

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9790 OF 2025**

Abegail Vanlalliani Pachuau,
Age-50 year, Occ-Business,
R/s. 601, Orva Apartment,
Road No.1, TPS 4,
Almeida Park, Bandra West,
Mumbai, Maharashtra – 400 050.

..Petitioner

Versus

1. Digambar M Meshram

2. Akshay D. Meshram

Both Residing at, Rio 605, Mount Everest,
A-wing, Bhakti Park, Wadala (East),
Mumbai – 400 037.

3. Obelix Hospitality Pvt Ltd

Throgh its Director, Mr. Aditya J. Dwivedi,
29, Chaitali, Western Express Society,
Bandra (E), Mumbai 400 051.

4. Aditya Jagdish Dwivedi,

R/s. At Mathuradas Mills Compound,
M. Joshi Marg, Lower Parel,
Mumbai – 400 013.

...Respondents

Mr. Anand Patwardhan, i/b Shivamsinh Deshmukh, Tarun Shetty and
Aditya Sharma, for the Petitioner.

Ms. Supriya Patil, for Respondent Nos. 1 and 2.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 18th JULY 2025

PRONOUNCED ON : 29th JULY 2025

ARUN
RAMCHANDRA
SANKPAL

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JUDGMENT:

- 1.** Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.
- 2.** By this Petition, the Petitioner takes exception to an order dated 20th May 2025, passed by the National Consumer Disputes Redressal Commission (“National Commission”) whereby an Application preferred by the Petitioner for condonation of delay in filing First Appeal against the order dated 15th June 2018 in Complaint Case No. CC/17/771 of 2017 passed by the State Consumer Disputes Redressal Commission (“State Commission”) came to be dismissed. Consequently, the First Appeal also stood dismissed as barred by limitation.
- 3.** The Petitioner and Aditya Dwivedi (R4-OP No.2) entered into an agreement to form a Limited Liability partnership under the name and style of World Gourmet LLP to run a restaurant “UZO”. Aditya Dwivedi was also a director of Obelix Hospitality Private Limited (OP No.1).
- 4.** Respondent Nos. 1 and 2/Complainant Nos. 1 and 2 filed a complaint under Section 17(1) of the Consumer Protection Act 1986 (“the Act of 1986”) alleging *inter alia* that Aditya Dwivedi (R4-OP2) had approached the Complainants and induced them to invest a sum of Rs. 80 Lakhs by making a promise that the Opponent Nos. 1 and 2 will provide regular monthly income to the Complainants of Rs. 1 Lakh per month, in the least. Believing such representations, the Complainants

invested a total sum of Rs.80 Lakhs with the OP Nos. 1 and 2, and World Gourmet LLP of which the Petitioner (OP3) was a partner. The amounts were paid during the period 3rd July 2014 to 28th July 2015 through banking channels as well as in cash.

5. As the Petitioner and other Opponents did not file the Written Statement, the Complainant case No. CC/17/771 of 2017 proceeded without written version of the Opponents. By a judgment and order dated 15th June 2018, the State Commission was persuaded to allow the Complaint and direct the Opposite Party Nos. 1 to 3, to refund the amount of Rs. 80 Lakhs along with interest @ 12% per annum from the date of payment till realisation. In addition, the State Commission awarded Rs. 50,000/- each, towards the compensation and costs of litigation.

6. The Petitioner preferred First Appeal No. 729 of 2019. Since there was delay in preferring the Appeal, the Petitioner took out an Application for condonation of delay. The principal reason ascribed for not preferring the Appeal within the stipulated period of limitation was that the Petitioner (Appellant-OP3) was unaware of the judgment and order dated 15th June 2018. The Petitioner had appointed an Advocate to defend the Complaint. However, the said Advocate did not diligently pursue the Complaint. The Petitioner was not apprised of the developments in the said Complaint. Nor the Petitioner was informed

about the order dated 15th June 2018 passed by the State Commission. The Petitioner came to know about the said order when the Petitioner received a call from Worli Police Station to the effect that a bailable warrant was issued against her for the execution and enforcement of the order passed by the State Commission. Thereafter, the Petitioner gathered information, obtained the certified copy of the order passed by the State Commission and, hence, there was delay in preferring the Appeal.

7. The Respondent Nos. 1 and 3 resisted the prayer for condonation of delay. It was *inter alia* contended that FA No. 671 of 2019 was filed by Respondent Nos. 3 and 4 (OP- 3 and 4) along with Petitioner also. The said Appeal was eventually dismissed by the National Commission as the Appellants failed to satisfactory account for the huge delay of about 220 days in filing the said Appeal. Even, the SLP (C) No. 9936 of 2022 preferred by the Respondent Nos. 3 and 4 against the said order dated 24th January 2022, passed by the National Commission came to be dismissed by the Supreme Court on 13th July 2022. Therefore, the Petitioner cannot be permitted to again pray for condonation of delay. Respondent Nos. 1 and 2 also questioned the sufficiency of the cause ascribed by the Petitioner for condition of delay.

8. It would be contextually relevant to note that by an order dated 26th April 2019, the National Commission granted ad-interim stay to the

execution of the impugned judgment and award of the State Commission, subject to the Petitioner depositing 50% of the amount ordered to be paid by the State Commission. In compliance of the said order, the Petitioner has deposited a sum of Rs. 62, 67,122/-.

9. By the impugned order the National Commission was persuaded to reject the Application for condonation of delay observing *inter alia* that the sole ground of inaction or negligence on the part of the Advocate for the Petitioner cannot be said to be a sufficient cause to condone the delay. The National Commission recorded that, the office report indicated that the order was received by the Petitioner on 10th September 2018 and there was a delay of about 87 days in obtaining certified copy of the order passed by the State Commission. Condonation of such delay, in the view of the National Commission, would defeat the purpose of the welfare and beneficial legislation which has been enacted for the protection of the consumers and to provide swift and cost effective remedies.

10. Being aggrieved, the Petitioner has invoked the writ jurisdiction.

11. Mr. Patwardhan, the learned Counsel for the Petitioner, would submit that the National Commission has taken a very rigid and hyper-technical view of the matter. Mr. Patwardhan laid emphasis on the fact that the Petitioner had shown the *bona fide* by depositing 50% of the amount ordered to be paid by the State Commission. This factor ought

to have been given due weight. Mr. Patwardhan made a strenuous effort to demonstrate that in the Complaint, the allegations of deficiency in service, even if construed rather generously, are primarily against Mr. Aditya Dwivedi. A passing reference is made in the Complaint that Mr. Aditya Dwivedi is a partner of World Gourmet, and, therefore, the Petitioner who is also a partner of the said LLP is jointly and severally liable for the act of accepting the deposits. If the Petitioner have had opportunity to participate in the Complaint proceeding before the State Commission, the Petitioner would have successfully demonstrated that no order could have been passed against the Petitioner.

12. Mr. Patwardhan would urge that the material on record would show that the Petitioner had appointed Advocate, Hemant Kapoor; who, despite filing the Vakalatnama, did not diligently defend the Petitioner. In such circumstances, if the delay is not condoned and the Appeal preferred by the Petitioner not heard on merits, the Petitioner would suffer irretrievable prejudice, submitted Mr. Patwardhan.

13. In opposition to this Ms. Supriya Patil, the learned Counsel for the Respondent Nos. 1 and 2, stoutly resisted the submissions canvassed on behalf of the Petitioner. Ms. Patil laid special emphasis on the fact that in Appeal No. 671 of 2019, the Petitioner was also shown as a party-Appellant. There was non-compliance on the part of the Appellants, in the said Appeal, to deposit 50% of the amount awarded by the State

Commission. Therefore, the Application for condonation of delay along with the said Appeal, came to be dismissed both for failure to ascribe a sufficient cause for not filing the Appeal within the stipulated period and non-compliance of the order to deposit the amount.

14. As the said order attained finality, with the dismissal of SLP (C) No. 9936 of 2022, preferred thereagainst, Ms. Patil would urge, the Petitioner cannot be permitted to urge the self-same grounds again.

15. As regards the cause ascribed by the Petitioner for condonation of delay, Ms. Patil would urge there is not a shred of material in support of the bald assertion that the Advocate appointed by the Petitioner did not diligently defend the proceeding. Nothing prevented the Petitioner from filing the Written Statement on 3rd October 2017, the last day stipulated by the State Commission to file the Written Statement. The Petitioner has resorted to the litigative strategy by putting the entire blame on the Advocate, whilst the Petitioner's acts and conduct betrayed negligence of the highest order, submitted Ms. Patil,

16. I have given anxious consideration to the rival submissions canvassed across the bar. At the outset, it is necessary to note that the Petitioner had been pursuing her remedies independently of Respondent Nos. 3 and 4 (OP No. 1 and 2). The material on record indicates that the Petitioner had filed FA No. 729 of 2019, in her individual capacity. Whereas First Appeal No. 671 of 2019 was filed by the other opposite

parties. This fact becomes evident from the order passed by the National Commission on 16th July 2019, which records that a submission was made on behalf of the Petitioner, in the said FA No. 671 of 2019, that she had neither filed the said Appeal nor had she instructed any Advocate to file the same on her behalf.

17. Thus, on the one hand, the Petitioner had filed an independent Appeal, i.e., FA No. 729 of 2019, on the other hand, in Appeal No. 671 of 2019, filed by the other opposite parties, the Petitioner appeared and made a statement that she had not filed the said Appeal. It is not the case that after FA No. 671 of 2019 was dismissed by the National Commission, the Petitioner filed another Appeal disowning the said Appeal No. 671 of 2019. Therefore, the independent Appeal filed by the Petitioner cannot be interdicted on the ground that the order passed in FA No. 671 of 2019, dismissing the said Appeal on the ground of delay and non-compliance of the deposit order, attained finality.

18. The National Commission was justified in appreciating the prayer for condonation of delay keeping in view the object of the Consumer Protection Act. An indiscriminate condonation of delay in filing the proceedings/Appeals before the Consumer Foras would defeat the object of securing a swift and cost-effective remedy to the consumers. The Consumer Protection Act thus stipulated a time-frame for the processes leading to the disposal of the Complaint and for assailing the

orders passed by the respective Foras. Viewed through this prism, a very liberal exercise of discretion to condone the delay may frustrate the very legislative intent.

19. In the case of **Anshul Aggarwal Vs New Okhla Industrial Development Authority**,¹ the Supreme Court cautioned that while deciding the Application 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 the Supreme Court was to entertain highly belated petitions filed against the orders of the consumer foras. Holding this, the Supreme Court rejected an Application to condone the delay of 233 days in filing the Petition against the order passed by the National Commission.

20. A profitable reference can also be made to the Constitution Bench judgment in the case of **New India Assurance Co Ltd Vs Hilli Multipurpose Cold Storage (P) Ltd**,² wherein the approach of the Courts in the matter of delay in filing the proceeding under the Consumer Protection Act was expounded as under:

“28. It is true that ‘justice hurried is justice buried’. But in the same breath it is also said that ‘justice delayed is justice denied’. The legislature has chosen the latter, and

1 (2011) 14 SCC 579.

2 (2020) 5 SCC 757.

for a good reason. It goes with the objective sought to be achieved by the Consumer Protection Act, which is to provide speedy justice to the consumer. It is not that sufficient time to file a response to the complaint has been denied to the opposite party. It is just that discretion of extension of time beyond 15 days (after the 30 days period) has been curtailed and consequences for the same have been provided under Section 13(2) (b) (ii) of the Consumer Protection Act. It may be that in some cases the opposite party could face hardship because of such provision, yet for achieving the object of the Act, which is speedy and simple redressal of consumer disputes, hardship which may be caused to a party has to be ignored.”

(emphasis supplied)

21. The justifiability of the order passed by the National Commission is required to be appreciated keeping in view the aforesaid position in law. The Court must be alive to the legislative object in prescribing the period of limitation. However, at the same time, if a case for condonation of delay is made out, a party cannot be non-suited on the premise that the condonation of delay would defeat the object of the enactment.

22. On the aforesaid touchstone, reverting the facts of the case, I am conscious that, at this juncture, the Court is not expected to delve into the merits of the claim in the Complaint. Nor the legality and propriety of the order passed by the State Commission which was impugned

before the National Commission in the Appeal, can be examined. Nonetheless the broad case of the Complainant deserves to be taken into account not for the purpose of assessing its merits but to ascertain whether refusal to condone the delay would cause irretrievable injustice.

23. The tenor of the Complaint is that Aditya Dwivedi (R4) induced the Complainants to part with a sum of Rs.80 lakhs by representing them that he would provide the service and return an amount of Rs.1 lakh per month to facilitate the Complainant to earn their regular livelihood. The Petitioner came in the frame in her capacity as a partner of World Gourmet LLP, to the account of which also the Complainants were made to transfer various amounts. It is imperative to note that no allegation of any representation emanating from the Petitioner has been made. Nor is it alleged that the Petitioner induced the Complainants to part with any amount.

24. Keeping this context in view, if the material on record is appraised, it appears that the Petitioner had appointed Mr. Hemant Kapoor, Advocate to represent the Petitioner. The order passed by the State Commission on 11th October 2017 records that on 3rd October 2017, the last day given by the State Commission to file the written version, Advocate Hemant Kapoor had filed Vaklatnama. However, he did not care to file the written version on that day.

25. It is true on the basis of the assertions in the Application and the copies of the orders passed by the State Commission, an inexorable inference may not be justifiable that the default on the part of Advocate Hemant Kapoor was the sole factor which contributed to delay. A trend is discernible that the delay is often sought to be attributed to the Advocate, who represented the party claiming condonation of delay, with a view to gain advantage in the proceeding by contending that a party should not be made to suffer the consequences on account of the default or negligence on the part of an Advocate. However, the fact remains that the Petitioner had appointed an Advocate. He had filed Vakalatnama. Moreover, on account of the alleged failure on the part of the said Advocate, the Petitioner claimed to have lodged a Complaint with the Bar Council for professional misconduct. Thus, it cannot be said that the Petitioner had ascribed a wholly unsustainable ground for the condonation of delay.

26. It is trite that an Application for condonation of delay cannot be construed very rigidly. Some amount of delay or indolence is bound to exist in every case. A factor which assumes critical salience is, the element of bona fide. In the case at hand, as noted above, the Petitioner had deposited 50% amount, i.e., Rs. 62, 67,122/- pursuant to the interim order passed by the National Commission. The material on

record does not show that there was deliberate negligence or inaction on the part of the Petitioner.

27. These elements of bona fide and possibility of irretrievable prejudice, in the light of the nature of the claim in the Complaint, if the order passed by the State Commission is executed without the Petitioner being provided an opportunity to assail the legality, propriety and correctness thereof before the National Commission, persuade this Court to hold that the delay ought to have been condoned by the National Commission.

28. The conspectus of the aforesaid consideration is that the delay in filing the Appeal No. 729 of 2019, deserves to be condoned. However, Respondent Nos. 1 and 2/Complainants deserve to be adequately compensated by awarding costs.

29. Hence the following order:

: O R D E R :

- (i) The Petition stands allowed.
- (ii) The impugned order dismissing the Application No.NC/IA/6745 of 2019 for condonation of delay and consequently FA No.729 of 2019 stands quashed and set aside.
- (iii) The Application for condonation of delay NC/IA/6745 of 2019 stands allowed.
- (iv) The delay in preferring the Appeal stands condoned.

(v) The Petitioner shall pay costs of Rs. 1 lakh each to Respondent Nos. 1 and 2 within a period of three weeks from today. Payment of costs shall be condition precedent.

(vi) In the event costs is paid, the FA No. 729 of 2019 would stand restored to the file of National Commission.

(vii) The National Commission is requested to decide the Appeal on its own merits and in accordance with law, without being influenced by any of the observations made hereinabove, which were confined to determine the justifiability of the prayer for condition of delay only.

Rule is made absolute to the aforesaid extent.

[N. J. JAMADAR, J.]