreme Court 361*, it has been observed in paragraph 12 as under:

"12. It is, however, necessary to emphasize 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 S.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.....".

19. In *R.B. Ramlingam Vs. R.B. Bhavaneshwari, 2009 (2) Scale 108*, it has been observed in paragraph 4 as under:

"4.....We hold that in each and every case the Court has to examine whether delay in filing the special appeal leave petition 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....."

20. The Hon'ble Supreme Court in the matter of ***G. Ramagowda Major and others Vs. Special Land Acquisition Officer, Bangalore, AIR 1988 (2) SC 142*** in paragraph 14 has explained the term sufficient cause as under:

"The expression 'sufficient cause' in Section 5 of the Limitation Act, 1963 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay."

21. The Hon'ble Supreme Court in the matter of ***State of Nagaland Vs. Lipok A.O. and others, 2005 (3) SCC 752*** has observed as under in paragraph 9:

"9. What constitutes sufficient cause cannot be laid down by hard-and- fast rules. In New India Insurance Co. Ltd. v. Shanti Misra (1975) 2 SCC 840) this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction. In Brij Indar Singh v. Kanshi

Ram (AIR 1917 PC 156) it was observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In Shakuntala Devi Jain v. Kuntal Kumari (AIR 1969 SC 575) a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned."

22. From the above legal position in law, it is clear that there can be no straight jacket formula for dealing with applications for condonation of delay. Each case must be assessed based on its unique facts. Courts are expected to adopt a liberal approach when evaluating the explanation provided for the delay in filing the petition. The law of limitation aims not to shut the door of justice on litigants but to protect the ends of justice.

23. As per the contentions of the Respondent the Appeal having been filed jointly stood abated in view of withdrawal. The Petitioner is amongst 22 original Appellants, the mere fact that three Petitioners are no longer party to the appeal does not render the appeal as abated. The Appeal is still pursued by the remaining 19 petitioners and their substantive rights remain unaffected by the withdrawal of the said parties. The fact that one of the parties to the

appeal Mr. Paresh Kamat has expired and the Petitioner was unable to trace the legal heirs. Requiring the Petitioner to trace the legal heirs have caused further delay and therefore at their own risk did not add them as party to the petition.

24. Upon careful consideration of the facts, we find that the delay in filing of appeal was unintentional, caused by the time consumed in deciding to file the appeal and the delay in delivering relevant documents to the Advocate. Otherwise, also, it is admitted case of the parties that respondents have also filed a complaint no. 102/2023 which is pending disposal. The National Commission obviously will have to consider the merit of the appeal preferred by the Petitioner. Therefore, the interest of justice demands that the delay in filing of appeal by the Petitioner should be condoned; so that the appeal can be considered on merits and decided by the National Commission.

25. In light of the above discussion, we allow the Petition, by setting aside the order dated 27.05.2024 and condone the delay of 82/84 days in filing an appeal; subject to the payment of costs of Rs. 25,000/- by the Petitioner to the Respondents for the delay caused. The National Commission to dispose of the appeal on

merits after hearing the parties. Parties to appear before the
National Commission on 10.02.2025 at 11.00 a.m.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.