

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

NEW DELHI

REVISION PETITION NO. NC/RP/1573/2019

(Against the Order dated 25th March 2019 in Appeal 367/2016 of the State Consumer Disputes Redressal Commission West bengal)

G.M., EASTERN RAILWAYS

PRESENT ADDRESS - 4, FAIRLIE PALACE, P.S. HARE STREET, , KOLKATA-700001 , WEST BENGAL ,

.....Petitioner(s)

Versus

PUSPENDU DUTTA CHOWDHURY

PRESENT ADDRESS - S/O. BADAL DUTTA CHOWDHURY, 72, KANKULIA ROAD, , KOLKATA-700029 , WEST BENGAL ,

.....Respondent(s)

BEFORE:

HON'BLE MR. BINOY KUMAR , PRESIDING MEMBER

HON'BLE MRS. JUSTICE SAROJ YADAV , MEMBER

FOR THE PETITIONER:

MR. SANJEEV KUMAR VERMA, ADVOCATE

FOR THE RESPONDENT:

MR. PAWAN KUMAR RAY, ADVOCATE

DATED: 25/03/2025

ORDER

PER MRS. JUSTICE SAROJ YADAV, MEMBER

1. The present Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 (for short 'the Act') by General Manager, Eastern Railway, (hereinafter referred as "Petitioner(s)") against Pushpendu Dutta Chowdhury (hereinafter referred as "Respondent/ Original Complainant") assailing the judgment and order dated 25.03.2019 passed in First Appeal No. A/367/2016 by Learned the State Consumer Dispute Redressal Commission, West Bengal (hereinafter referred to as the "State Commission"). Whereby the learned State Commission partly allowed the appeal and

modified the order to the extent that the appellant need not to pay any penal damage, but it shall pay simple interest @ 9% p.a. over the sum of Rs.1,50,000/- for the entire period of default to the respondent/complainant.

2. Brief facts of the case are that the Respondent /original complainant on 17.06.2012 at around 9:40 a.m. was robbed of some valuables in front of G.R.P. & R.P.F of Howrah. The items that were robbed included a chain (Rs. 9,145/-), a necklace (Rs.37,789/-), a chain (Rs.47,018/-), a gold ring (Rs.9,063/-) and a hallmark chain (Rs.34,900/-). The petitioner had also sustained grave injury. He was medically examined and Govt. Doctors had advised him to take rest. The Respondent/original complainant on the date of the incident itself had lodged a report per General Diary dated 17.06.2012 as Howrah GRPS, G.D. Entry No. 1258.

3. Therefore, the Respondent/original complainant filed a complaint before the Learned District Forum-II, Kolkata on 03.08.2015. The Prayers were made therein to:-

“(A) Order to show cause for the acts of negligence & gross deficiency of Service;

(B) order the O.P. to make for the return of lost/robbed goods of petitioner;

(C) Order the O.P. to pay a sum of Rs.10,00,000/- as damages for the mental agony and harassment caused by O.P.;

(D) Order the O.P. to pay for litigation costs.

(E) Pass such other order / orders as your petitioner may deem fit and proper for the ends of justice.”

4. The Learned District Consumer Forum after taking evidence, hearing arguments and

appreciation of the case vide order dated 30.03.2016 has allowed the complaint against the Petitioner and passed the following order:

“That the case be and the same is allowed on contest with a cost of Rs.10,000/- against OP Railway Authority.

OP Railway Authority is hereby directed to pay a sum of Rs.1,50,000/- as compensation to the complainant within one month from the date of this order failing which for harassing the complainant in any further period and for disobedience of the Forum’s order OP shall have to pay penal damages @ Rs.5,000/- per month till full satisfaction of the decree and if it is collected it is deposited to this Forum.

Even if it is found that OP is reluctant to comply the order in that case penal action u/s 25 read with Section 27 of the C.P. Act shall be started against them for which further penalty and fine shall be imposed.”

5. Being aggrieved and dissatisfied, by the judgement/order of the District Commission the Petitioner filed First Appeal before the Learned State Commission. After hearing arguments and appreciation of the material available on record, the learned State Commission vide Order dated 25.03.2019 has partly allowed the appeal and modified the order of the learned District Forum to a limited extent and passed the following order:

“the Appeal stands allowed on contest against the Respondent in part. The impugned order is modified to the extent that the Appellant need not pay any penal damage to the Forum below, but it shall pay simple interest @ 9% p.a. over the sum of Rs.1,50,000/- for the entire period of default to the Respondent.”

6. The Revisionist aggrieved by the order of the learned State Consumer Disputes Redressal Commission, West Bengal dated 25.03.2019 has filed the present Revision

Petition.

7. Heard arguments of both the parties. The learned counsel for the Revisionist has submitted that both the foras below did not take cognizance of the fact that the complaint filed by the complainant was grossly time barred and there is not even an application for condonation of delay. The complaint ought to be dismissed on the ground of delay as barred by limitation. The incident took place on 17.06.2012 and the complaint was filed on 30.08.2015 that is after a delay of one year. Further it is submitted that from the Medico Legal certificate it is clear that the complainant fell down while boarding the train. Later on while reporting to the G.R.P the complainant had concocted the

story of theft/robbery of gold ornaments. Further it is submitted that the version of complainant is not credible as the petitioner had not disclosed to the doctors that his bag was snatched by miscreants. Further there has been a delay of four hours in filing the complaint at 03:35pm while the incident occurred at 9:40 a.m. Moreover the alleged incident is a criminal offence and the jurisdiction is with the criminal courts, hence the same cannot be adjudicated under the Consumer Protection Act. The learned Court below has failed to appreciate that the incident of robbery is covered under the purview of “untoward incident” as defined under section 124 A of the Indian Railways Act, 1989. The jurisdiction to try and entertain is specifically barred under Section 13 and 15 of the Railway Claims Tribunal Act.

8. The Revisionist referred the case law **Zonal Manager/ General Manager Bilaspur (CC) & Anr. V. Purushottam Mohta (I (2019) CPJ 335 (NC)**, where it has been observed as under:

“6. Though, It is alleged in the consumer complaint that some unauthorized persons had entered the coach in which the complainant and his wife were travelling at Bilaspur ,and TTE did not take any action on the protest registered with him by the complainant / respondent in this regard, no such averment is made in the FIR which the complainant had registered soon after theft of the suitcase. There is no explanation as to why the said averment was not made in the FIR lodged by none other than the complainant himself. Had some unauthorized persons entered the reserved coach and had the complainant lodged protest with the TTE in this regard, he would certainly have stated so in the FIR lodged at the police station.

7. Even after lodging the FIR at the police station, the complainant / respondent did not make any complaint to railway officer alleging therein that some unauthorized persons had entered the coach at Bilaspur and that he had lodged the protest in this regard with the TTE of the coach. Again, no explanation is forthcoming from the complainant / respondent for not making any such complaint if there was negligence on the part of the TTE in taking action on the protest alleged to be lodged by him.

8. The consumer complaint was lodged more than one year after the alleged theft. Throughout this period, the complainant did not allege any negligence on the part of the railway officials, resulting in the theft of his suitcase. I therefore, hold that the complainant has failed to prove any negligence on the part of the railway officials in performance of their duty, resulting in the theft of his suitcase. Therefore, it cannot be said that the theft of the suitcase had happened on account of the negligence of the railway officials.”

9. Further, the Revisionist referred the following case laws on the point of limitation:

VM Salgaocar and Bros v. Board of Trustees of Port of Marmugao and Another (2005 STPL (LE) 34312 SC); Manindra land and Building Corp. Ltd. v. Bhutnath Banerjee and Ors (AIR 1964 SC 1336); Sneh Gupta V. Devi Sarup and Ors (2009 STPL (LE) 41437 SC); Ragho Singha v. Mohan Singh (2000 STPL (LE) 28142 SC); Noharlal Verma v. District Cooperative Central Bank Ltd. Jalgdalpur (2008 STPL

(LE) 40841 SC); Mahinder Singh v. Huda (IV 2011 CPJ 117 (NC).

The revisionist has further submitted that the respondent has wrongly alleged in the complaint that he sustained a grave injury while the bag was snatched. From perusal of the FIR, it is seen that Respondent has not complained of any injury. Respondent gave false bills of jewellery in support of his claim, as the bills were issued with different names and the respondent has not proven their identity yet. Further there has been no evidence of any eye witness. Moreover this is a criminal case and the same is within purview of the criminal court and the forum does not have jurisdiction.

10. Contrary to it the learned counsel for the Respondent/original complainant has submitted that the contentions raised by the Revisionist are not legally viable. There is concurrent finding against the petitioner. There is a very limited scope for this Commission in the revision petition. To support their contention they have placed reliance on **Rubi Chandra Dutta v. United India Insurance Co. Ltd. (2011) 11 SCC 269); Rajiv Shukla v. Gold Rush Sakes & Services Ltd (2022) 9 SCC 31)**. He further submitted that the services provided by the petitioner were significantly deficient. The petitioner failed in their obligation to guarantee the safety and security of passengers and their belongings. Respondent suffered severe physical harm and underwent medical examination on 17.06.2012, the treatment for which continued till 07.08.2012. Petitioner failed to undertake measures to recover the lost articles of the Respondent and even the Railway Protection Force (hereinafter referred to as RPF) and the Government Railway Police Service (hereinafter referred to as GRPS) stationed at the railway station failed to take any proactive measure to apprehend the miscreants. Moreover the Learned District Forum possessed adequate competence to adjudicate upon the matter and the Petitioner's contention on the non-maintainability of the Consumer complaint due to limitation has been raised only at the stage of Revision. To substantiate he has placed reliance on **National**

Insurance Co. Ltd. v. Prabodh Kumar Swain (2022 SCC OnLine NCDRC 364). The contention raised by the Petitioner that the alleged incident falls within the jurisdiction of the criminal courts and is not subject to adjudication under the Consumer Protection Act is false, to substantiate reliance has been placed on ***Indian Railway & 2 Ors. v. Uma Agarwal, (Revision Petition NO. 1099 of 2020).***

11. We have considered the rival contentions and perused material available on record.

12. The first issue raised by the revisionist is that the complaint was highly time-barred and no application for condonation of delay was moved before the learned District Forum where the complaint was filed. This plea was taken in the Written Statement filed by the revisionist before the learned District Forum but the District Forum did not address the issue. The learned counsel further submitted that the plea of time-barred was not considered even by the learned State Commission. He further submitted that the incident occurred on 17.06.2012 and the consumer complaint was filed on 03.08.2015. It shows that the consumer complaint was filed after a delay of one year and no application for condonation of delay was filed to condone the said delay. The complaint should have been dismissed as time-barred and it is a legal proposition which can be decided in this revision petition also.

13. Contrary to it, the learned counsel for the respondent / complainant submitted that the complaint was not time-barred because first he lodged the police complaint in the GRP and waited for the recovery of the snatched / stolen goods but the GRP failed to recover the snatched / stolen goods. Thereafter, he decided to file the consumer complaint. He further submitted that the cause of action continued as the investigation was going on in the complaint filed with the GRP therefore, the complaint should not be treated as time-barred.

14. The contention of the learned counsel for the respondent / complainant is not tenable because the filing of the criminal complaint or continuation of that complaint cannot be taken as a ground for condonation of delay in filing of the consumer complaint. If it is so permitted then the very purpose of the limitation provided in the Consumer Protection Act will fail. It is an admitted fact that no application for condonation of delay was filed by the respondent / complainant before the District Forum. Hence, the consumer complaint filed was time-barred. Section 24A of the Consumer Protection Act, 1986 which provides the limitation period for filing of a consumer complaint which runs as under:

“24A. Limitation Period (1) The District Forum, 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.

(2) 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 Forum, 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 National Commission, the state Commission or the District Forum, as the case may be, records its reasons for condoning such delay.”

15. Admittedly, in this matter the consumer complaint was not filed within two years of the incident and no application for condonation of delay was moved before the District Forum. The Hon'ble Supreme Court in **Kandimalla Raghavaiah & Co. V. National Insurance Co. Ltd. & Anr.** III (2009) CPJ 75 (SC) = 2009 CTJ 951 (SC) (CP) in this regard has held as under:

“17. Section 24-A of the Act bars any fora set up under the Act, from admitting a complaint, unless the complaint is filed within two years from the date on which

the cause of action has arisen. The provision expressly casts a duty on the Commission, admitting a complaint, to dismiss a complaint unless the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that the complainant had sufficient cause for not filing the complaint within the period of two years from the date on which the cause of action had arisen. Recently, in SBI V. B.S. Agriculture Industries (I) this Court, while dealing with the same provision, has held; (SCC p. 125, paras 11-12).

“11. It would be seen from the aforesaid provision that it is peremptory in nature and requires the consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The consumer forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint’ occurring in Section 24-A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within the limitation period prescribed thereunder.

12. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24-A and give effect to it. If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside.”

Hence, the complaint which is time-barred could not have been entertained by the District Forum.

16. Hence, in the light of the above discussion, the impugned judgment / order passed by the learned State Commission as well as the judgment / order passed by the learned

District Forum deserve to be set aside.

17. The present revision petition is allowed. The judgment / order dated 25.03.2019 passed by the learned State Commission as well as the judgment/ order dated 30.03.2016 passed by the learned District Forum are set aside.

All the IAs pending in this revision petition shall stand disposed of.

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BINOY KUMAR
PRESIDING MEMBER

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SAROJ YADAV
MEMBER