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

% ***Date of Decision: 25th March, 2025***

+ CM(M) 3595/2024 & CM APPL. 60033/2024 & CM APPL. 67748/2024

SH RAJESH KUMAR SHARMAPetitioner

Through: Petitioner in person.

versus

RAJESH GUPTA AND ANRRespondents

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner herein had filed a complaint before *District Consumer Disputes Redressal Forum, North East, Delhi*. Such complaint was filed in the year 2018 and the complaint was proceeded *ex-parte* and was, eventually, allowed by directing the opposite party to pay a sum of Rs.80,000/- to the complainant along with interest @ 6% per annum. The opposite party was also directed to pay an amount of Rs.50,000/- to the complainant on account of harassment and litigation expenses along with interest @ 6% per annum.
2. Feeling aggrieved, the opposite parties i.e. Sh. Rajesh Gupta and his wife, filed an appeal under Section 41 of the Consumer Protection Act, 2019. However, such appeal was dismissed by learned State Commission on the point of delay.



3. Feeling aggrieved, the appellants filed a revision petition before Learned National Consumer Disputes Redressal Commission (in short 'NCDRC') and learned NCDRC, *vide* order dated 11.06.2024, condoned such delay in filing the above appeal before learned State Commission, subject to cost of Rs.5,000/- and, accordingly, order dated 16.08.2023 passed by learned State Commission was set aside and the appeal was directed to be restored to its original number.

4. While considering the abovesaid revision petition, learned NCDRC took note of the various grounds taken by the revisionist and these were highlighted in the impugned order. These read as under:-

"5. In the Application seeking condonation of delay filed before the learned State Commission, the Petitioners mainly raised the following grounds:

"1. The appellant has filed this against the order dated 07.09.2022, received by the District Consumer Disputes Commission in C. C NO 209/18.

2. That for the sake of brevity the contents of the accompanying Appeal are not being reproduced herein. The applicant prays to this Hon'ble court that the contents of the said petition be allowed to be read & referred to as part and parcel of the present application.

3. That the Respondent had concealed the fact from the Ld. District Consumer forum by not disclosing the fact that the refund of Rs. 70,000/- had already been credited in the account of Respondent for the assessment year of 2014- 2015 and the same also reflected in his status of Income Tax Refund dated 28.12.2020 (Copy of the same has been annexed herewith), much before passing of the impugned order and judgment.

4. That as per the notice received on 02.03.2023 the appellants got to know regarding the proceedings against them and after enquired about the same this fact came into the knowledge of the appellants that the summons were sent on email id of the appellant, which email might missed by the appellants as in the year 2021-2023 the appellant no.2 was diagnosed with cancer and was undergoing treatment from Apollo Hospital and the appellant no.1 was looking after his wife, due to which all their work and life got affected. In these circumstances, the appellants could not appear before the Ld. District Forum and were proceeded ex parte.



5. *That the new counsel applied for the certified copies of all the records and thereafter application was filed before the Ld. District Consumer Disputes Redressal Forum, Nand Nagri.*

That in view of the above mentioned present case, facts and circumstances of the present case, it is therefore prayed to condone delay of 289 days in filing of the appeal which is not deliberate or malafide in the interest of justice. Any other and further relief, which this Hon'ble Court may deem fit, just and proper in the circumstances of the present case, may also be granted in favour of the Appellant and against the Respondent."

5. The abovesaid order dated 11.06.2024 is under challenge by filing the present petition under Article 227 of the Constitution of India.
6. It is apparent that learned NCDRC has, after taking stock of all the facts and attendant circumstances and the reasons given in the application, condoned the delay and the abovesaid appeal was directed to be restored.
7. Petitioner takes exception to such condonation of delay.
8. Petitioner places reliance upon *Pathapati Subba Reddy v. LAO*, 2024 SCC OnLine SC 513 and *H. Guruswamy v. A. Krishnaiah*, 2025 SCC OnLine SC 54 wherein Hon'ble Supreme Court had, while acknowledging the need for a liberal approach, observed that the same cannot be employed to defeat the law of limitation.
9. This Court in *TDI Infrastructure Ltd. v. Babita Chopra*, 2024 SCC OnLine Del 6926 and *DDA v. Bachhi Devi*, 2024 SCC OnLine Del 7394 also made reference to *Pathapati Subba Reddy (supra)* and concurred with the observations made therein. However, it is pertinent to highlight that discretion to exercise condonation has to be exercised after careful analysis of the circumstances pleaded in any given case. There cannot be any *rigid* and *straightjacket* formula as to when delay should be condoned and when not. Moreover, the scope of interference in such type of petitions filed under



Article 227 of the Constitution of India is constricted one and the Court can only interfere if there is glaring perversity or illegality in the order.

10. Obviously, the decision given by learned NCDRC is on a technical point and keeping in mind the grounds urged before it, it merely directed that the delay in lodging the appeal before learned State Commission be condoned. Exercise of such jurisdiction, which seems discretionary in nature, need not be interfered with by invoking supervisory powers under Article 227 of the Constitution of India, particularly when such exercise of discretion seems judicious in nature. Moreover, it is always better to have decision on merits, instead of on technicalities.

11. This Court is conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India. Moreover, when there is a liberal approach adopted in condoning the delay, the supervisory Court should not intervene unless there is some grave illegality or perversity in the matter i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments v. Young Friends and Co.*, 2022 SCC OnLine SC 283.

12. Finding no merit or substance in the present petition, the same is, hereby, dismissed.

(MANOJ JAIN)
JUDGE

MARCH 25, 2025
st/pb