

RESERVED

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW**

REVISION NO. 19 OF 2022

(Against the order dated 07-02-2022 in Complaint Case/Misc. Case
No.54/2021 of the District Consumer Commission-~~Aggra~~)

Balrampur

01. Director
Balrampur Nursing Home
Tulsipur Road
Post and District Balrampur, U.P.

02. Dr. Siddiq Tariq Afzal
C/o Balrampur Nursing Home
Tulsipur Road
Post and District Balrampur, U.P.

...Revisionsits

Vs.

Shri Dhokhai, Aged 70 years



...Opposite Party

BEFORE:

HON'BLE MR. JUSTICE ASHOK KUMAR, PRESIDENT

For the Revisionists : Sri Manish Mehrotra, Advoate.

For the Opposite Party :

Dated : 20-05-2022

JUDGMENT

MR. JUSTICE ASHOK KUMAR, PRESIDENT

This is a revision petition under Section 47(1) (b) of the Consumer Protection Act, 2019 against the order dated 07-02-2022 passed by the District Consumer Commission, Balrampur in Complaint Case/Misc. Case No. 54/2021.

Facts of the case stated in brief are that the complainant has filed a complaint before the learned District Consumer Commission, Balrampur under Section-35 of the Consumer Protection Act, 2019 against the opposite parties on 01-09-2021 alleging therein that the opposite parties have committed gross negligence in the treatment of the complainant. The



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aforesaid complaint is filed alongwith the delay condonation application as the complaint is barred by limitation.

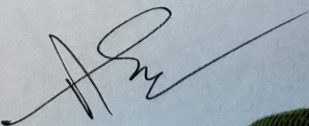
On the complaint being filed the District Consumer Commission, Balrampur has registered it as Misc. Case No. 54/2021 and the notices have been issued to the opposite parties. Thereafter the opposite parties have appeared before the learned District Consumer Commission and filed objection against the delay condonation application and prayed for disposal of the same at the stage of admission itself . Thge opposite parties have also filed the reply of the complaint. The District Consumer Commission has fixed the date 07-02-2022 for admission of the complaint and also for hearing on the point of limitation. On 07-02-2022 when the case was called out the complainant was present. No one was appeared on behalf of the opposite parties on the date fixed.

On 07-02-2022 the District Consumer Commission has admitted the complaint and passed the following order :-

“दिनांक- 07-02-2022

पुकार पर परिवादी उपस्थित। विपक्षीगण अनुपस्थित। प्रस्तुत परिवाद दिनांक 01-09-2021 को पेश किया गया है तब से अंगीकरण के बिन्दु पर तथा मियाद बिन्दु पर सुनवाई चल रही है। वर्तमान में प्रभावी उपभोक्ता संरक्षण अधिनियम 2019 की धारा 36(3) में यह प्रावधान किया गया है कि यदि किसी परिवाद में 21 दिनों तक परिवाद की ग्राह्यता के मुद्दे का विनिश्चय नहीं करता है तो उसे ग्रहण कर लिया समझा जाएगा। प्रस्तुत परिवाद काफी दिनों से ग्रहण के बिन्दु पर लंबित है ऐसी स्थिति में उपभोक्ता संरक्षण अधिनियम 2019 की धारा 36(3) के अन्तर्गत परिवाद को स्वतः अंगीकृत किये जाने की उपधारणा की जाती है। तदनुसार परिवाद मूल वाद में दर्ज रजिस्टर हो। विपक्षीगण को परिवाद की नोटिस निर्गत हो। परिवादी नोटिस हेतु तीन दिन में पैरवी

परिवादी ने विलम्ब माफी हेतु मियाद प्रार्थना पत्र सं0 4 दिया है और परिवाद प्रस्तुत करने में हुए विलम्ब को माफ करने का अनुरोध किया है। परिवादी के विलम्ब माफी प्रार्थना पत्र पर विपक्षी ने अपनी आपत्ति प्रस्तुत किया है जो कागज सं. 120 है। परिवादी के विलम्ब माफी प्रार्थना पत्र पर तथा विपक्षी की आपत्ति का निस्तारण पत्रावली को



गुणदोष के आधार पर निर्णीत करते समय किया जाएगा।

पत्रावली वास्ते उत्तर पत्र विपक्षीगण दिनांक 10-03-2022 को पेश हो।”

Being aggrieved with the order dated 07-02-2022 passed by the learned District Consumer Commission, Balrampur, the opposite parties have come up in revision with the prayer that the order passed by the learned District Consumer Commission be set aside and a direction be issued to the District Consumer Commission to decide the issue of limitation first as the complaint has been filed beyond the limitation prescribed under the Consumer Protection Act.

I have heard Sri Manish Mehrotra, learned Counsel for the revisionist and perused the record carefully.

It is submitted by learned Counsel for the revisionists that the learned District Consumer Commission has arbitrarily not considered the preliminary objection of the revisionists of the complaint petition being grossly time barred and leaving the matter to be decided at the final stage and the impugned order being totally against the settled mandate of law laid down by the Hon'ble Apex Court.

It is further submitted by learned Counsel for the revisionists that the District Consumer Commission has failed to exercise the jurisdiction vested in it by law and has acted in exercise of its jurisdiction illegally and with material irregularities while arbitrarily rejecting the revisionists' preliminary objection for dismissal of the complaint petition as being barred by time. The impugned order passed by the District Consumer Commission is in violation of the provisions contained in Section 69 of the Consumer Protection Act, 2019. The treatment undisputedly was administered on the patient in September, 2011 to March, 2012 and the complaint petition has been filed before the learned District Consumer Commission after nine years as on 27-08-2021.

It is argued by the learned Counsel for the revisionists that the learned District Consumer Commission has completely ignored the legal position which is fairly well settled in this regard by the Hon'ble Apex Court in the case of State Bank of India V/s M/s PS Agricultural



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Industries reported in 2009 5 SCC 121, Haryana Urban Development Authority V/s B K Sood reported in (2006) 1 Supreme Court Cases 164 and V. N. Shrikhande V/s Anita Sena Fernandes reported in 2011(1) SCC 53.

It is further argued by the learned Counsel for the revisionists that the impugned order dated 10-03-2022 passed by the learned District Consumer Commission is illegal, arbitrary and unsustainable in the eyes of law and liable to be set aside and further the District Consumer Commission be directed to decide the issue of limitation at the preliminary stage in accordance with the settled legal position and the same shall subserve the ends of justice.

I have heard the learned Counsel for the revisionists Sri Manish Mehrotra and gone through the judgments which are relied upon by the learned Counsel for the revisionists.

It is not disputed that the treatment undisputedly was administered on the patient between the month of September, 2011 to March, 2012 and the complaint petition has been filed before the learned District Consumer Commission after a gap of about nine years i.e. on 27-08-2021.

Sub-section-1 of Section 69 of the Consumer Protection Act, 2019 provides as follows:-

"The District Commission, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen."

Sub-section-2 of Section 69 of the Consumer Protection Act, 2019 reads as follows:-

"Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Commission, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the District Commission or the State Commission or the National



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Commission, as the case may be, records its reasons for condoning such delay.”

Proviso of sub-section 2 of Section 69 clearly provides that no such complaint shall be entertained unless the District Commission or the State Commission or the National Commission, records its reasons for condoning such delay.

In the instant case the learned District Consumer Commission while passing the order dated 07-02-2022 has fixed the date for hearing the complaint on merits as well as for deciding the issue with regard to delay in filing the complaint.

I find that the submission of learned Counsel for the revisionists is correct as in the instant case the complaint has been filed beyond the period of two years from the date on which the cause of action has arisen. The complaint is admittedly filed after a gap of nine years, therefore, it is the duty of the District Consumer Commission to consider the delay condonation application first and decide the same before proceeding to decide the complaint itself on merits.

In view of the aforesaid, the revision is liable to be allowed. The order passed by the learned District Consumer Commission dated 07-02-2022 is liable to be set aside.

ORDER

The revision is allowed. The order passed by the learned District Consumer Commission dated 07-02-2022 is hereby set aside. The matter is remanded back to the learned District Consumer Commission ^{u Balhampur} ~~u~~ to decide the preliminary objection about the maintainability of the complaint on the ground of delay and laches before proceeding further in deciding the complaint on merits.

Let copy of this order be made available to the parties as per rules. The Stenographer is requested to upload this order on the website of this Commission at the earliest.

(JUSTICE ASHOK KUMAR)
PRESIDENT

Note- necessary correction is carried out by me today by hand in red ink.



1cc certified copy
Serial No. of the Application
Date of receipt of application
Name of the applicant
Date of disposal
Date of preparation
Date of dispatch of the certified copy of order
By Hand
Dt. 13/02/22

Pnt. 13/2
13/02/22
13/02/22
13/02/22

