

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1376 OF 2023

(Against the Order dated 26/04/2023 in Appeal No. 177/2022 of the State Commission
Delhi)

1. ORCHID TRAVEL AND TOURSPetitioner(s)
Versus
1. KAMINI CHAUCHAN & 2 ORSRespondent(s)

BEFORE:

HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER

FOR THE PETITIONER : MR. SHANKAR DIVATE, ADVOCATE

Dated : 31 May 2023

ORDER

Learned counsel for the Petitioner has filed an Affidavit stating that the objection raised regarding the e-dakhil portal has been removed. Ms. Shivi from the Registry submitted that by mistake the objection regarding e-dakhil was mentioned. She has submitted her apology, the same is accepted.

2. The present Revision Petition has been filed against the order dated 26.04.2023 of the Delhi State Consumer Disputes Redressal Commission (for short "the State Commission") in Appeal No. 177 of 2022 of the present Petitioner. The Appeal had been filed against the order dated 06.05.2022 in Complaint No. 389 of 2018, whereby the District Consumer Disputes Redressal Commission, East District (for short "the District Commission") had allowed the Complaint of the Respondents.

3. Since the said Appeal had been filed by the Petitioner with delay, an Application (IA/1396/2022) was moved seeking condonation of delay of 117 days in filing the Appeal. The State Commission heard the arguments of the Parties on this Application and dismissed the Application on the ground that no reasonable grounds for condoning the delay has been shown and it is also recorded that on calculation the delay comes to 128 days and not 117 days as mentioned in the Application.

4. It is argued by the learned counsel for the Petitioner that the delay had occurred due to delay in getting the certified copy and thereafter inability of the Petitioner to trace the case file on account of the closure of the branch office and its shifting due to Covid Pandemic. On its inability to trace the file in July, 2022 the counsel, who had moved an Application seeking condonation of delay, was contacted and again the efforts on his advice were made to trace the file but the file could not be traced. Thereafter, an Application for certified copies of the entire paper book was moved on 22.08.2022 before the District Commission but the certified copies were not given to him by the District Commission due to crunch in staff and other related issues. Thereafter, the counsel applied for the inspection of the file on 09.09.2022, which was made available on 16.09.2022. After inspection of the file the Registry on the

request of the counsel provided the certified copy of the paper book on 16.09.2022. Then the Appeal was prepared. The FDRs towards mandatory/ statutory deposits were issued only on 26.09.2022 and when the FDRs were deposited with the Registry, it was noticed that it had been wrongly issued and therefore was not accepted by the Registry. The FDRs were thereafter, corrected and were received by the counsel on 10.10.2022. Finally, the Appeal was filed on 11.10.2022. It is submitted that these are the reasonable grounds and due to these reasons the Appeal could not be filed within limitation period.

5. It is submitted by the learned counsel for the Petitioner that the State Commission has erred in not considering these reasons as sufficient grounds for condonation of delay.

6. I have heard learned counsel and perused the file.

7. In para 2 of the Application (IA/1396/2022) as reproduced in the impugned order, the Petitioner has admitted that the impugned judgment of the learned Commission was delivered to the Appellant on 06.05.2022. This clearly shows that on that day itself the Petitioner was aware of the passing of the judgment. Even otherwise it is admitted in the same para that the Appellant had received the copy of the judgment on 17.05.2022. The period of limitation had therefore started running from that date itself. It was expected from the Appellant to file its Appeal within 30 days from the date of receipt of the Order. The reasons for its inability to file the Appeal within limitation, relates to their internal reasons like, inability to trace the file and thereafter preparing FDRs in wrong name, etc.

8. Learned State Commission has relied on the findings of the Apex Court in *Basawaraj and Ors. Vs. The Spl. Land Acquisition Officer* reported in *AIR 2014 SC 746*, wherein the expression of sufficient cause has been defined. The Hon'ble Supreme Court has clearly held that the sufficient cause does not include the negligent manner in which the Applicant had acted or/and want of bona fide. It is held by the Hon'ble Supreme Court that party, if not acted diligently or remains inactive, it cannot be considered sufficient ground enabling the court to exercise discretion in favour of such a party.

9. It is a settled proposition of law that condonation of delay is not a matter of right. The person who has come up with the request for condonation of delay needs to explain delay of each and every day and has to show that there was some reasonable ground for him not to come to the court within the period of limitation. The Hon'ble Supreme Court in the case of **“Ram Lal and Ors. vs. Rewa Coalfields Limited, AIR 1962 Supreme Court 361”** has held 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 discretionary jurisdiction vested in the Court by S.5. If sufficient cause is not proved nothing further has to be done; the application for condonation 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.”

10. The law also requires the Applicant to act with reasonable diligence as has been held by the Hon’ble Supreme Court in the case of “**R. B. Ramlingam vs. R. B. Bhavaneshwari, I (2009) (2) CLJ (SC) 24**”. The Hon’ble Supreme Court has held as under:

“5. We hold that in each and every case the Court has to examine whether delay in filing the special appeal leave petitions 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.”

11. The reasonable reason must be of such nature which prevented him from coming to the court and which was not in his control. In the case of “**Anshul Aggarwal vs. New Okhla Industrial Development Authority, (2011) 14 SCC 578,**” the Hon’ble Supreme Court has held that while dealing with an application seeking condonation of delay under the Consumer Protection Act, 1986 special nature of the Act has to be kept in mind. The Hon’ble Court has held as under:

“5. It is also apposite to observe that while deciding an application filed in such cases 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 this court was to entertain highly belated petitions filed against the orders of the consumer Fora.”

12. The Petitioner has failed to point out any reason, which were beyond its control and which prevented the Petitioner from filing the Appeal within limitation period. The reasons given in the Application clearly shows that the Petitioner had acted negligently when it states that it was not able to trace the file and FDRs were prepared in the wrong name, etc.

13. The impugned order does not suffer from any illegality or infirmity. No ground to set aside the impugned order exists.

14. The present Revision Petition is dismissed in limine with no orders as to cost.

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DEEPA SHARMA
PRESIDING MEMBER