

Sri. Amit Agarwal. Vp And Country ... vs Mr. Biswanath Bhattacharya on 30 June, 2017

Daily Order

Tripura State Consumer Disputes Redressal Commission, Agartala.

Case No.A.18.2017

Sri Amit Agarwal,

VP and Country Manager,

Amazon Seller Services Private Limited,

Having its registered office at Brigade Gateway, 8th Floor,

26/1, Dr. Rajkumar Road, Malleshwaram (W),

Bangalore - 560055, Karnataka, India.

... .. Appellant/Opposite Party No.1.

Sri Biswanath Bhattacharya,

S/o Late Rabindra Chandra Bhattacharya,

Resident of East of Circuit House, Kunjaban Colony,

P.O. Abhoynagar, P.S. New Capital Complex,

District - West Tripura, Agartala.

... .. Respondent/Complainant.

Shree Krishna Enterprises, SCO 100-101, Sector 34-A, First Floor, Chandigarh - 166002.

... .. Respondent/Opposite Party No.2.

Present Mr. Justice U.B. Saha, President, State Commission, Tripura.

Mrs. Sobhana Datta, Member, State Commission, Tripura.

Mr. Narayan Ch. Sharma, Member, State Commission, Tripura.

For the Appellant:

Mr. Pranabashis Majumder, Adv.

For the Respondent No.1:

Mr. Haripada Das, Adv.

For the Respondent No.2:

Absent.

Date of Hearing & Delivery of Judgment: 30.06.2017.

J U D G M E N T [O R A L]

U.B. Saha,J,

The instant appeal is filed by the appellant, Sri Amit Agarwal, VP and Country Manager, Amazon Seller Services Pvt. Ltd. under section 15 of the Consumer Protection Act, 1986 against the judgment dated 17.11.2016 passed by the Ld. District Consumer Disputes Redressal Forum (hereinafter referred to as District Forum), West Tripura, Agartala in case No. C.C. 09 of 2016 along with an application for condoning the delay of 91 days in preferring the appeal against the judgment impugned.

Today the matter is fixed for hearing on condonation petition. Heard Mr. Pranabashis Majumder, Ld. Counsel appearing for the appellant (hereinafter referred to as opposite party no.1/Amazon

India) as well as Mr. Haripada Das, Ld. Counsel appearing on behalf of the respondent no.1 (hereinafter referred to as complainant). None appears on behalf of the respondent no.2 (hereinafter referred to as opposite party no.2). Facts needed to be discussed are as follows:-

The complainant, Sri Biswanath Bhattacharya purchased one Netgear N 600 Wireless Dual Band Modem Router being influenced by the advertisement given by opposite party no.1, Amazon India. He made payment through net banking and also received the modem. But the modem was found defective and thereafter, he informed the opposite party no.2, Sri Krishna Enterprises as well as the opposite party no.1, Amazon India, the appellant herein and they assured him that they would replace the defective modem and also advised him to wait for next course of action. Thereafter, the opposite party no.1, Amazon India informed him that Sri Krishna Enterprises was the seller and accordingly, the complainant made contact with Sri Krishna Enterprises, but modem was not replaced. Being aggrieved by the action of the opposite parties, the complainant filed an application under Section 12 of the Consumer Protection Act claiming the cost of the modem amounting to Rs.9,004/- and also compensation of Rs.1 lac with cost of litigation.

The opposite party no.1, Amazon Sales & Service Ltd. appeared and filed written statement denying the claim. It is stated in the written statement that Amazon is a platform and it is not the seller of the modem. Sri Krishna Enterprises is the seller. Thus, relief is to be sought against Sri Krishna Enterprises.

Complainant has produced photocopy of account, e-mail, invoice of DTDC, e-mail copies, which were marked as Exhibit-1 series by the District Forum.

On the other hand, opposite party produced the Board Resolution Authority Letter, statement of affidavit of one Rahul Sundaram, but the said Rahul Sundaram did not appear to face cross-examination.

After considering the pleadings of the parties as well as evidence on record, the Ld. District Forum passed the impugned judgment, wherein, the Ld. District Forum held that appellant, ASSPL (Amazon Seller Services Private Limited) is the actual seller and they had deficiency of service as they had sent one defective modem and ASSPL has the liability to pay the price of the modem amounting to Rs.9,004/- and for deficiency of service Rs.20,000/- as compensation and also Rs.5,000/- as cost of the litigation, in total complainant is entitled to get Rs.34,004/-. The amount of Rs.34,004/- is to be paid to the complainant within two months and if the aforesaid amount is not paid, then it will carry interest @9% per annum. It is also mentioned that ASSPL can take step against Sri Krishna Enterprises who sent the empty box without modem after return of product.

Being aggrieved by the judgment of the Ld. District Forum, the opposite party no.1, Amazon India filed the instant appeal along with a petition for condoning the delay of

91 days.

Mr. Majumder, Ld. Counsel appearing for the opposite party no.1, the appellant herein submits that though the impugned judgment was passed on 17.11.2016, but the opposite party no.1 was not aware about the said judgment. He further submits that the counsel of the opposite party no.1 who appeared before the Ld. District Forum went to the Office of the Ld. District Forum on 25.11.2016 for obtaining the information as to when the judgment would be passed. It is stated that the bench clerk of the District Forum had informed that on 17.11.2016 the judgment was already passed. On obtaining the information, the counsel for the opposite party no.1 sought for the free copy provided by the Ld. District Forum, West Tripura, Agartala, but it was informed that the free copy is yet to be made ready and the free copy was finally made available on 05.12.2016 and the same was received by the counsel for the opposite party no.1 on 07.12.2016. He further submits that the free copy of the judgment was received on 07.12.2016, but the same could not be forwarded to the opposite party no.1 due to health problems of the counsel and on 11.12.2016, the counsel for the opposite party no.1 forwarded the same to the appellant-opposite party no.1 and the said copy of the judgment was received on 14.12.2016 and immediately, the opposite party no.1 asked the counsel to prepare the appeal challenging the impugned judgment. Thereafter, the certified copy of the impugned judgment and all the relevant documents were shared by the appellant-opposite party no.1 with the present counsel on 16.12.2016 to enable him to prepare the appeal and accordingly, the present counsel prepared the preliminary draft of the appeal and sent to the opposite party no.1 along with the delay application and after doing certain necessary correction in the appeal, the appellant-opposite party no.1 forwarded the memo of appeal along with condonation petition through mail on 27.12.2016 and thereafter, doing all the necessary formalities, the appeal was filed on 07.04.2017 along with the condonation petition.

On the other hand, Mr. Das, Ld. Counsel appearing for the respondent no.1-complainant has relied upon paragraph-9 of the objection to the condonation petition wherein it is specifically stated that the appellant has received the free copy of the judgment on 25.11.2016. Thus, the grounds taken by the appellant-opposite party no.1 for condoning the delay is totally false, fabricated and concocted. He also submits that it would be evident from the peon book of the District Forum that the Ld. Counsel Sri Amrit Lal Saha who appeared on behalf of the appellant-opposite party no.1, Amazon India received the copy of the judgment on 25.11.2016. Therefore, the contention of the appellant-opposite party no.1 in its condonation petition that the bench clerk of the District Forum had informed the conducting lawyer of the opposite party no.1 on 25.11.2016 that the free copy is yet to be made ready and the free copy was finally made available on 05.12.2016 is nothing but suppression of facts for which itself the condonation petition is liable to be dismissed. He further submits that in nowhere of the condonation petition, it is mentioned that who were the counsel before the Ld. District Forum and who went on 25.11.2016 before the bench

clerk of the District Forum to obtain the information as to when the judgment would be passed.

We have gone through the condonation petition. In the condonation petition particularly in Paragraph-2, it is stated that, "Appellant/Petitioner was not aware of the Judgment passed on 17.11.2016. The counsel for the Appellant/Petitioner went to the Learned District Consumer Disputes Redressal Forum, West Tripura, Agartala on 25.11.2016 in order to obtain the information as to when the Judgment would be passed. It is stated that the bench clerk had informed that on 17.11.2016 the Judgment was already passed. On obtaining the information, the counsel for the Appellant/Petitioner sought for the free copy provided by the Learned District Consumer Disputes Redressal Forum, West Tripura, Agartala but, it was informed that the free copy is yet to be made ready. The free copy was finally made available on 05.12.2016 and the same was received by the counsel for the Appellant/Petitioner on 07.12.2016". In Paragraph-3 of the condonation petition, it is stated, "That the counsel for the Appellant/Petitioner after receiving the free copy of the Judgment on 07.12.2016, could not inform or forward the same to the Appellant/Petitioner due to health problems. However, on 11.12.2016, the counsel for the Appellant/Petitioner forwarded the same to the Appellant/Petitioner. It is stated that the free copy was received by the Appellant/Petitioner on 14.12.2016 and immediately, the Appellant/Petitioner asked the counsel to prepare the appeal challenging the impugned judgment. Simultaneously, the Appellant/Petitioner requested his previous counsel engaged at Agartala to apply for the certified copy of the impugned judgment."

We have also gone through the record of the Ld. District Forum including the peon book from which it appears that the free certified copy of the judgment was received by the engaged counsel of the opposite party no.1, namely, Mr. Amrit Lal Saha on 25.11.2016 i.e. within 8 days from the delivery of the judgment, but nowhere in the condonation petition the said fact was disclosed, rather the appellant-opposite party no.1 took a plea that on 25.11.2016, the Ld. engaged Counsel of the appellant-opposite party no.1 was informed by the bench clerk of the District Forum that free copy of the judgment is yet to be made ready and the copy was finally available on 05.12.2016 and the same was received by the Counsel for the appellant-opposite party no.1 on 07.12.2016. This entire statement is false and fabricated one.

There is no doubt that an application for condonation of delay has to be examined liberally subject to 'sufficient cause' is shown. The explanations which have been given in the condonation petition for condoning the delay in filing the appeal are not at all satisfactory, rather according to us, the appellant-opposite party suppressed the facts regarding the receipt of the certified copy of the impugned judgment by their engaged Ld. Counsel Mr. Amrit Lal Saha on 25.11.2016, who has conducted the case before the Ld. District Forum and even there is no mention who received the copy of the judgment on 07.12.2016 and could not inform or forward the same to the

appellant due to health problems. According to us, receipt of the judgment by the engaged Counsel of the appellant-opposite party is nothing but receipt of the copy by the appellant-opposite party. Knowledge of the Counsel is the knowledge of the party. The concerned lawyer did not file any affidavit stating that he failed to communicate the impugned judgment in time due to health problems.

In *Basawaraj & Anr. Vs The Spl. Land Acquisition Officer* (Civil Appeal No.6974 of 2013), the Hon'ble Apex Court observed that "It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. 'A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.' The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim 'dura lex sed lex' which means 'the law is hard but it is the law', stands attracted in such a situation. It has consistently been held that, 'inconvenience is not' a decisive factor to be considered while interpreting a statute."

'Sufficient cause' is the cause for which the opposite parties could not be blamed for their filing of appeal in time. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. In other way, it can be said that "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, in the instant case, after going through the order of the Ld. District Forum dated 17.11.2016, i.e. the date on which the impugned judgment was announced, we find that it is specifically mentioned to supply a copy of the judgment and from the Peon Book of the Ld. District Forum it also appears that admittedly, the Ld. Counsel of the appellant-opposite party no.1, Mr. Amrit Lal Saha appeared before the District Forum and received the free copy of the impugned judgment on 25.11.2016.

In view of the above, we are of the opinion that the appellant-opposite party no.1 not only failed to explain the delay properly, rather suppressed some facts before us particularly, regarding the receipt of the free copy of the impugned judgment by the Ld. Counsel of the opposite party no.1 on 25.11.2016. In the certified copy filed along with the appeal, it appears that on 17.02.2017, an application was made for certified copy of the impugned judgment by the opposite party no.1 and the copy was made ready and also delivered on the same date and the said copy is admittedly, not the free copy of the judgment supplied on 25.11.2016 and again on 23.02.2017, an application was made for certified copy of the impugned judgment by the opposite party no.1 and the same was delivered on 02.03.2017.

In the cause title of the impugned judgment, the Ld. District Forum mentioned the name of Mr. Amrit Lal Saha, Ld. Counsel for the opposite party no.2 instead of opposite party no.1. As opposite party no.2 Sri Krishna Enterprises did not appear in the proceeding and the complaint case was proceeded ex parte against the opposite party no.2, such a mistake is nothing but a typographical mistake.

The reasons stated in the condonation petition elicit nothing satisfactorily to condone the delay in filing the appeal. We have also gone through the impugned judgment as well as the grounds stated in the memo of appeal.

Considering the entire facts and circumstances, we are of the opinion that the delay in filing the instant appeal has not been explained properly and the same is also not bona fide. Accordingly, the condonation petition is dismissed and in consequent thereto, the appeal also stands dismissed.

Send down the records to the Ld. District Forum, West Tripura, Agartala.

MEMBER State Commission Tripura MEMBER State Commission Tripura
PRESIDENT State Commission Tripura