

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION
THIRUVANANTHAPURAM**

**First Appeal No. A/597/2022
(Date of Filing : 24 Nov 2022)**

(Arisen out of Order Dated 29/07/2016 in Case No. CC/596/2014 of District Trissur)

1. JAYAGOPAL K

SOUPARNIKA , 22 MILE MALAPPURAM ROAD
MANJERI MALAPPURAM 676121

.....Appellant(s)

Versus

1. PRADEEP CHOLAYIL

NEW NO 30 I BLOCK FIRST MAIN ROAD ANNANAGAR
EAST CHENNNAI

.....Respondent(s)

BEFORE:

**HON'BLE MR. SRI.AJITH KUMAR.D PRESIDING MEMBER
SMT.BEENAKUMARI.A MEMBER
SRI.RADHAKRISHNAN.K.R MEMBER**

PRESENT:

Dated : 24 Jul 2023

Final Order / Judgement

KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

VAZHUTHACAUD, THIRUVANANTHAPURAM

I.A. No. 1448/2022 in APPEAL No. 597/2022

ORDER DATED: 24.07.2023

(Against the Order in C.C. 596/2014 of CDRF, Thrissur)

PRESENT:

SRI. AJITH KUMAR D.

: JUDICIAL MEMBER

SMT. BEENA KUMARY. A

: MEMBER

SRI. RADHAKRISHNAN K.R.

: MEMBER

PETITIONER/APPELLANT:

Jayagopal K., S/o Rama Varma, residing at 'Souparnika', 22nd Miles, Malappuram Road, Manjeri, Malappuram-676 121.

(By Adv. Unnikrishnan V.)

Vs.

RESPONDENTS:

1. Pradeep Cholail, S/o Dr. V.P. Sidhan, Old No. 25, New No. 30, I Block, First Main Road, Annanagar, East Chennai represented by his agent Mr. Kirubakar, S/o Nagalingam, No. 8, TVS Subham Apartments, Kodambakkam, Chennai-600 024.
2. Unidesign Builders & Developers Private Ltd. represented by its Managing Director, Door No. EL 51/74, 'Sathi', Civil Lane Road, Ayyanthole, Thrissur-680 003.
3. P. Navneeth Menon, S/o P. Venugopal, Managing Director, M/s Unidesign Builders & Developers Private Ltd., 'Meghna', 18/530, No. 40 Shanthi Nagar, Ayyanthole, Thrissur-680 003.
4. Prasanth V.K., S/o Kumaran, Director, M/s Unidesign Builders & Developers Private Ltd., 'Nirmalyam', Door No. T.C. 1/409, Kanattukara Post, Thrissur-680 011.
5. Krishnaprasad K., represented by P/A holder Thathampillil Ravindranath, Flat No. 2 A, Waterford Apartments, Pandit Karuppan Road, Thevara, Kochi-682 013.

ORDER

SRI. RADHAKRISHNAN. K.R.: MEMBER

This is a petition for condonation of a delay of 2279 days in filing the appeal. The appellant/Petitioner is the 5th opposite party in C.C. No. 596/2014 before the Consumer Disputes Redressal Commission, Thrissur (District Commission for short). The District Commission by its order dated 29.07.2016 allowed the complaint and directed the opposite parties to complete the construction and hand over the possession within one month of receipt of the copy of the order and pay Rs 5 per sq ft per month from 04.12.2011 to date of actual handing over. The opposite parties are further directed to pay Rs. 50,000/- as compensation for deficiency in service and Rs. 5,000/- as costs of the proceedings to the complainant.

2. The complaint relates to the alleged deficiency in service on the part of the opposite parties in not handing over an apartment as per terms of the agreement. On the basis of the evidence adduced the District commission passed the impugned order. Aggrieved by the said order the 5th opposite party has filed this appeal with a delay of 2279 days.

3. Notice on the delay condonation petition was issued to the Respondents. Notice was served on 4th Respondent and notice by substituted service by paper publication was effected in respect of 1st and 2nd respondents. Notice to R3 was returned unclaimed. None of the respondents appeared/represented before this Commission.

4. The petitioner seeks condonation of a delay of 2279 days in filing this appeal. The learned counsel for the appellant/petitioner submitted that the appeal ought to have been filed on or before 28.08.2016 and the delay is not wilful and has been on account of not receiving the notice since the petitioner is abroad where he is settled and working. He did not receive notice in the complaint and hence could not contest the case. The envelope was returned with the remarks 'Left India'. The procedure for service of notice was not complied with in his case. He came to know about the case only when he was informed regarding the warrant brought to his house by the police. There is no wilful negligence or delay on his part in filing the appeal and hence the learned Counsel prayed to condone the delay in filing the appeal.

5. We have heard the learned counsel for the appellant and perused the affidavit and other records. The contention of the learned counsel for the appellant is that the appellant was not served with notice in the complaint. They came to know about the order of the District Commission only when he came to know about the warrant issued against him. It is observed that the notice issued by the District Commission to the appellant was returned with endorsement that the addressee has left. There is no case for the appellant that the address furnished by the complainant is incorrect. When a registered postal envelope is sent to the addressee in his correct address it could be construed as deemed service. Here the District Commission had issued notice to the appellant which was returned with endorsements that the addressee left. It is obligatory on the part of the appellant to give instructions to the postal authorities to deal with the communications received in his address. Therefore the stand taken by the appellant that the appellant was unaware about the order of the District Commission does not appear to be correct and it cannot be found that there is no delay in filing the appeal.

6. Needless to say that condonation of delay cannot be claimed as a matter of right. Where there is a delay, the burden is upon the person who appears before the Commission seeking condonation of delay to explain it with sufficient reasons. The appellant appears to have not acted diligently and had remained inactive for quite some time. He has not been able to give adequate and sufficient reasons to show that he was prevented from approaching this Commission within the limitation period, due to circumstances beyond his control. We are not satisfied with the reasons submitted by the appellant for condonation of delay in filing the appeal.

7. Apart from the above, though notice was served on the appellant / 5th opposite party in this case, he has not appeared before the District Commission or filed written version. Therefore, he was set ex-parte and the complaint has been decided by the District Commission on the evidence that was adduced by the complainant. The said procedure of the District Commission is in conformity with the dictum laid down by the Constitution Bench of the Apex Court in *New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd. (2020)5 SCC 757*.

Therefore, the District Commission cannot be found fault with for proceeding ex-parte in the matter. It is also not permissible for him to be provided with any further opportunity to plead and prove his case.

8. In view of the foregoing reasons, we find no grounds to condone the inordinate delay of 2279 days. The petition for condonation of delay is accordingly dismissed. As a consequence, the appeal is also dismissed in limine being barred by limitation.

Statutory deposit of Rs. 25,000/- remitted at the time of filing the appeal shall be refunded to the appellant, on proper application.

AJITH KUMAR D. : JUDICIAL MEMBER

BEENA KUMARY. A : MEMBER

RADHAKRISHNAN K.R. : MEMBER

jb

KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

VAZHUTHACAUD, THIRUVANANTHAPURAM

APPEAL No. 597/2022

JUDGMENT DATED: 24.07.2023

(Against the Order in C.C. 596/2014 of CDRF, Thrissur)

PRESENT:

SRI. AJITH KUMAR D. : JUDICIAL MEMBER

SMT. BEENA KUMARY. A : MEMBER

SRI. RADHAKRISHNAN K.R. : MEMBER

APPELLANT:

Jayagopal K., S/o Rama Varma, residing at 'Souparnika', 22nd Miles, Malappuram Road, Manjeri, Malappuram-676 121.

(By Adv. Unnikrishnan V.)

Vs.

RESPONDENTS:

1. Pradeep Cholail, S/o Dr. V.P. Sidhan, Old No. 25, New No. 30, I Block, First Main Road, Annanagar, East Chennai represented by his agent Mr. Kirubakar, S/o Nagalingam, No. 8, TVS Subham Apartments, Kodambakkam, Chennai-600 024.
2. Unidesign Builders & Developers Private Ltd. represented by its Managing Director, Door No. EL 51/74, 'Sathi', Civil Lane Road, Ayyanthole, Thrissur-680 003.
3. P. Navneeth Menon, S/o P. Venugopal, Managing Director, M/s Unidesign Builders & Developers Private Ltd., 'Meghna', 18/530, No. 40 Shanthi Nagar, Ayyanthole, Thrissur-680 003.
4. Prasanth V.K., S/o Kumaran, Director, M/s Unidesign Builders & Developers Private Ltd., 'Nirmalyam', Door No. T.C. 1/409, Kanattukara Post, Thrissur-680 011.
5. Krishnaprasad K., represented by P/A holder Thathampillil Ravindranath, Flat No. 2 A, Waterford Apartments, Pandit Karuppan Road, Thevara, Kochi-682 013.

JUDGMENT

SRI. RADHAKRISHNAN. K.R.: MEMBER

Petition for condonation of delay dismissed. Therefore this appeal is dismissed.

AJITH KUMAR D. : JUDICIAL MEMBER

BEENA KUMARY. A : MEMBER

RADHAKRISHNAN K.R. : MEMBER

jb .

**[HON'BLE MR. SRI.AJITH KUMAR.D]
PRESIDING MEMBER**

**[SMT.BEENAKUMARI.A]
MEMBER**

**[SRI.RADHAKRISHNAN.K.R]
MEMBER**