IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 1885 of 2025
Nirmal Devi Agarwal
Vs.
Shanti Rani Kharbanda & Anr.

For the Petitioner : Mr. Srijib Chakraborty
Mr. Rittick Chowdhury
Mr. Pankaj Agarwal
Ms. Champa Pal
..... advocates

For the Opposite Parties : Mr. Tanmoy Mukherjee
Mr. Ganesh Prasad Shaw
Mr. Gaurav Kumar
..... advocates

Reserved on : 04.08.2026

Judgment on : 15.10.2026

Hiranmay Bhattacharyya, J.:-

1. This application under Article 227 of the Constitution of India is at the instance of the opposite party in a complaint case under the Consumer Protection Act, 1986 and is directed against an order dated 14.02.2025 passed by the National Consumer Disputes Redressal Commission at New Delhi (for short "NCDRC") in Revision Petition no. NC/RP/2484/2024.

2. The order dated 07.05.2024 passed by the State Consumer Disputes Redressal Commission, West Bengal (for short "SCDRC") in First Appeal no. A/280/2023 thereby dismissing the application for condonation of delay and consequently dismissing the appeal being barred by limitation was challenged by the petitioner before the NCDRC in Revision Petition no. 2484 of 2024.

3. The order dated 14.02.2025 passed by the NCDRC dismissing the Revision Petition is under challenge in this application under Article 227 of the Constitution of India.

4. Facts giving rise to this application in a nutshell are as follows-

   The opposite parties filed the Complaint Case no. CC/16/274 on 19.08.2016 before the District Consumer Dispute Redressal Commission, Howrah (for short "DCDRC") under Section 12 of the Consumer Protection Act, 1986 against the petitioners alleging deficiency in service on the part of the petitioner.

5. The DCDRC, by a judgment and order dated 21.09.2022, allowed the complaint case no. 274 of 2016 on contest against the petitioner and the petitioner was directed to execute the deed of conveyance in respect of the flat in question including car parking space in favour of the complainant/opposite parties within the time limit stipulated in the said order. The petitioners were also directed to hand over the peaceful vacant possession of the car parking space to the opposite parties within a stipulated time. The petitioners were further directed to pay compensation to the opposite parties for mental pain and agony within the aforesaid time limit. The petitioners were also directed to pay a sum of Rs. 10,000/- to the opposite parties towards litigation cost.

6. Being aggrieved by the said judgment and order passed by the DCDRC, petitioner filed an appeal before the SCDRC being First Appeal no. A/280/223. The said appeal was filed on 20.07.2023. Along with the said appeal the petitioner filed an application praying for condonation of 257 days delay in preferring the said appeal. SCDRC rejected the application for condonation of delay and consequently dismissed the appeal being barred by limitation. Challenging the said judgment and order passed by the SCDRC, petitioner filed a Revision Petition before the NCDRC, New Delhi being Revision Petition No. 2484 of 2024. The revision petition stood

dismissed by the impugned order. Being aggrieved the opposite party in the complaint case approached this Court.

7. Mr. Chakraborty, learned advocate for the petitioner contended that complaint case filed by the opposite parties before the DCDRC was hopelessly barred by limitation. He contended that since the complaint case was barred by limitation as the same was not filed within the time frame stipulated under Section 24A of the Consumer Protection Act, 1986 (for short "the 1986 Act") all orders passed in such proceeding are nullity. He contended that the DCDRC was under an obligation to first examine whether the complaint case was time barred or not before proceeding to adjudicate the same on merit even if limitation was not specifically raised by way of defence. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **State Bank of India vs. B.S. Agriculture Industries (I)** reported at **(2009) 5 SCC 121**.

8. Mr. Chakraborty further contended that the revision petition before the National Commission against the order passed by the SCDRC in an appeal arising out of an original proceeding filed before the DCDRC was not maintainable. He further contended that an appeal lies before the NCDRC only against an original order passed by the SCDRC. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Karnataka Housing Board vs. K.A. Nagamani** reported at **(2019) 6 SCC 424**. Mr.

9. Chakraborty further contended that the SCDRC failed to consider the cause shown by the petitioner in the application for condonation of delay which prevented the petitioner from filing the appeal within the statutory time limit. He further contended that the petitioner being an elderly lady suffering from various ailments and also due to change of residence after the demise of her husband was not aware of the order passed by the DCDRC and only upon being served with the notice in connection with the execution proceeding the petitioner became aware of the order passed by the DCDRC. He further contended that DCDRC failed to appreciate the medical

documents and records produced by the petitioner in support of the ground for condonation of delay. He further contended that the NCDRC without appreciating the fact that the DCDRC decided the complaint, which was ex facie barred by limitation, mechanically dismissed the revision petition.

10. Mr. Mukherjee, learned advocate appearing for the opposite parties seriously disputed the submission made by Mr. Chakraborty. He contended that the petitioner failed to prove the ground taken in the application for condonation of delay by producing relevant materials in support thereof. He submitted that the DCDRC after considering the grounds taken in the application for condonation of delay rightly held that the grounds of delay as mentioned in the application for the condonation of delay is not believable and acceptable. Mr. Mukherjee placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Pathapati Subba Reddy vs. Special Duty Collector (LA)** reported at **(2024) SCC Online SC 513** and **Ramlal v. Rewa Coalfields Ltd.,** reported at **AIR (1962) SC 361** in support of his contention that courts may refuse to exercise its discretionary power where there is inordinate delay, negligence and want of due diligence.

11. For the same proposition Mr. Mukherjee placed reliance upon the decision in the case of **Kishan Estate Developers vs. Naveen Srivastav** reported at **(2018) SCC Online NCDRC 1706**; Mr. Mukherjee contended that since there was inordinate delay in preferring the instant appeal and the petitioner was negligent and also there was want of due diligence on the part of the petitioner, the SCDRC was right in rejecting the application for condonation of delay. Mr. Mukherjee further contended that the NCDRC after noticing the proposition of law laid down by the Hon'ble Supreme Court rejected the revision petition by a well-reasoned order. By referring to the complaint petition Mr. Mukherjee contended that the complaint case was filed before the DCDRC immediately upon refusal on the part of the petitioner in executing the deed of conveyance and handing over possession of the property in question. He thus, contended that the complaint case was

filed within statutory period of limitation as provided under Section 24A of the 1986 Act.

12. In reply Mr. Chakraborty learned advocate for the petitioner contended that a stale claim cannot be revived by a belated representation or communication. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Chief Executive Officer and ors. vs. S. Lalitha and ors.** reported at **(2025) SCC Online SC 916**.

13. Heard the learned advocates for the parties and perused the materials placed.

14. Before entering into the factual matrix it would be beneficial to consider the proposition of law laid down by the Hon'ble Supreme Court on condonation of delay.

15. In **Ramlal** (supra) the Hon'ble Supreme Court emphasized that even after sufficient cause has been shown, a party is not entitled to the condonation of delay as a matter of right. The proof of a sufficient cause is a condition precedent for exercise of the discretionary jurisdiction vested in the Court by Section 5 of the Limitation Act. If sufficient cause is not proved nothing further has to be done; the application for condoning delay 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.

16. As to the meaning of the expression "sufficient cause" it would be apt to take note of the decision of the Hon'ble Supreme Court in the case of **Basawaraj & Anr. Vs. Special Land Acquisition Officer** reported at **(2013) 14 SCC 81** wherein it was held that "sufficient cause" is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough" in as much as may be necessary to answer the purpose intended. The Hon'ble Supreme Court in the said decision further held that the expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so

long as negligence, inordinate delay or lack of bona fide cannot be imputed to the party concerned. Whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straight jacket formula is possible. It was further held that the Court has no power to extend the period of limitation on equitable grounds. The Hon'ble Supreme Court in paragraph 15 of the said reports summarized its conclusion which is extracted hereinafter.

> ***"15.*** *The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."*

17. The Hon'ble Supreme Court in **Pathapati Subba Reddy** (supra) after noticing several decisions including **Basawaraj** (supra) summed up its conclusions in paragraph 26 of the said reports.

> ***"26.*** *It would be beneficial to quote para 12 of the aforesaid decision in Basawaraj case [Basawaraj v. LAO, (2013) 14 SCC 81] which clinches the issue of the manner in which equilibrium has to be maintained between adopting liberal approach and in implementing the statute as it stands. Para 12 reads as under: (SCC pp. 86-87)*
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> *"12. 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."

(Emphasis Supplied)

18. From the aforesaid discussion it logically follows that the Court may refuse to exercise its discretionary power to condone the delay even if sufficient cause is established in cases where there is inordinate delay, negligence and want of due diligence.

19. In **Anshul Aggarwal vs. New Okhla Industrial Development Authority** reported at **(2011) 14 SCC 578** the Hon'ble Supreme Court while dealing with the issue of condonation of delay in an appeal filed before the SCDRC held that in cases for condonation of delay the Court has to keep in mind that the said period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revision in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if highly belated petitions filed against the orders of the consumers foras are entertained.

20. Thus, over and above the tests laid down by the Hon'ble Supreme Court for condonation of delay as observed supra, the Court has to also keep in mind the object of the Consumer Protection Act while deciding an application arising out of an order rejecting an application for condonation of delay by a consumer forum.

21. Keeping in mind the aforesaid proposition of law laid down by the Hon'ble Supreme Court this Court has to now consider whether the NCDRC was right in dismissing the revision petition.

22. At this stage it would be profitable to take note of the grounds for condonation of delay as stated in the application for condonation of delay.

For better appreciation paragraphs 3,4,5 and 6 of the said application is extracted hereinafter-

> *"3. The appellant, who is aged about 76 years, has been suffering from respiratory tract infection on and from early 2019 and her health condition is extremely deteriorated overtime. The appellant was also detected with osteoporosis and spondylosis and multi rodular goitre and has been bed ridden for a long period of time. The troubled health condition of the appellant shall be morefully evident from the medical records of the appellant annexed hereto and collectively marked with the letter "B".*
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> *4. The appellant has all her life been a homemaker and the said transactions etc were conducted by her husband and the present litigation was also contested by the said husband of the Appellant, who expired on 18th July, 2020. After the demise of her husband the Appellant has been living with her daughter and son in law in the address mentioned hereinabove and even though the said fact was well within the knowledge of the Complainant/Respondent no information or notice was ever sent to the Appellant at her current residence. A copy of the death certificate is annexed hereto and marked as "C"*
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> *5. On receiving the said notice and obtaining the certified copies the Appellant has instructed her Ld. Advocate to prepare and file the instant appeal against the said order dated 21- September, 2022 on the grounds as stated in the said appeal.*
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> *6. The Appellant was not aware of any such litigation or orders passed therein as her late husband used to conduct the same after coordinating with the Lawyers etc. however, the Appellant doesn't even have the contact details of the said Ld. Advocates."*

23. After going through the grounds for condonation of delay this Court finds that the petitioner has taken a specific stand that she had been bed ridden for long period of time on account of various ailments. At this stage it would be relevant to point out that the learned SCDRC after going through the medical papers returned a factual finding that there is no whisper in the said medical papers that the appellant/petitioner herein was bed ridden and she was unable to move and was advised by the medical officers to take complete bed rest. After returning the said finding SCDRC held that the grounds of delay as mentioned in the application for condonation of delay is not believable and acceptable.

24. In course of hearing of this application Mr. Chakraborty learned advocate appearing for the petitioner could not point out that such factual finding suffers from perversity. Mr. Chakraborty would strenuously contend that the petitioner being a home maker, all transactions were conducted by her husband and the present litigation was also conducted by her husband who expired on 18.07.2020. From the written version filed by the petitioner before the DCDRC in complaint case no. CC/16/274, this Court finds that the said written version was affirmed by the petitioner herself. In the affidavit portion she has specifically stated that she is well conversant with the facts of the case. Her occupation was mentioned as business and her residential address in the affidavit portion is the same as that of the address mentioned in the complaint case.

25. In view thereof this Court is not inclined to accept the contention of Mr. Chakraborty that the husband of the petitioner was contesting the proceeding on her behalf till death. It cannot be said that the petitioner was not aware of the proceedings pending before the DCDRC. Since the petitioner on oath has stated in the written version before the DCDRC that her occupation is business and she was also acquainted with the facts of the case, this Court is not inclined to accept the contention of Mr. Chakraborty that the husband of the petitioner was conducting the case before the DCDRC. The learned SCDRC was right in holding that the appeal was filed only to get rid of the execution case and the cause shown in the application for condonation of delay is insufficient.

26. Record reveals that the appeal was filed by the petitioner before SCDRC with a delay of 257 days. Thus, the said delay is an inordinate one. That apart in view of the reasons stated hereinbefore this Court holds that the petitioner was negligent in prosecuting the complaint case and there was want of due diligence on the part of the petitioner.

27. The learned NCDRC after taking note of the grounds taken in the application for condonation of delay applied the proposition of law laid down by the Hon'ble Supreme Court and rejected the revision petition.

28. It is now well settled that it is the satisfaction of the fora considering the application for condonation of delay about the sufficiency of the cause. It is not for the appellate forum to substitute its views unless it is shown that the subordinate forum improperly exercised its discretion to consider the application for condonation of delay or that such decision was based on untenable, arbitrary or perverse grounds or that the orders suffers from any illegality or material irregularities.

29. To the mind of this Court the order passed by the learned SCDRC rejecting the application for condonation of delay is based on proper appreciation of materials available on record and correct application of the law governing the field. The order passed by the SCDRC does not suffer from any perversity or arbitrariness. The said order also does not suffer from any illegality or material irregularity.

30. Section 21(b) of the 1986 Act states that the consumer commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested or as acted in exercise to its jurisdiction illegally or with material irregularity.

31. Upon a reading of Section 21(b) of 1986 Act this Court is of the considered view that the National Commission can exercise its revisional powers against order passed by the State Commission in any consumer dispute. Section 21(b) does not create any embargo upon the NCDRC to entertain a revision petition against an appellate order passed by the State Commission in any consumer dispute. For such reason this court is not inclined to accept the contention of Mr. Chakraborty that the revision petition before the National Commission was not maintainable.

32. The NCDRC after considering the materials on record rightly held that there is no illegality or material irregularity or jurisdictional error in the order of

the State Commission and accordingly dismissed the revision petition. The impugned order does not suffer from any infirmity warranting interference under Article 227 of the Constitution of India.

33. At this stage it would be relevant to take note of the contention of Mr. Chakraborty that the appeal filed by the petitioner before the SCDRC was a meritorious appeal as the learned DCDRC allowed the complaint case which was ex facie barred by limitation. In order to deal with such contention it would be relevant to take note of the provision laid down under Section 12 of the 1986 Act filed by the opposite parties before the DCDRC. After going through the said complaint petition this Court finds that the agreement for sale was entered into on 20.10.2003 and such agreement was registered on 19.04.2012. The opposite parties claimed to have handed over the affirmed deed of conveyance to the petitioner on 21.06.2016 and on 05.07.2016 the opposite parties sent the letter to the petitioner requesting the petitioner to hand over the car parking space which is part and parcel of the suit flat. It is the further case of the opposite parties that on 26.07.2016 the opposite parties met the petitioner and requested her to register the suit flat in favour of the opposite parties as per the agreement for sale but the petitioner in filthy languages replied that if the opposite parties could pay a further sum to the petitioner then the registration would be made.

34. Cause of action is a bundle of facts and after going through the facts narrated in the complaint case it appears that the application under Section 12 of the 1986 Act which was filed on 19.08.2016 in the backdrop of the facts as narrated in the application under Section 12 cannot be said to have been filed beyond the statutory period of limitation as provided under Section 24A of the 1986 Act.

35. In **Pathapathi Subbah Reddy** (supra) the Hon'ble Supreme Court has specifically held that the merits of the case are not required to be considered in condoning the delay. This Court finds that the petitioner after being unsuccessful in her attempt before the SCDRC and NCDRC sought to raise

the issue of limitation for the first time in this application under Article 227 of the Constitution of India.

36. For all the reasons as aforesaid this Court is not inclined to accept the contention of the learned advocate for the petitioner that the complaint case was hopelessly barred by limitation or that all orders passed by the DCDRC and subsequent orders passed by other foras are nullity in the eye of law.

37. There is no quarrel to the proposition of law laid down in **State Bank of India** (supra) that the question relating to limitation goes to the root of the matter and may render the order illegal and the Court has to see whether the complaint was filed within time irrespective of the fact whether such a plea has been raised by the parties or not. However, the Hon'ble Supreme Court after noting the fact of the said reported case that the bank had communicated to the complainant vide letter dated 28.03.1995 held that the complaint filed on 05.05.1997 was beyond 2 years therefrom and there was no application for condonation of delay nor any sufficient cause shown. The said decision being distinguishable on facts cannot come to the aid of the petitioner in the case on hand.

38. The issue that fell for consideration before the Hon'ble Supreme Court in **Karnataka Housing Board** (supra) was whether a petition is maintainable before the National Commission under Section 21(b) of the 1986 Act against an order passed by the State Commission in an appeal arising out of execution proceedings. The Hon'ble Supreme Court after noting the provisions of Section 25 of the 1986 Act held that an order passed for enforcement would not be an order in the "consumer dispute" since it stands finally decided by the appellate forum which has conclusively determine the rights and obligations of the parties. The Hon'ble Supreme Court further observed that nature of execution proceedings is materially different from the nature of proceedings for adjudication of a consumer complaint. An execution proceeding are independent proceedings. Orders passed for enforcement of the final order in the consumer dispute, cannot be construed to be the orders passed in "consumer dispute". In the light of the

aforesaid observation the Hon'ble Supreme Court held that there is no remedy provided under Section 21 to file a revision petition against an order passed in appeal by the State Commission in execution proceedings and accordingly held that Section 21(b) does not provide for filing of a revision petition before the National Commission against an order passed by the State Commission in execution proceeding. The said decision being distinguishable on facts cannot come to the aid of the petitioner. This Court has held that the revision petition is maintainable against an appellate order passed by the State Commission under Section 21(b) of the 1986 Act for the reasons as stated supra.

39. There is no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in **S. Lalitha (supra)** that in exercise of writ jurisdiction under Article 226 of the Constitution of India, unexplained delay or laches is considered one of the factors which could assume significance in denying reliefs when the discretionary writ remedy is invoked. In an appropriate case a writ court may refuse to invoke its extraordinary powers if the applicant is guilty of negligence or asserts his right combined with undue delay and laches. The said decision cannot come to the aid of the petitioner in the case on hand as this Court has already observed that the complaint case was filed within the statutory period of limitation as provided under Section 24A of the 1986 Act.

40. For all the reasons as aforesaid this Court is not inclined to interfere with impugned order. CO No. 1885 of 2025 accordingly stands dismissed. There shall be, however, no order as to costs.

41. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)