
(2006) 07 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 4462 of 2004

M/s. Upkar Road Lines

APPELLANT

Vs

M/s. Pfizer Limited and Another

RESPONDENT

Date of Decision : 31-07-2006

Acts Referred:

Limitation Act, 1963 — Section 14, 14(1), 15, 5

Citation : (2007) 1 CivCC 382 : (2006) 4 RCR(Civil) 455

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Advocate : Kanchan Sehgal, for the Appellant; Jatin Talwar, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—This is a revision petition against the order dated 12.6.2004 passed by the learned Civil Judge (Junior Division), Chandigarh, vide which the application, moved by the plaintiff-applicant u/s 5 read with Section 14 of the Limitation Act for condoning the delay in prosecuting the case before the Consumer Commission was allowed.

2. M/s Pfizer Limited along with the Oriental Insurance Company filed a complaint in the consumer Court in 1997 i.e within a period of limitation. However, the said complaint was disposed of by the Consumer Disputes Redressal Commission, Ahmedabad, vide order dated 18th of October, 2000 holding therein that it had no jurisdiction to entertain the complaint and it was open to the parties to approach the Civil Court.

3. The said application was contested on the ground that the time and delay for filing the suit could not be condoned. The learned trial Court came to the conclusion that period spent by the respondent herein before the Consumer Court was liable to be excluded u/s 14 of the Limitation Act. It is further held that if the period of trial before the Consumer Commission is excluded, the suit was within limitation and accordingly the application was allowed.

4. Learned counsel for the petitioner challenged the said order firstly, on the ground that Section 15 of the Limitation Act was not applicable and for the said purpose reference was made to Section 14(1) of the Limitation Act which reads as under: -

"In computing the period for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceedings, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceedings relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."

5. The contention of the learned counsel for the petitioner was that it is only the proceedings taken bona fide in Court which can be excluded. However, the Consumer Commission being not a Court, no benefit of the time spent before it, can be excluded u/s 14 of the Limitation Act. The contention of the learned counsel for the petitioner cannot be accepted in view of the judgments of the Hon"ble Supreme Court in Laxmi Engineering Works Vs. P.S.G. Industrial Institute, ; Saushish Diamonds Ltd. Vs. National Insurance Co. Ltd., and Trai Foods Ltd. v. National Insurance Co. and others 2004(13) S.C.C. 656. The Hon"ble Supreme Court in Laxmi Engineering Works" case (supra) was pleased to hold that if the appellant chooses to file a suit for the relief claimed in these proceedings, he can do so according to law and in such a case he can claim the benefit of Section 14 of the Limitation Act to exclude the period spent in prosecuting the proceedings under the Consumer Protection Act while computing period of limitation prescribed for such suits. Similar observations were made in other two above mentioned cases by the Hon"ble Supreme Court. Therefore, the decision of the trial Court in excluding the period spent by the respondent herein under the Consumer Protection Act cannot be faulted with.

6. Learned counsel for the petitioner thereafter contended that it was open to the petitioner, to choose one of the two concurrent remedies available to him and once one remedy is chosen, the second stands excluded. The contention of the learned counsel for the petitioner is that the respondent herein having availed his remedy under the Consumer Protection Act, the suit was not competent nor the period spent in prosecuting the said proceedings could be excluded. The contention of the learned counsel for the petitioner is that it was an intentional act for which no bona fides can be attributed to it. However, this contention is also devoid of force. The finding of the Consumer Commission was that it had no jurisdiction to entertain the claim and it had relegated the parties to the civil suit. Therefore, it could not be said the respondent had two remedies out of which he could choose any one of them.

7. It was next contended by the learned counsel for the petitioner that in fact there was no evidence before the trial court to come to the conclusion that the period spent in prosecuting the proceedings before the Consumer Commission was to be excluded. The basis for this submission is that was not allowed to

cross-examine the witnesses produced in trial Court and, therefore, the impugned order is liable to be set aside. This contention can also not be believed as the copy of the order passed by the Consumer Commission was placed on record which showed the date of institution as well as of its decision.

8. Lastly, the learned counsel for the petitioner contended that the present case cannot be decided unless the record is summoned. In order to appreciate the merits of the case, it would be necessary to refer to the record and in absence thereof, the present revision cannot be disposed of. I find no force in this contention also. The facts in the present case are not in dispute and are otherwise clear from the impugned order which shows that the respondent earlier approached the Consumer Commission for redressal of their grievances and thereafter the suit was filed along with the application for condoning the delay in prosecuting the case before the Consumer Commission and treating the suit to be within time.

Therefore, finding no merit in the present revision petition, the same is dismissed.