

(2013) 11 SHI CK 0035
In the High Court Of Himachal Pradesh
Case No : OMP (M) No. 21 of 2013

Lok Raj Saini

APPELLANT

Vs

M/s. Chinnamman Marketer Private Ltd.

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 11 SHI CK 0035

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Advocate : Tarlok Chauhan, for the Appellant; Shilpa Sood, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Sharma, J.—Reply stands filed. Rejoinder not to be filed. Heard. The present application u/s 14 of the Limitation Act, 1963, read with Section 151 of the Code of Civil Procedure, 1908 has been moved by the applicant (plaintiff) for exclusion of the time spent by him in pursuing the proceedings bonafide in a Court without jurisdiction.

2. Shorn of details, facts of the case may be stated thus. The applicant (plaintiff) is stated to have purchased some machinery from the non-applicant (defendant) way back in the year, 2002. On the allegation that the machinery supplied was defective, the plaintiff filed a complaint against the defendant before the H.P. State Consumer Disputes Redressal Commission, Shimla, which was partly allowed. Being aggrieved, the defendant carried the matter in appeal to the National Consumer Disputes Redressal Commission, New Delhi. The National Commission while holding that the plaintiff did not fall within the definition of "consumer" u/s 2(1)(d) of the Consumer Protection Act, 1986, nonsuited him and proceeded to set aside the order passed by the State Commission, but with liberty to the defendant (respondent before the National Commission) "to seek redressal of his grievance in any other forum including civil court, along with an application u/s 14 of the Limitation Act seeking condonation of delay for the time

spent before the consumer fora, keeping in view the observation made by the Supreme Court in Laxmi Engineering Works Vs. P.S.G. Industrial Institute, ."

3. The present application has been moved by the plaintiff against the forgoing background. In the given facts and circumstance, I have no hesitation to conclude that the facts of the present case are squarely covered under the dictum of law laid down by the Hon''ble Supreme Court in Laxmi Engineering Works (supra) and the time spent by the plaintiff in prosecuting the case before the consumer fora is liable to be excluded while reckoning the period of limitation for filing the present suit before this Court. This is because the complaint filed by the plaintiff was duly entertained, tried and disposed of by the State Commission, partly in his favour and it was only the National Commission which held that he did not satisfy the pre-requisite of being a consumer to espouse his cause before the consumer fora. The National Commission being seized of the matter and realizing that the proceedings were prosecuted by the plaintiff bonafide before the consumer fora, granted liberty in the above terms to seek his remedy including by way of filing a civil suit, which the plaintiff has accordingly filed before this Court.

4. The contention on behalf of the defendant that since the plaintiff had himself admitted before the National Commission that he did not fulfill the pre-requisite of being a consumer as defined u/s 2(1)(d) of the Consumer Protection Act, 1986, it does not lie in his mouth to now say that he had been prosecuting the proceedings before the consumer fora bonafide. This contention cannot be a ground for denying the benefit of Section 14 of the Limitation Act to the plaintiff for the simple reason that had he satisfied the condition of being a consumer, the eventuality of his coming to this Court by way of present suit would not have arisen at all and it is for this reason that he is required to be protected u/s 14 of the Limitation Act, as has also been observed by the National Commission while reserving liberty to him in that regard basing its decision to this effect on the law propounded by the Apex Court of the country.

5. In view of the above, the application is allowed and the time spent by the plaintiff in prosecuting the matter before the State Commission and the National Commission is ordered to be excluded for the purpose of reckoning the period of limitation for filing the present suit, which in that event would be well within time. The application stands disposed of.