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(1990) 11 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

H.JOB APPELLANT

Vs

EXECUTOR, TRUSTEE And TAXATION SECTION RESPONDENT

Date of Decision : 12-11-1990

Acts Referred:

Citation : 1993 1 CPJ 249

Hon'ble Judges : R.G.Desai , K.R.Ramaswamy Iyengar , Sudha V.Reddy J.

Final Decision : Complaint dismissed

Judgement

1. AFTER hearing the Learned Counsel for the Complainant and Respondent and perusing the records, the Commission delivered the following:

2. THE complainant had entrusted to the First Respondent the work of filing his Income-tax returns for the Assessment years from 1967-68 to 1972-73. According to the complainant, on the advise of the Officials of the First Respondent he had deposited Rs. 5,65,000/- in M/s. Metro Malleable Manufacturers Pvt. Ltd., Mysore Road, Bangalore and the said Company was unable to pay its liabilities. Hence he has filed this complaint for damages of Rs. 9,99,000/- on account of the negligence of the Respondents in handling his tax matters, in failing to pay the tax arrears and in giving wrong advice.

The complaint is resisted by the Respondents by contending interalia that the claim is barred by time; that they were not negligent in handling his tax matters and that they never advised him to deposit the amount with M/s. Metro Malleable Manufacturers Pvt. Ltd.

3. WE heard the Learned Counsel for the Parties on the question of limitation. Mr. A. George, Learned Counsel for the complainant urged that in view of Section 10 of the Limitation Act and the decision in UCO Bank v. Hemachandra Sarkar, AIR 1990 Supreme Court, Page 1329, the Respondents cannot plead limitation as they we trustees in respect of the property of the complainant. So the question is whether Section 10 of the Limitation Act, 1963 applies to the case on hand. Section 10 of the said Act, reads thus:- "Notwithstanding anything contained in

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the foregoing provisions of this Act, no sit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time".

4. IN this case, the complaint is not in respect of the property of the complainant, which has become vested in trust with the Respondents as bankers. The complaint is for damages on account of negligence in handling his tax matters. Hence Section 10 of the Limitation Act is not applicable to this case. There is no separate article in the Limitation Act for filing such suits. So Article 113 of the Limitation Act applies. According to its, a suit for which no period of limitation is fixed is to be filed within three years from the date of accrual of the right. It is admitted on behalf of the complainant and it is also borne out by the correspondence between the parties which is on record that the papers relating to the tax matters of the complainant were returned to the complainant by the Respondents in about April 1974 and the complainant entrusted his tax matters to M/s. Phillipos & Sampath, Chartered Accountants and that they entered appearance before the Tax Authorities in July 1974 (vide Annexure R-2). Hence, it is clear that the Respondents were not handling the INcome Tax matters of the complainant from about April 1974 onwards. So the complainant must have come to know about the alleged damages caused to him by the negligence of the Respondents in 1974. Hence it is clear that the claim of the complainant was barred by time long prior to the coming into force of Consumer Protection Act, 1986. No doubt, there is no limitation prescribed in the Consumer Protection Act for filing complaints. But it is clear from the decision of the National Commission in Complaint No.1/1988 in Oswal Fine Arts v. HMT Motors that where any claim for damages or compensation arising out of a contract had become time-barred under the Law of Limitation long prior to the coming into force of the Consumer Protection Act, the Commission will not entertain such a stale claim. The decision of the Supreme Court in UCO Bank v. Hemachandra Sarkar, AIR 1990 Supreme Court Page 1329 relied upon by Sri George is not applicable to the facts of the present case. IN that case according to the plaintiff there was an oral agreement with the Bank on 2nd September, 1950 under which the latter (UCO Bank) interalia was to receive bills, documents and air receipts sent by or on behalf of him from his agents or suppliers and would release and/or take delivery of goods sent by them as and when goods were sent and the bank would keep the goods stored in its godown for and on behalf of and on account of the plaintiff for his benefit, etc. It was also alleged that payment of bills in respect of goods despatched to the bank should be made by the plaintiff and the plaintiff should be given delivery of the goods and air receipts by the Bank according to his convenience and requirement. The bank accordingly received certain goods on behalf of the plaintiff and failed to deliver them to the plaintiff. On the other hand, the Bank contended that the goods were delivered to a wrong person who

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had claimed on behalf of the plaintiff. Under those circumstances, it was held that the bankers do not in practice set up plea of limitation against their customers or their legal representatives. IN this case, there is no vesting of property of the complainant with the Respondents and the complaint, as already stated is for damages due to negligence on the part of Respondents in handling his tax matters. Hence the said decision is of no avail to the complainant. As the claim of the complainant had become time barred long prior to the coming into force of the Consumer Protection Act, we decline to entertain this complaint. On that short point alone the complaint has to be dismissed. In the Result, the complaint is dismissed. Under the peculiar circumstances of the case and regard being had to the old age of the complainant, we direct the Parties to bear their own costs. Complaint dismissed. _______________

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