(2003) 08 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

CEENAR APPARELS PVT. LTD. — APPELLANT

Vs

CENTRAL BANK OF INDIA — RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Citation : 2003 0 NCDRC 54

Hon'ble Judges : D.P.WADHWA , RAJYALAKSHMI RAO , B.K.TAIMNI J.

Advocate : M.C.DHINGRA , PRADEEP TREHAN

Judgement

1. APPELLANT was the complainant in the Maharashtra State Consumer Disputes Redressal Commission. By the impugned order, State Commission dismissed the complaint on the ground that the Central Bank of India, the respondent-Bank had already filed a suit against the complainant before Debt Recovery Tribunal before filing of the complaint and that the said suit had since been decreed in the year 1999. State Commission recorded that this fact when put to the employee of the complainant was confirmed by him. State Commission was, therefore, of the view that filing of the complaint subsequent to the decreeing of the suit before the Debt Recovery Tribunal, could not be maintainable and without referring to the merits or demerits of the claim, dismissed the complaint. There was no order as to costs.

2. IT is contended by Mr. Dhingra, learned counsel for the appellant that there was no suit as such against the complainant filed before the Debt Recovery Tribunal by the Bank and by the impugned order which was made post haste, complaint was dismissed. He said complainant was a company registered under the Companies Act and had a separate entity than M/s. Janta Menswear of whose N. Devdasan was the proprietor. This very N. Devdasan is the Managing Director of the complainant as well. We may note that we are separately deciding 4 appeals filed in the name of N. Devdasan, sole proprietor of Janta Menswear and these appeals have also arisen out of the common order of the State Commission dismissing the complaints. In those complaints, however, it is the admitted case that in the suit filed by the Bank against Janta Menswear, decree for a sum of

Rs.1.86, 38,817.57 was passed by the Debt Recovery Tribunal and a writ petition filed against that order in the Bombay High Court was dismissed.

3. THIS appeal is barred by limitation. The impugned order of the State Commission is dated 14.3.2002 and a copy of the order as per rules was sent to the appellant on 4.6.2002. This appeal came to be filed on 28.2.2003. There is no cause much less sufficient cause to condone the delay. We cannot accept the submission of the complainant that the endorsement on the certified copy of the order of the State Commission to the effect that copy of the impugned order was sent on 4.6.2002 should not be believed. Moreover, we find that the complaint itself was barred by limitation. Mr. Dhingra was hard put to explain as to how it could be said that the complaint was within the period of limitation. Though he said that there was a continuing cause of action, let us see how the claim of Rs.14,31,383.00 has been made in the complaint. This is as under: "(1) Excess amount paid by the complainant as on 2.9.1995 Rs. 33,109.00 (2) Interest of about 5-1/2 Years on the said amount of Rs.33,109/- @ 18% per annum Rs. 32,779.00 (3) Excess amount paid by the complainant as on 16.1.96 Rs. 1,56,088.00 (4) Interest of about 4-1/2 Years on the said amount of Rs.1, 56,088/- @ 18% per annum Rs. 1,19,407.00 (5) Turn Over loss on the sum of Rs.40 Lakhs at the Rate of 15% Rs. 6,00,000.00 (6) Mental agony, damages and other losses suffered By the complainant and its Directors, Members Etc. Rs. 5,00,000.00 ________________ TOTAL Rs. 14,41,383.00

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4. IT would be seen that for a sum of Rs.33, 109/- which according to the complainant was collected in excess by the Bank, he arrived at figure of Rs.14.41 lakhs which includes interest and alleged damages, mental agony etc. It is difficult to appreciate as to how it could be said that there was any continuing cause of action. We find a complaint like this is abuse of the process of the Consumer Protection Act and was rightly dismissed by the State Commission though on different ground. This appeal has no merit and it is dismissed with cost counsel fee of Rs.2000/-.