
(1991) 06 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

CHAMUNDI MOPEDS LIMITED-/Opp. Party APPELLANT
Vs
MUMBAI GRAHAK PANCHAYAT RESPONDENT

Date of Decision : 04-06-1991

Acts Referred:

Citation : 1991 2 CPR 117 : 1992 2 CPJ 514 : 1993 1 CLT 367

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , Brijendra Singh , B.S.Yadav J.

Final Decision : Appeal dismissed

Judgement

1. AFTER hearing the learned Counsel appearing on behalf on the Appellant we do not find any valid ground to differ from the conclusion recorded by the State Commission that the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 do not prohibit proceedings under the Consumer Protection Act being initiated or continued against a sick company for the recovery of amounts due to the consumers who have deposited sums by way of advance payments while placing their orders for scooters manufactured by the Company. The proceedings before the Consumer Forum do not fall within the categories enumerated in Section 22 viz. proceedings for winding up of the industrial company, proceedings for execution, distress of the like against any of the properties of the Industrial Company or for the appointment of a receiver in respect thereof.

2. THE Appellant's Counsel also urged before us a point which was not taken up before the State Commission viz. that the proceedings initiated against the Company by the Respondent herein are barred by limitation. It has been repeatedly held that a question of limitation is essentially a mixed question of law and fact and unless the basic facts are put forward in the pleadings before the Trial Court, the Appellate Court will not entertain for the first time a plea if Limitation for which the factual foundation has not been laid before the lower Court. Hence, we are unable to find our way to uphold the Appellant's contention that the proceedings were time barred. The Appeal accordingly fails and is

dismissed. Parties will bear their respective costs. Appeal dismissed.