

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 18556 OF 2024**

1. Samarth Constructions
through its Partner
Anita Balasaheb Pokle
Age-43 years, Having address at
: Kamatwada Shivar, S. No. 9,
Rajkamal Building, Siddhivinayak
Appt., Near Saykhedkar Hospital, Nashik.

2. Vrushali Pramod Amrutkar
Age-46 years, Parnter of M/s Samarth
Constructions Having address at: 1-B,
Samriddhi Bunglow, Kamatwada, Shivar,
Nashik.

...Petitioners

Versus

1. Pushpa Chandrakant Mate.
Age-49 years, Having her place of Residence at:
Mayur Colony No. 2, Chakrapani Vasahat, Alandi
Road, Shastri Chowk, Bhosari, Pune, 411039

....Respondent

Mr. Pranav Nair a/w Ms. Akshata Katara i/b Asahi Legal, for the
Petitioners.

CORAM:

G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

JUDGMENT RESERVED ON :

10 MARCH 2025

JUDGMENT PRONOUNCED ON :

04 APRIL 2025

JUDGMENT (Per Advait M. Sethna, J.) :

1. This writ petition is filed under Article 226 of the Constitution of
India, prays for the following substantive relief :-

*“(iii) To pass orders setting aside and quashing the impugned order dated 19/08/2024 (at **Exhibit-A**) passed by the NCDRC in First Appeal No. 771 of 2021; and further pass order that the main Complaint No. 516 of 2016 be remanded back to SCDRC, Maharashtra, Circuit Bench at Nashik for reconsideration while allowing the Appellants to file its*

written statement before the SCDRC in the said complaint and the said complaint be re-heard on merits.”

2. The petitioners have preferred this petition assailing the order passed by the National Consumer Dispute Resolution Commission, New Delhi (**‘National Commission’** for short) dated 19 August 2024 (**‘Impugned Judgment’** for short) which dismissed the appeal of the petitioners. The dispute in these proceedings relates to alleged deficiency of service under the provisions of Consumer Protection Act, 1986 (**‘The Act’** for short), arising out of delay by the petitioner in handing over the respondent’s flat within the agreed time frame as claimed by the respondent, a flat purchaser.

Factual Matrix

3. The relevant facts for adjudicating the present petition are noted as under :-

4. The petitioners are engaged in the real estate construction business acting as builders and developers of various projects. The petitioners launched the project under the names and style of Sainandan for construction of a multi-storeyed building on the land admeasuring 1084.80 sq. mtr. in survey No. 9/3 situated within the jurisdiction of Nashik Municipal Corporation. The respondent as an investor approached the petitioners in or around the year 2010 with a proposal to invest into the said project launched by the petitioners.

5. The respondent under such investment scheme of the petitioners

invested an amount of Rs. 5,00,000/- on 20 September 2010 followed by an amount equivalent to Rs. 1,50,000/- on 25 September 2011 with the petitioners. However, as the commencement certificate was not issued, the agreement with the respondent could not be registered. Accordingly, the petitioners tentatively entered into Agreement to Sale/Visar Pavati dated 23 July 2010.

6. Pursuant to the above an estimated time frame of 24 months was set by the petitioners to complete the said project, which did not happen. In view thereof, the respondent file a complaint Case No. 516 of 2016 under the provisions of section 12 of the Consumer Protection Act, 1986 (**'The Act'** for short) before the State Consumer Dispute Resolution Commission (**'State Commission'** for short).

7. The State Commission by an order dated 27 July 2018 on the complaint filed by the respondent (complainant) partly allowed the complaint by directing the petitioners (opponents) to refund an amount of Rs. 11,00,000/- to the complainant with interest at 9% per annum from the date of deposit of such amount by the respondent with the petitioners until realization of the amount by the respondent. Additionally, the petitioners were directed to pay compensation of Rs. 1,00,000/- to the respondent towards mental agony an amount of Rs. 20,000/- towards litigation charges. The petitioner being aggrieved by the said order of the State Commission, preferred an appeal dated 27 July 2018 before the

National Commission.

8. The petitioners also filed an application for condonation of delay of 1132 days in filing such appeal before the National Commission dated 16 October 2021. As stated in the said application such delay was mainly attributable to the Covid-19 pandemic. The National Commission passed the impugned judgment dated 19 August 2024 in First Appeal No. 771 of 2021 preferred by the petitioner.

Submissions

9. In the above backdrop, we have heard Shri. Nair, learned counsel for the petitioner who has circulated the petition stating urgency. At his request, we have heard him on the present proceedings as a limited issue arises for consideration.

10. Mr. Nair, at the outset would submit that the impugned judgment of the National Commission is perverse, as it lacks application of mind. According to him the National Commission has failed to consider that he is a consumer within the scope of the act. Also that the National Commission has overlooked the petitioner's case that the respondent fabricated receipts, playing fraud and thus abused the legal process.

11. Mr. Nair would then submit that it is true that there is a delay in filing the appeal by the petitioners before the National Commission against the order of the State Commission, however he would submit that such delay of about 1132 days was mainly attributable to then prevalent

Covid-19 pandemic. His submission is that such delay was sufficiently explained in the application of the petitioners for condonation of delay filed before the National Commission. In this regard he would also place due reliance on Paragraph 4 of such application to state that there was a change in the affairs of the partnership firm of the petitioners, pursuant to which its partner M/s Anita Balasaheb Pokle was discharged from the said partnership firm by executing a deed of dissolution dated 4 February 2016. It was pursuant to such change that the entire project was taken over by one Vrushali Amritkar. For such reason of change in the constitution of the partnership firm, there was an inevitable delay in taking steps to file the proceedings within time.

12. Mr. Nair, would further rely on para 5 of the above application to submit that the health of petitioner nos. 2 and 3 i.e. erstwhile partners had suffered a major set back including the surgery of husband of petitioner no. 2, due to which the petitioners were not in position to file an appeal before the National Commission, within the statutory time frame of 30 days as mandated under the said Act. According to him the petitioner was not at fault as the delay was caused obtaining permission from statutory authority like the municipal corporation. He would urge that immediately on receiving the impugned judgment of the State Commission, the petitioners took all reasonable steps as necessary to expedite filing its appeal before the National Commission. However due to reasons beyond

control of the petitioners as stated above, the appeal could not be filed within time. Nonetheless, Mr. Nair, would submit that petitioners were always ready and willing to handover the flat to the respondent, in regard to which settlement talks were ongoing between the petitioners and respondent as set out in Paragraph 7 of the application for condonation of delay, before the National Commission, which led to the delay in filing proceedings before the National Commission.

13. Mr. Nair would then submit that the respondent had filed execution proceedings before the State Commission for execution of the order of the State Commission dated 27 July 2018. It was in such circumstances that the petitioners have approached this Court under Article 226 of the Constitution of India seeking reliefs as noted by us. He would urge that the impugned judgment is not legally sustainable and should be set aside.

Analysis

14. In the above backdrop, we have carefully perused the impugned judgment dated 19 August 2024 passed by the National Commission assailed by the petitioners before us. The National Commission has rendered a reasoned judgment recounting the facts, under the canopy of submissions of parties, duly, supported by law. It was after examining the petitioners case in detail that the impugned judgment was passed by the National Commission, which is analyzed below.

15. It is true that the National Commission has dismissed the appeal of

the petitioners on the ground of failure of the petitioners to make out a case for condonation of delay of 1132 days in filing its appeal before National Commission. However, the National Commission has meticulously recorded reasons and rendered its findings in support of its decision, in the given facts and circumstances, which therefore warrants no interference.

16. From the factual matrix as noted above, we may observe that the petitioner had received a copy of the order dated 27 July 2018 passed by the State Commission in complaint No. 517 of 2016 on 1 September 2018. The prescribed statutory period of 30 days in filing appeal before the National Commission under Section 51 of the Act against the order of the State Commission expired on 13 September 2018. However, such appeal before the National Commission was filed by the petitioner on 16 September 2021 i.e. after 1132 days, as against the prescribed period of 30 days as provided under section 51 of the Act. The petitioner had filed an application for condonation of delay dated 16 October 2021 before the National Commission. The case of the petitioner to justify such delay was attributed to reasons like change in the constitution of the petitioner's erstwhile partnership firm which came to be dissolved on 4 February 2015; the deteriorating health condition of the husband of petitioner no. 2 since the year 2014 and other health related issue including surgery which lead to the delay in filing the proceedings; the petitioner attributed such

delay also to the Covid -19 pandemic prevalent at the relevant time as a reason to justify such delay; as also the settlement talks which were ongoing before the parties as a result of which the petitioner could not approach the National Commission within the stipulated time period. In this context, we have noted the observations in this regard made in the impugned order of the National Commission. The National Commission has meticulously examined all the aspects including that of delay on part of the petitioners in approaching the said Commission and recorded its findings more particularly in paragraphs 5 and 6 of the impugned order which reads thus :-

- “5. The reasons advanced by the Appellant to justify the delay caused have been considered. The Appellant has contended that the delay in filing of the Appeal occurred due to lack of correct guidance from their Advocate, period of COVID-19 Pandemic, discharge of Appellant No. 1 from the project, takeover of the project by Appellant No. 2 who could not pursue the case before the State Commission in view of deteriorating health of her husband and failure of settlement talks.*
- 6. 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. A perusal of the application for the condonation of delay establishes beyond doubt that the delay was caused because the Appellant dealt with the case in a rather routine and casual manner.”*

We find that there is no explanation, much less justification by the petitioner to overcome the delay in filing the appeal before the National Commission within the time period of 30 days as stipulated under section 51 of the Act, as rightly observed by the National Commission in the impugned judgment. The petitioner has alleged that the respondent is not

a consumer in the grounds of the present petition. The buck does not stop here. The petitioner would further allege that the respondent had fabricated payment receipts and abused the legal process as also the delay is not attributable to the petitioner, who could not obtain permission from statutory authorities in time. In our view, such grounds are baseless, and an afterthought on the part of the petitioner. Section 2(7) of the Act defines “*consumer*”. A bare perusal of such provision would bring to fore that the respondent who availed the services for a consideration from the petitioner in terms of buying a flat would fall within the ambit of such definition. Further, except for the bald allegation that the delay is not at all attributable to the petitioner and that the respondent has abused the process of law, is bereft of any material placed on record to even remotely make good such serious accusations which need to be sufficiently proved.

17. We may refer to the provisions of Section 51 of the Act providing for which reads thus:-

“51. Appeal to National Commission -

- (1) *Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of section 47 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:*

Provided that the National Commission shall not entertain the appeal after the expiry of the said period of thirty days unless 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 State Commission, shall be entertained by the National Commission

unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.

- (2) *Save as otherwise expressly provided under this Act or by any other law for the time being in force, an appeal shall lie to the National Commission from any order passed in appeal by any State Commission, if the National Commission is satisfied that the case involves a substantial question of law.*
- (3) *In an appeal involving a question of law, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.*
- (4) *Where the National Commission is satisfied that a substantial question of law is involved in any case, it shall formulate that question and hear the appeal on that question:*
Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the National Commission to hear, for reasons to be recorded in writing, the appeal on any other substantial question of law, if it is satisfied that the case involves such question of law.
- (5) *An appeal may lie to the National Commission under this section from an order passed ex parte by the State Commission."*

The word "shall" as it appears in the *proviso* casts an obligation on the National Commission to not entertain an appeal after an expiry of period of 30 days. Such is the rule, the exception to which is the existence of sufficient cause to be shown to the satisfaction of the court/tribunal.

18. Apropos the above, contextually, we find it apposite to refer to paragraph 13 of the judgment of the National Commission, which reads thus:-

"13. The purpose of Section 69 of the Consumer Protection Act, 2019 (corresponding to Section 24A 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 justification for the condonation of delay in the instant case is only an attempt to delay the implementation of an order of the State Commission as there is no evidence brought on record to substantiate the application for consideration. The Appellant has not been able to provide adequate and sufficient reasons which prevented them to approach this Commission within the limitation. Admittedly, the Appellant was in settlement

talks with the Respondent and when that did not fructify and the Respondent filed execution proceedings, the Appellant chose to file this Appeal. This alone cannot be considered as sufficient cause to seek condonation of delay in the filing of the Appeal. Condonation of delay is not a matter of right and the applicant has to set out the case showing sufficient reasons which prevented them to come to the Court/Commission within the stipulated period of limitation. Cause shown is, therefore, not found to be sufficient.”

Thus, the National Commission has rightly appreciated that an application for condonation of delay ought to be considered in the context of the object, purpose, and purport of the Consumer Protection Act, which is correctly described as a beneficial legislation. In this context, we refer to a recent decision of the Supreme Court in the **Alpha G 184 Owners Association vs. Magnum International Trading Company Pvt Ltd**¹, the relevant paragraph which reads thus :-

“15.The 2019 Act facilitates the consumers to approach the forums by providing a very flexible procedure. It is meant to encourage age consumerism in the country. Any technical approach in construing the provisions against the consumer would go against the very objective behind the enactment.”

Thus, the National Commission being conscious of the settled legal position proceeded on the footing that the delay in every case cannot be mechanically condoned at the drop of the hat, unless a sufficient cause to the satisfaction of the Court is made out, as the law would mandate.

19. We may observe that in proceedings under the Act where delay is inordinate the court has to satisfy itself that the same have been prosecuted in good faith and with due diligence. The expression “*good faith*” as found

1. (2023) 16 SCC 294

in section 2(h) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. The impugned order of the National Commission has correctly observed that the law of limitation does not require the delay of each day to be explained after expiry of the period of limitation. Juxtaposing this to the given facts, it is discernible that the petitioner did not act diligently, as also with proper care and caution as the law would require. In view thereof, we do not find any fault with the impugned order of the National Commission.

20. We find that another significant aspect of this case is that the National Commission could not have been oblivious to the vital fact that admittedly the petitioners and respondents were in settlement talks. It is the failure of such talks, that prompted the petitioners to file an application, *inter alia*, for stay on execution of the order of State Commission. It is at such belated stage that the petitioners chose to file the appeal before the National Commission with an obvious reason to defeat the rights of the respondent – a flat purchaser arising from the order of the State Commission which directed recovery of the amounts decreed in favour of the respondent. The petitioners took a calculated risk adopting wait and watch approach. The appeal before National Commission was filed by the petitioner when there was no alternative upon failure of settlement talks, with a clear intent to thwart the execution proceedings

initiated by the respondent, as also reflected in Paragraph 13 of the impugned judgment (supra). In this context, we may refer to a judgment of the Supreme Court in **The State of Bombay vs. Morarji Cooverji**² which reads thus:

“41.In order to get that relief from the Court on a writ petition, not only must he come with clean hands, not only must he not suppress any material facts, not only must he show the utmost good faith, but he must also satisfy the Court that the making of the order will do justice and that justice lies on his side.....”

As discussed by us above the petitioner falls short of fulfilling the requirements as laid down by the Supreme Court in the said decision, constituting the *sine qua non* for the writ court to grant relief, which would be incumbent on where justice would lie.

21. We gainfully refer to a few decisions of the Supreme Court below, some of which are also referred to in the impugned judgment, laying down the cardinal principles on limitation and delay condonation.

22. The Supreme Court in the case of **Basawaraj and Anr vs. The special Land Acquisition Officer**³. The Supreme Court while examining expression “*sufficient cause*” held that, the meaning of the word “*sufficient*” is adequate or enough as much as may be necessary to answer the purpose intended. It would mean that a party should not have acted in a negligent manner or there was a want of bonafide on its part, in view of the facts and circumstances of the case, where the Court has to examine whether the

² 1958 SCC OnLine Bom 188

³. (2013 AIR SCW 6510)

mistake is a bonafide or was a mere device to cover an ulterior purpose.

23. It is settled legal position that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute to prescribes and the courts have no power to extend the period of limitation on equitable grounds as held by the Supreme Court in the decision of **P.K. Ramachandran vs. State of Kerala**⁴ which was followed by the Supreme Court in a later decision in **Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbais**⁵.

24. The Supreme Court in the decision of **Ram Lal and others vs. Rewa Coalfields Limited**⁶ held that, even after sufficient cause has been made out the party is not, as a matter of right, entitled to condonation of delay.

25. The Supreme Court in **Anshul Agarawal vs. New Okhla Industrial Development Authority**⁷ held that the Court ought to keep in mind that special period of limitation prescribed under the Consumer Protection Act for filing appeal and revision in consumer matters and the object of expeditious adjudication of consumer disputes will get defeated if the Court was to entertain belated petitions filed against the orders of consumer fora.

26. The Supreme Court interpreting the expression “*sufficient cause*” in a recent ruling in **Shivraj Singh vs. Union of India**⁸ emphasized that in an application for condonation of delay the conduct should be bonafide based

4. (1997) 7 SCC 556

5. (2012) 5 SCC 157

6. (AIR 1962 SC 361)

7. (2011 14 SCC 578)

8. (2023 10 SCC 531)

on true and plausible explanation and should reflect the normal conduct of a common prudent person. The delay should be clearly understood in contradistinction to inordinate delay and unexplained delay, for it to warrant condonation.

27. The Supreme Court in another recent decision in the case of **Diamond Exports and Another vs. United India Insurance Company Limited and Others**⁹ has reiterated that the discretion for condonation of delay under Consumer Protection Act, 1986 is specifically circumscribed by the statute. Similar statutory provisions exist under the Arbitration and Conciliation Act, 1996 and Insolvency and Bankruptcy Code, 2016 though in a different statutory context facilitating the sanctity of the arbitral process in the former and to ensure timely disposal, corporate rehabilitation in the latter.

28. We are in complete agreement with the above decisions which would squarely apply to the present case.

29. Before concluding we may observe that the matters falling under the Consumer Protection Act deal with a range of consumers from individuals to co-operative societies, home buyers, flat purchasers and such others who approach the specialized fora created under the Act, to redress their grievances with a hope of speedy resolution of long pending disputes. The object and purpose of this statute, makes it evident that it is a social

9. (2022) 4 SCC 169

welfare legislation where protection of consumer interest is paramount. From the legislative scheme and framework of the Act, the intent is to encourage consumerism in our Country as also echoed by the Supreme Court. A situation cannot be countenanced where a technical plea espoused would militate against the very purpose and object behind the enactment. One needs to be mindful of the object behind the legislation that an untrained, unwary consumer because of unequal bargaining power ought not to be deprived of his legal rights. What is relevant to the facts of this case was that the National Commission was circumspect when dealing with parties like the petitioner who was in a dominating position being developers/builders vis-a-vis the respondent who is a individual home buyer, to ensure that the latter in the quest for shelter over his head was not driven into unwarranted litigation, much less prolonged litigation, at the behest of the former. The National Commission has correctly taken into account such perspective in adjudicating the proceedings and in passing the impugned order, which in our opinion surely, ought not to be disturbed.

30. On the foregoing discussions and taking a holistic view of the proceedings, we are certainly not inclined to interfere with the impugned judgment of the National Commission dated 19 August 2024.

31. The petition is misconceived and is dismissed. No order as to costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]