

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1429 OF 2016

(Against the Order dated 06/01/2016 in Appeal No. 931/2015 of the State Commission Andhra Pradesh)

1. SOUDHARYA JEWELLERS

REP. BY ITS PROPRIETOR, B. SHANMUKHA RAO, S/O
VISWANADHAM, PETROMAX STREET, TOWN AND
DISTRICT-SRIKAKULAM
ANDHRA PRADESH

.....Petitioner(s)

Versus

1. PAIDI JAGANADHA RAO

S/O SATYANARAYANA C/O ADINARAYANA, DOOR NO.
2-132, KINTHALIMILL VILLAGE S.M. PURAM POST,
ETCHERLA MANDAL,
DISTRICT-SRIKAKULAM
ANDHRA PRADESH

.....Respondent(s)

BEFORE:

**HON'BLE MR. C. VISWANATH, PRESIDING MEMBER
HON'BLE MR. SUBHASH CHANDRA, MEMBER**

For the Petitioner : Mr V Sridhar Reddy, Advocate with
Mr P Mohan Rao, Advocate

For the Respondent : Mr Y Rajagopala Rao, Advocate with
Mr Korada Pramod Kumar, Mr Dhuli
Gopi Krishna, Advocates

Dated : 26 Dec 2022

ORDER

PER MR SUBHASH CHANDRA

This revision petition has been filed under section 21 of the Consumer Protection Act, 1986 (in short, 'the Act') against the judgment dated 06.01.2016 of the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (in short, 'the State Commission') in Appeal no. 931 of 2015 and FA no. 2385 of 2015.

2. The facts stated by the petitioner in brief, are that the respondent/ complainant had purchased 65.330 grams of gold 916 gold for an amount of Rs.1,84,677/- on 14.05.2014 from the petitioner/ opposite party. The respondent/ complainant had paid an advance of Rs.40,000/-. The petitioner/ opposite party agreed to make a necklace weighing 23.330 grams with loss of weight 2.800 and Nalla Pusalu chain. The petitioner agreed to make the said items within one and a half months and, in the meantime, the respondent/ complainant was to pay the balance amount to the petitioner/ opposite party. The respondent/ complainant paid an amount of Rs.1,38,000/- leaving a balance of Rs.46,677/- as still unpaid. Respondent approached the petitioner numerous times for completing the jewellery. However, the petitioner did not prepare the ornaments even though the respondent is ready to pay the balance amount. The respondent has alleged that neither the ornaments have been delivered nor the money been refunded to the respondent/ complainant.

3. A complaint was therefore, filed before the District Consumer Disputes Redressal Forum, Srikakulam (in short, 'the District Forum') by the respondent herein with the following prayer:

- i. Direct the Soundharya Jewellers to either deliver the gold ornaments on receipt of balance amount or to repay the paid amount of Rs.1,38,000/- with interest 24% per annum from 01.07.2014 till the date of payment;
 - ii. Direct the Soundharya Jewellers to pay compensation of Rs.50,000/- for causing mental agony plus Rs.5000/- as litigation expenses.
4. The District Forum vide its order dated 30.03.2015 allowed the complaint and ordered as under;

“In the result, the complaint is allowed. Opposite party is directed to deliver the gold ornaments weight of 65.330 grams of 916 purity (neckless and nalla pusalu with locket) on receipt of balance amount of Rs.46,677/- or to repay the paid amount of Rs.1,38,000/- with interest @ 9% per annum from 01.07.2014 to till the date of repayment within one month to the complainant or else, the complainant is entitled to get the paid amount of Rs.1,38,000/- with interest @ 12% per annum from 01.07.2014 to till the date of repayment. The complainant is also entitled to get compensation of Rs.40,000/- within one month, towards mental agony, pain and sufferings, with litigation expenses of Rs.2000/- in which Rs.1000/- is included as Advocate fee.”

5. Aggrieved by the said order of the District Forum, the petitioner herein preferred an appeal before the State Commission. The said appeal was filed with a delay of 177 days. The State Commission after hearing the counsels for the parties on the condonation of delay dismissed the appeal observing as under:

“In the light of the aforesaid settled principle of law, it must be held that the petitioner, who has utterly failed to show any cause for the delay and who has no bona fides, is not entitled for the discretionary indulgency of this Commission.

The petition is therefore, liable to be dismissed and it is accordingly dismissed. No costs.”

6. Being aggrieved by the order of the State Commission, the petitioner has preferred a revision petition before us.

7. We have heard the learned counsel for the parties and have perused the records carefully.

8. Since the delay in filing the appeal before the State Commission was not condoned and the State Commission had dismissed the appeal on the same ground, the petitioner is before this Commission to condone the delay of 177 days in filing the appeal. In view of the settled position of law that condonation of delay under the Limitation Act, 1963 needs to be satisfactorily explained for every day of delay and cannot be claimed as a matter of right, as per the Hon’ble Supreme Court in the case of **“Ram Lal and Ors. vs. Rewa Coalfields Limited, AIR 1962 Supreme Court 361”** has held that the condonation of delay is not a matter of right and the courts can exercise its discretion to condone the delay only where sufficient reasons are shown. The Apex Court 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.”

9. It is also a settled proposition of law that delay of each and every day has to be explained. The basic test to determine whether the delay is reasonable or whether the party has been acting with due diligence, has been laid down 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 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."

10. The Hon’ble Supreme Court has directed to keep in mind the special nature of the Consumer Protection Act, 1986 while dealing with the applications for condonation of delay. In the case of **Anshul Aggarwal vs. New Okhla Industrial Development Authority**, (2011) 14 SCC 578, the Hon’ble Supreme 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."

11. The delay in filing the appeal before the State Commission has rightly not been condoned as sufficient and reasonable cause was not shown for the delay.

12. We, therefore, find no illegality or infirmity or perversity in the impugned order. The present revision petition is, therefore, found to be without merits and is accordingly dismissed.

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C. VISWANATH
PRESIDING MEMBER
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SUBHASH CHANDRA
MEMBER