(2014) 09 NCDRC CK 0135

In the National Consumer Disputes Redressal Commission

Assistant General Manager, Reserve Bank Of India APPELLANT

Vs

Karumu Subba Reddy RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Citation : 2014 0 NCDRC 606

Hon'ble Judges : V.B.GUPTA , SURESH CHANDRA J.

Advocate : MAHENDRA ANAND , H.S.PARIHAR , SHAKSHI GUPTA

Judgement

1. IN this revision filed under Section 21(b) of the Consumer Protection Act,1986(for short, ''Act ''), by Petitioner/Opposite Party, there is challenge to order dated 13.11.2006, passed by A.P. State Consumer Disputes Redressal Commission, Hyderabad (for short, ''State Commission '').

2. BRIEF facts are that Respondent/Complainant is the the only son of late Seshi Reddy who expired on 26.01.1960. When Seshi Reedy was alive he had purchased on 15.07.1943, two Government of India Loan Bonds 1953 -1955 for Rs.1,000/ - each, bearing Nos.101808 and 101809 respectively. As per the terms and conditions of the bonds, each bond carries 3% interest during the period of the currency of the bond i.e. from 1943 -1953 with half yearly interest payable at any of the Treasury Office as per the opinion of the Depositor. The said deposits can be renewed at any time at the option of the holder on payment of the prescribed fee. It is stated that his father received interest on the said two bonds for half yearly periods only upto 14.01.1945. Thereafter, respondent approached the petitioner and requested to renew the said bonds, but petitioner sent a letter dated 16.08.1996 asking the respondent to submit some particulars. Hence, respondent got issued a legal notice demanding the petitioner to pay the entire amount with accrued interest on the said two deposits. However, petitioner sought for production of the original bonds. Respondent submitted legal heir certificate issued by the Mandal Executive Magistrate to the petitioner and requested them to calculate the amount from 01.01.1945 for the period mentioned under Fixed Deposit Scheme and also upto December, 2004 or issue

term deposit from 01.01.1945 or any other certificate which is beneficial to him by issuing a fresh certificate for accrued interest. Respondent also sent two demand drafts for Rs.500/ - towards the renewal fee as per the terms stated in the bonds. But petitioner returned the demand drafts along with bonds informing that no further interest would be paid. This act of the petitioner in not renewing the bonds nor allowing payment of principal and interest, is arbitrary and amounts to deficiency of service. Hence, respondent sought for directions to the petitioner to issue fresh bonds for Rs.4,88,644/ - by renewing the bonds upto December,2003 in his favour. The respondent also sought damages of Rs.50,000/ - towards mental agony and inconvenience.

3. IN the written statement, Petitioner took preliminary objection to the effect, that the complaint filed before the District Forum is hopelessly barred by limitation under Section 24 -A of the Act. The securities had already matured on 15.7.1953. The complaint had been filed after a period of about 50 years since the notified date of repayment of the securities. On merits, it is stated that as per terms and conditions, appearing on the face of said Promissory Note, it would be clear that on the date of repayment of the securities notified at 15th July,1953 a sum of Rs.1,000/ - only is payable as principal amount and no further interest on the securities is payable after its notified date of repayment. The holder of the securities could have drawn periodical interest from the Tenali Sub -Treasury, Guntur upto the date of its repayment as the securities were enfaced for payment of interest at that place. It is further stated that the securities can be renewed by the holder only during the period of existence of the said Loan, i.e. between the date of issuance, which is 15th July,1943 and its notified date of repayment which is 15th July, 1953. There is no provision for renewal of the securities after its notified date of repayment i.e. 15th July, 1953. Further, respondent was eligible to receive as maturity proceeds only the face value i.e. Rs.1,000/ - along with the amount undrawn interest, if any, calculated upto the notified date of repayment. This is subject to the compliance by the respondent with the statutory requirements such as producing an heirship certificate issued by the District Magistrate and his signatures on the reverse of the bonds being duly attested by a banker with the bank ''s seal. Respondent is not entitled to either to renew the securities or receive any further interest on the securities after the notified date of its repayment.

4. DISTRICT Consumer Disputes Redressal Forum, Guntur(for short, ''District Forum '') vide its order dated 30.4.2004, disposed of the complaint with following directions; ''''1)The opposite party shall indicate 1) the amount due under principal amount of both the instruments together with the accrued interest due upto the date of maturity i.e.15.7.1953 and also the interest i.e. due and payable further 16.7.1953(at the rate of interest allowed on such and similar instruments floated by the R.B.I from time to time upto the date of this Claim). This only would enable the complainant to obtain the requisite legal heir certificate/ (succession certificate) from the competent Court of Law. The opposite parties are therefore, directed to attend this within one month from the date of receipt

of copy of this order and furnish these particulars to complainant.

2)The Complainant shall after obtaining the details of the amounts from the opposite parties shall have to approach the competent court(or the District Magistrate authorized) to issue succession certificate acceptable to the opposite parties as per the relevant rules and lodge proper claim immediately on receipt of such certificate.

3) On receipt of such a claim the opposite parties shall have to settle such claim within six weeks of the date of lodgment of such a claim to the opposite parties office. In case the claim is not settled within one month after the lodgment of the claim by the complainant, that the opposite parties shall have to pay further interest of 9% p.a. from the date of lodgment of such a claim till the date of ultimate payment.

4) Rest of the claim if any is disallowed.

5) Rs.2,000/ - is awarded towards costs ''''.

5. AGGRIEVED by the order of the District Forum, Petitioner filed an appeal before the State Commission which vide its impugned order, modified the order of the District Forum and directed the petitioner; '''' To communicate the complainant the agreed value with interest of 9% per annum upto 15.07.1953;and on receiving such communication the complainant shall obtain a Succession Certificate and submit the same to the opposite party/appellant herein;and on submission of the Succession Certificate the opposite party/ appellant shall pay the amount within a period of six weeks ''''.

6. AGAINST the impugned order, petitioner has filed this revision.

7. WE have heard the learned counsel for the parties and gone through the record.

8. LEARNED senior counsel for petitioner has submitted that, securities in question had matured on 15.07.1953. However, the complaint was filed after a period of 50 years. Thus, the complaint is barred by limitation as per Section 24 - A of the Act.

9. ON the other hand, learned Amicus Curiae for respondent has admitted that the complaint before the District Forum, was filed by the legal heir of the bond holder many years after the death of the bond holder.

10. AS per respondent ''s own case, the deceased had purchased the bonds on 15.7.1943. As per terms and conditions of the bond, each bond have to carry 3% interest during the period from 1943 to 1953 with half yearly payments. It is also an admitted fact that, deceased had been receiving interest from 14.1.1944 to 14.1.1945.

11. REGARDING cause of action, respondent in its complaint has stated that it arose on 15.7.1943, when the bonds were purchased. Subsequently, it arose

when respondent as well as deceased had approached and made several representations to the petitioner. Later on, it arose on 20.3.2002 when respondent got issued a legal notice to the petitioner.

12. THE main question which arises for consideration is, whether the complaint filed by the respondent before the District Forum, was within the period of limitation or the same was barred by limitation.

13. AS per respondent ''s own case, the bonds in question were purchased in the year 1943. The deceased had received the interest only from 14.1.1944 to 14.1.1945. Thereafter, various representations were made and finally on 20.3.2002 a legal notice was sent to the petitioner.

14. SECTION 24 -A of the Act deals with such situation and same is reproduced as under; ''''24 -A. 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. THE above provision is clearly peremptory in nature requiring the Consumer Fora to see at the time of entertaining the complaint, whether it has been filed within the stipulated period of two years from the date of cause of action.

16. HON ''ble Apex Court in case of Kandimalla Raghavaiah and Co. versus National Insurance Co. Ltd. and another, 2009 CTJ 951 (Supreme Court)(CP)took view of the observations made in case State Bank of India vs. B.S. Agricultural Industries, 2009 CTJ 481 (SC) (CP) = JT 2009 (4) SC 191, as under: - ''''12. Recently, in State Bank of India Vs. B.S. Agricultural Industries, 2009 CTJ 481 (SC) (CP)= JT 2009 (4) SC 191, this Court, while dealing with the same provision, has held;

8. It would be seen from the aforesaid provision that it is peremptory in nature and requires 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 if sufficient cause is shown. The expression, ''shall not admit a complaint '' occurring in Section 24A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within limitation period prescribed thereunder. 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 24A 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. ''''

In Para No.13, it has been held by the Hon ''ble Supreme Court that;

''''The term ''''cause of action '''' is neither defined in the Act nor in the Code of Civil Procedure, 1908 but is of wide import. It has different meanings in different contexts, that is when used in the context of territorial jurisdiction or limitation or the accrual of right to sue. Generally, it is described as ''''bundle of facts ''''., which if proved or admitted entitle the plaintiff to the relief prayed for. Pithily stated, ''''cause of action '''' means the cause of action for which the suit is brought. ''''Cause of action '''' is cause of action which gives occasion for and forms the foundation of the suit. In the context of limitation with reference to a fire insurance policy, undoubtedly, the date of accrual of cause of action has to be the date on which the fire breaks out. ''''

17. IT is well settled that by serving the legal notice or by making representation, the period of limitation cannot be extended by the respondent. In this context, reference can be made to Kandimalla Raghavaiah & Co.(supra), in which it has been held; ''''By no stretch of imagination, it can be said that Insurance Company ''s reply dated 21st March, 1996 to the legal notice dated 4th January, 1996, declining to issue the forms for preferring a claim after a lapse of more than four years of the date of fire, resulted in extending the period of limitation for the purpose of Section 24A of the Act. We have no hesitation in holding that the complaint filed on 24th October, 1997 and that too without an application for condonation of delay was manifestly barred by limitation and the Commission was justified in dismissing it on that short ground. ''''

18. THUS on the face of it, the complaint filed by the respondent before the District Forum, was hopelessly barred by limitation. Admittedly, no application for condonation of delay was filed on behalf of the respondent before the District Forum.

19. BOTH the fora below did not consider the preliminary objection raised by the petitioner, regarding limitation. Since, complaint filed before the District Forum was hopelessly barred by limitation, both the fora below have committed grave error and illegality in allowing the same.

20. CONSEQUENT LY , we allow the present revision petition and set aside the orders of both the fora below. Accordingly, the complaint filed by the respondent before the District Forum stand dismissed being barred by limitation.

21. NO order as to cost.

