

(2004) 05 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

KAMALJIT KAUR

APPELLANT

Vs

New India Assurance Company Ltd.

RESPONDENT

Date of Decision : 06-05-2004

Acts Referred:

Citation : 2004 1 CLT 625 : 2004 3 CPJ 407

Hon'ble Judges : K.K.Srivastava , MajGenS.P.Kapoor J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal filed against order dated 3.2.2004 passed by District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (for short hereinafter referred to as the District Forum) in Complaint Case No. 90 of 2002 vide which the appellant/complainant was relegated to her remedy to approach Civil Court of competent jurisdiction for redressal of his grievances on the ground that the complaint in dispute has been contested by the respondents/O.Ps. on the plea of the policy in question being obtained by practising fraud and the allegation of fraud could not be adjudicated in the summary jurisdiction given to the District Forum under the provisions of the Consumer Protection Act, 1986 (for short hereinafter referred to as the C.P. Act).

2. THE learned Counsel for the appellant in the first place contended that the plea of fraud, forgery and other serious illegalities and irregularities have been taken by the respondents/O.Ps. in the written statement with a view to oust the jurisdiction of the District Forum and the same have been categorically denied and it is urged that these pleas could very well be adjudicated by the District Forum even in exercise of summary jurisdiction given to it under the provisions of the C.P. Act as ruled by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (for short hereinafter referred to as the National Commission) in the case of Dr. J.J. Merchant & Ors. v. Shrinath Chaturvedi, III (2002) CPJ 8 (SC)=IV (2002) SLT 714=2002 CTJ 757 (Supreme Court). The learned Counsel for the appellant, however, could not substantiate his argument from the material placed on record that the aforesaid pleas have been taken only

with a view to oust the jurisdiction of the Consumer Dispute Redressal Agencies. The learned Counsel for the appellant also could not cite any authority laying down a proposition that these pleas of fraud, forgery and other serious illegalities and irregularities, as alleged by the respondents/O.Ps. could be adjudicated in the summary jurisdiction given to the Consumer Disputes Redressal Agencies under the provisions of the C.P. Act.

After carefully going through the law laid down by the Hon''ble Apex Court in the case of Dr. J.J. Merchant & Ors. (supra), we find that in Para 10 at page 760, the observations of the Hon''ble Apex Court in the case of Indian Medical Association v. V.P. Shantha & Ors., III (1995) CPJ 1 (SC)=1995 CTJ 969 (SC) (CP) were quoted. The Hon''ble Apex Court in the case of Indian Medical Association (supra) held, inter alia that in complaints involving complicated issues requiring recording of evidence of experts, the complainant can be asked to approach the Civil Court for appropriate relief. Section 3 of the C.P. Act which prescribes that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, preserves the right of the consumer to approach the Civil Court for necessary relief. The Hon''ble Apex Court in Para 11 held, inter alia as under : "11. In the aforesaid case, the Court was dealing with a contention that services rendered by the medical practitioners are not intended to be included in the expression "service" as defined in Section 2(1)(o) of the Act. That contention was negated by the Court. Further from this decision, it is apparent that it is within the discretion of the Commission to ask the complainant to approach the Civil Court for appropriate relief in case complaint involves complicated issues requiring recording of evidence of experts, which may delay the proceedings....."

3. IN view of the law laid down by the Hon''ble Supreme Court, the District Forum could come to conclusion that the complaint case before it raised the pleas of fraud and forgery, which could be disposed of only in a regular Civil Court, as per the settled view of law expressed by the Hon''ble National Commission in the case of M/s. Singhal Swaroop Ispat Ltd. v. United Commercial Bank, III (1992) CPJ 50 (NC)=1994 (1) CON.LT 334 (NC). IN another case N. Shivaji Rao v. M/s. Daman Motor Company, I (1993) CPJ 88 (NC)=1993 (1) CON.LT 524, the Hon''ble National Commission held that the Consumer Protection Act and the machinery thereunder cannot be effectively utilized for determining complicated questions of fraud and cheating. Faced with such a situation, the learned Counsel for the appellant stated that the appellant be relegated to his remedy of approaching a Civil Court of competent jurisdiction for redressal of his grievances. Suffice it so say that the impugned order itself relegates the complainant to approach Civil Court of competent jurisdiction for redressal of her grievances and for vindication of her rights against the O.Ps. and has also relied on the judgment of the Hon''ble Supreme Court in the case of Laxmi Engineering Works v. PSJ Industrial Institute, II 1995 CPJ 1 (SC), to allow the time spent by the complainant in prosecuting this complaint in the District Forum to be excluded while computing limitation for filing the civil suit.

Resultantly, the appeal is devoid of merit and is dismissed with no orders as to costs. Copies of this order be sent to the parties free of charge. Appeal dismissed.