
(2006) 07 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

KASHIPRASAD COTTON PVT. LTD.

APPELLANT

Vs

KAMLADEVI KANHIYALAL SHRAWGI

RESPONDENT

Date of Decision : 03-07-2006

Acts Referred:

Citation : 2006 0 NCDRC 9 : 2006 2 CPR 113

Hon'ble Judges : K.S.GUPTA , RAJYALAKSHMI RAO J.

Advocate : R.M.Chandrakav , S.K.SHARMA

Judgement

1. THIS revision is directed against the order dated 7.03.05 of Consumer Disputes Redressal Commission Maharashtra, Mumbai dismissing appeal against the order dated 29.10.04 of a District Forum whereby petitioner No. 1/opposite party No. 2 was directed to refund amount of Rs.1 lakh with interest @ 9% p.a. we.f. 1.10.99 to respondent No.1/complainant.

2. FACTS giving rise to this revision lie in narrow compass. Respondent No. 1 had deposited amount of Rs.1 lakh with petitioner No. 2/opposite party No. 1 through respondent No. 2/opposite party No. 3 on 26.09.97 for a period of 7 months. Interest was agreed to be paid @ Rs.1.80% per month. Interest of Rs.4,200/- was lastly paid on 20.09.99. It was alleged that petitioner no. 2 was amalgamated with petitioner No. 1 under a Deed of Amalgamation dated 31.03.99 and all the liabilities of petitioner No. 2 were taken over by petitioner No. 1. Having failed to recover the amount due the respondent No. 1 got served a legal notice dated 14.05.03 on the petitioners and thereafter filed complaint on 19.08.03. Complaint was contested by the petitioners mainly on the grounds that it was barred by limitation and District Forum at Akola did not have territorial jurisdiction to try it. Both these objections decided by the District Forum against the petitioners which finding was affirmed in appeal by the State Commission. Submission advanced by Shri R.M. Chandrakav for petitioners was that the period of limitation would start running w.e.f. 9.5.2000 on which date telegraphic notice was sent by respondent No. 1 to Shree Balaji Industries, petitioner No. 2 and complaint filed on 19.08.03 was barred by limitation under Section 24A of

C.P. Act, 1986 (for short the "Act") and delay in filing complaint beyond two years could not have been legally condoned by the form below without an application by respondent No.1. Reliance was placed on the decisions in Punjab Urban Development Authority and Anr. Vs. S. Gurjinder Singh and Anr. 2006 (1) CPR 85 (NC) and Ramesh Chand Sharma Vs. Udham Singh Kamal and Ors. AIR 1999 SC 3837. It is admitted by the petitioners that petitioner No. 2 was amalgamated with M/s. Kashiprasad Sons Cotton Pvt. Ltd. petitioner No. 1 under a Deed of Amalgamation dated 31.03.99. Omitting immaterial portion, the letter dated 12.05.2000 (copy at page 85) sent by petitioner No. 1 to respondent No. 2/ opposite party No. 3 M/s. Kothari Brothers is reproduced below: - We have to inform you that M/s. Shree Balaji Industries, Cinema Road, Adilabad has been acquired by M/s. Kashiprasad Sons Cotton Pvt. Ltd., Adilabad as and from 31.03.99. The acquirer company shall be responsible for all the liabilities of the acquired firm. Hence, for the deposit with M/s. Shree Balaji Industries shall continue to be with the acquirer company on same terms and conditions. The following parties have deposited amount with M/s. Shri Balajee Industries through you. The letters of information are being sent herewith individually at your address. We request you kindly deliver the same to the respective parties and oblige.

3. IN this letter the name of respondent No. 1 appears at Sl. No. 2. To be only noted that in terms of this letter it was the responsibility of petitioner No. 1 alone to have paid the deposited amount with balance interest to respondent No.1. Petitioner No. 1 cannot take any advantage of the telegraphic notice sent on 9.5.2000 by respondent No. 1 to petitioner No. 2 who was absolved of the liability of payment after its amalgamation with petitioner No.1. Respondent No. 1 alleges that deposited amount with interest was not paid by petitioner No. 1 despite service of legal notice dated 14.05.03. Thus, for the purpose of filing complaint the limitation would start running against petitioner No. 1 w.e.f. 14.05.03 and complaint filed on 19.08.03 was well within limitation. As may be seen from para 9 of the impugned order the State Commission was of the view that respondent No. 1 had pardonable excuse and delay, if any, can, therefore, be legitimately condoned. It did not return the finding that complaint was barred by limitation. Submission referred to above advanced on behalf of petitioners is, therefore, repelled being without any merit. Aforesaid two decisions have no applicability to the facts of present case. Revision petition, thus, deserves to be dismissing being without any substance. Dismissed as such with cost of Rs.5000/- to respondent No. 1.