

(2009) 07 SC CK 0117

In the Supreme Court Of India

Case No : Civil Appeal No. 4962 of 2002

Kandimalla Raghavaiah and Co.

APPELLANT

Vs

National Insurance Co. and Another

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Consumer Protection Act, 1986 — Section 23, 24A
Penal Code, 1860 (IPC) — Section 120B, 380, 420, 423, 436

Citation : (2009) 5 ALD 45 : (2009) 4 AWC 3279 Supp : (2010) 2 BomCR 835 :
(2009) 9 JT 89 : (2009) 6 MhLj 925 : (2009) 6 MLJ 581 : (2009) MPLJ 506 :
(2009) 4 RLW 3515 : (2009) 9 SCALE 480 : (2009) 7 SCC 768 : (2009) 10 SCR
870 : (2010) 1 UC 146 : (2009) 8 UJ 3719

Hon'ble Judges : R. M. Lodha, J;D. K. Jain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.K. Jain, J.—Challenge in this Appeal u/s 23 of the Consumer Protection Act, 1986 ("the Act", for short) is to a common judgment and order dated 17th April, 2002, passed by the National Consumer Disputes Redressal Commission, ("the Commission", for short) in Original Petitions No. 97 of 1996 and 248 of 1997, whereby the Commission has dismissed appellant's two complaints alleging deficiency in service against two different insurance companies on account of non-settlement of insurance claims made by the appellant, on the ground that both the complaints were barred by limitation u/s 24A of the Act.

2. The salient facts giving rise to the appeal are as follows:

The appellant firm was engaged in the business of tobacco at Chelakaluripet, Guntur District, Andhra Pradesh. They constructed godowns in the premises of M/s Kandimalla Venkateswarlu at Padripuram, in the same district for storage of tobacco. On 4th December, 1987 the appellant took out a Fire Policy 'C' with the National Insurance Company -- Respondent No. 1 in this appeal (subject matter of O.P. No. 248 of 1997), in the account of the Indian Bank - Respondent No. 2

herein, against loss or damage by fire etc. for a period of 4 months from 4th December, 1987 to 3rd April, 1988 for a sum of Rs. 1,35,000/- and paid a premium of Rs. 17,634/-. On 8th March, 1988 the appellant obtained loan from Respondent No. 2 -- Indian Bank by hypothecating the tobacco stored in the godowns. In the intervening night between 22nd and 23rd March, 1988 a fire broke out in the godowns, allegedly due to electrical short circuit and the entire stock of tobacco was gutted. The appellant reported the matter to the present contesting parties, i.e., both the Insurance Company and the Bank. On 24th March, 1988 a Surveyor was appointed by Respondent No. 1 -- Insurance Company, who submitted his report on 2nd April, 1988.

3. However, it appears that on 23rd March, 1988 i.e., the date of the incident, Respondent No. 2 -- the Bank lodged First Information Report (FIR) against the appellant firm and its partners resulting in filing of Criminal Case No. 72 of 1988 against them under Sections 380, 420, 423, 436, 457, 484 read with Section 120B of the Indian Penal Code (IPC), inter alia, alleging that they had intentionally set fire to the tobacco stocks with a view to lay a false claim for loss of stocks. After the trial, the accused were acquitted by the Sessions Judge, Narasaraopet on 22nd August, 1991. Appeal filed by the Bank against order of acquittal was dismissed by the High Court on 5th September, 1992.

4. In the meanwhile, on 14th July, 1988, Respondent No. 2 -- the Bank preferred a claim (subject matter of the present appeal) with Respondent No. 1 -- the Insurance Company for an amount of Rs. 1,32,85,760/-. It seems that the Bank did not pursue the claim. On 6th November, 1992, the appellant asked for the claim form from the Insurance Company -- Respondent No. 1. Having failed to get any response, on 26th October, 1995 issued a legal notice to Respondent No. 1. On 4th January, 1996, the appellant again asked for claim forms but still there was no response. Ultimately, on 21st March 1996 the Insurance Company replied to the legal notice, denying the factum of fire and refused to issue the 'claim form' on the ground that the claim had become time-barred.

5. On 21st October, 1997, the appellant filed the complaint before the Commission. Before the Commission, appellant's case was that they had asked for the 'claim form' from the insurance company on 6th November, 1992, which was not given although Respondent No. 2 -- Bank being a 'co-insured' had lodged a claim with the Insurance Company on 14th July, 1988, and they were pursuing their claim with the Insurance Company on behalf of the appellant. Since the denial of the Insurance Company in honouring the claim was received on 21st March 1996, the period of limitation to file complaint would commence from that date and therefore, their complaint before the Commission was well within time.

6. As noted earlier, the stand of the appellant has not found favour with the Commission. The Commission has observed that the cause of action occurred on the intervening night between 22nd/23rd March, 1988 when the fire broke out but the complaint was filed only in the year 1997. The first action by the

appellant was in November 1992 i.e., after a gap of 4= years, when the appellant asked for the claim form. The Commission finally held that both the complaints were barred by limitation and therefore, could not be entertained. According to the Commission, cause of action could not be assumed to continue till the date of denial of the claim. The delay in filing the complaint was obvious in both the cases and there was not even a prayer or an application for condonation of delay. Hence the present appeal.

7. Mr. P. Narasimha, learned senior counsel, appearing for the appellant, argued that the Commission has erred in holding that the complaint was barred by limitation inasmuch as it failed to appreciate that the policy in question was a "joint policy" and Respondent No. 2 -- Bank was equally responsible to make a claim for the loss covered under the policy on account of the fire and as a matter of fact, it did lodge a claim with the Insurance Company as far back as on 14th July, 1988, but failed to pursue the same, a clear case of dereliction and deficiency in service towards the appellant was made out for which they cannot be made to suffer. It was urged that at any rate non-responsiveness of the Respondent -- Insurance Company towards the legal notices served upon them by both the appellant and the Bank and their repeated denial to issue the claim forms also amounted to deficiency in service towards the appellant. It was, thus, pleaded that the Commission has erroneously held the claim to be time- barred when the Bank as a joint beneficiary, had preferred the claim with Respondent No. 1 --Insurance Company within time on 14th July, 1988, particularly when because of false complaint by the Bank, the appellant could not file the complaint. It was asserted that due to deficiency in service of the Insurance Company as also the Bank, the appellant has suffered a loss to the tune of Rs. 1.35 crores besides facing a civil suit by the Bank for recovery of the loan, amounting to Rs. 3 crores.

8. Mr. M.K. Dua, learned Counsel appearing for Respondent No. 1 -- the Insurance Company, on the other hand, supported the decision of the Commission and submitted that the appellant's complaint was hopelessly time barred inasmuch as the incident took place on 23rd March, 1988 and complaint was filed by the appellant in the year 1997 i.e., after a lapse of 9 years. It was pointed out that except for intimating the Insurance Company about the fire incident, the appellant did not lodge any formal claim, supported by documents as was required under the terms and conditions of the Policy. It was thus, pleaded that since no claim was made by the appellant in terms of the policy of insurance, the question of deficiency in service did not arise.

9. The stand of Respondent No. 2 -- the Bank, in the counter affidavit is that suit for recovery of Rs. 3.76 crores has already been filed against the appellant which is now pending before Debt Recovery Tribunal, Vishakhapatnam and complaint before the Commission was by way of a counter-blast to the said proceedings. A reference is also made to the correspondence exchanged between the appellant and the Bank from 1988 to 1999 to show that there was no deficiency in service

on their part.

10. Thus, the short question for consideration is whether on facts at hand, the Commission was correct in law in dismissing the Complaint preferred by the appellant as barred by limitation?

11. Section 24A of the Act bars any forum set up under the Act, from admitting a complaint, unless the complaint is filed within two years from the date of which the cause of action has arisen. The provision expressly casts a duty on the Commission, admitting a complaint, to dismiss a complaint unless the complainant satisfies the District Forum, the State Commission or National Commission, as the case may be, that the complainant had sufficient cause for not filing the complaint within the period of two years from the date on which the cause of action had arisen.

12. Recently, in *State Bank of India Vs. B.S. Agricultural Industries (I)*, 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 there under. 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.

[Also see: *Union of India (UOI) and Another Vs. British India Corporation Ltd. and Others*, and *Haryana Urban Development Authority Vs. B.K. Sood*, .]

13. 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. See: *Sidramappa Vs. Rajashetty and Others*, . 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.

14. In the case before us, as already noted, fire in the tobacco godown took place on 22nd / 23rd March, 1988 and the Bank, in whose favour the stocks had been hypothecated, was informed about it by the appellant on 23rd March, 1988 itself. Insofar as the appellant is concerned, the matter rested there till 6th November, 1992, when for the first time, the appellant addressed the following letter to the Insurance Company.

To

The Branch Manager, National Insurance Company Limited, Chilakaluripet.

Sir,

We did business in tobacco in the name and style of Messrs. Kandimalla Raghavaiah and Company. Our stock belonging to 1983-84 crop was kept in a key loan to Indian Bank was insured with your Company. Subsequently, a fire accident occurred in the month of March, 1988 in the premises of the Company and the entire stock insured was gutted in the fire.

As the said stock was gutted in the fire accident and the same was insured, we would like to make a claim with regard to the loss insured by us due to the fire accident.

So, you are hereby requested to give the claim forms thereby enabling us to make a claim for the loss occurred due to the fire accident.

Our request may kindly be considered forthwith.

15. It is manifest from the letter that till that date the appellant had not made any claim whatsoever with the Insurance Company for the loss suffered in the fire on 23rd March, 1988. As a matter of fact, only on 6th November, 1992 they, for the first time, asked for supply of "claim forms" in order to prefer a claim. By that time period of limitation for the purpose of Section 24A of the Act had expired. Further, even thereafter, everything was quiet at both ends till 16th August, 1995 when the respondent -- Bank, seemingly on the request of the appellant, confirmed to the appellant that they had preferred claim for the loss on 14th July, 1988 (Annexure P-7). On 26th October, 1995, the appellant got a legal notice issued to the Insurance Company -- Respondent No. 1, narrating sequence of events leading to their prosecution at the instance of the Bank and their ultimate acquittal and dismissal of Bank's appeal in the year 1992. The relevant portion of the legal notice reads as follows:

5. And that thereafter my client addressed several letters to the authorities of National Insurance Company with a request to send the claim forms to enable my client to prefer claim under the policy.

6. And that in spite of repeated requests neglecting the customary services failed to attend and did not send the claim form on request.

16. The legal notice was followed by yet another legal notice dated 4th January,

1996 which was also on similar lines. Vide reply dated 21st March, 1996 to the legal notice, the Insurance Company refuted the claim made by the appellant. For the sake of ready reference, the material portion of the reply by the Insurance Company is extracted below:

From the material available and from the information secured, it became evident that your client, unable to dispose of the old stocks, unable to discharge the mounting debt to Indian Bank, resorted to mischievous and criminal acts i.e. shifting the tobacco stocks from their godowns and intentionally set fire to the tobacco stocks after substitution by inferior quality tobacco either wholly or in part with a view to lay a false claim for loss of the stocks against my clients. The various methods and acts indulged in by your clients constitute a flagrant violation of the terms and conditions of the policy. Probably realizing that the acts and methods adopted by them, as stated above, constitute flagrant violation of the terms and conditions, your clients have given quietus to the matter by keeping quiet all these years. Your client is totally disentitled for any claim for alleged loss against my client under policy obtained from them. The claim for loss alleged to have been sustained by your client, after a lapse of seven years is totally barred by limitation and is futile in any respect. Under these circumstances, sending claim forms to your clients as requested in your notice does not arise.

My clients further state that in case your client sustained any loss in the year 1988 under the scope of the policy, your client should have established such loss alleged to have been sustained thereon and pursued (sic) the matter well within time to enable my clients to act appropriately instead of asking for issuance of claim form at such a belated stage.

17. Although it is not clear from the record as to when the said reply was received by the appellant, but the complaint by the appellant seems to have been filed before the Commission on or after 24 th October, 1997.

18. It is, therefore, clear from the aforementioned correspondence between the appellant and the Insurance Company that cause of action in respect of the special insurance policy arose on 22nd / 23rd March, 1988, when fire in the godown took place damaging the tobacco stocks hypothecated with the Bank in whose account the policy had been taken by the appellant. Thus, the limitation for the purpose of Section 24A of the Act began to run from 23rd March, 1988 and therefore, the complaint before the Commission against the Insurance Company for deficiency in service, whether for non issue of claim forms or for not processing the claim under the policy, ought to have been filed within two years thereof. As noticed above, the complaint was in fact filed on or after 24th October, 1997, which was clearly barred by time. It is pertinent to note that in the complaint before the Commission, though there was an averment that the Bank had not disclosed to the appellant whether any amount had been received by them from the Insurance Company against the claim preferred on 14th July, 1988, but appellant's categorical stand therein was that it was because of the

pendency of the criminal litigation that they could not make a claim in respect of the policy for the loss suffered and time and again they had been requesting the Insurance Company to send the claim forms, which request was not acceded to by the Insurance Company, and it shows that the appellant was not depending on the claim stated to have been made by the Bank with the Insurance Company.

19. A bare reading of the impugned order shows that all these factual aspects have been duly taken into consideration by the Commission and we are in complete agreement with the finding by the Commission that the filing of claim by the Bank on 14 th July, 1988, would not have, in any way, helped the appellant. On their own showing, for the first time, only on 6th November, 1992 and then again on 26th October, 1995, the appellant had requested the Insurance Company to issue claim form to enable them to prefer a claim which request was declined by the Insurance Company on 21st March, 1996. 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.

20. For the foregoing reasons, we do not find any merit in this appeal. It is dismissed accordingly with costs.