
(2016) 02 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

Case No : 1384 of 2014

NEW INDIA ASSURANCE CO. LTD.

APPELLANT

Vs

M/S. PHOENIX OVERSEAS LTD.

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

[Limitation Act, 1963](#), [Section 14](#) -
Exclusion of time of proceeding bona fide in court without jurisdiction

Citation : 2016 2 CPR 2

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : VISHNU MEHRA, RITESH AGARWAL

Judgement

1. The petitioner/opposite party being aggrieved of condonation of delay of 6 years 2 months and 23 days in filing of the consumer complaint vide order of West Bengal State Consumer Disputes Redressal Commission, Kolkata (in short, "State Commission") dated 30.1.2014 in CC No. 94 of 2013 has filed this revision petition.

2. Briefly stated as per allegations in the consumer complaint, the dispute which is subject matter of the complaint relates back to the insurance policy valid w.e.f. 11.12.2003 to 10.12.2004. Insurance claim was filed by the respondent/complainant on 21.7.2004. A surveyor was appointed who submitted his report on 7.2.2005. It is not clear from the record whether the claim was repudiated or not. The complainant, being aggrieved of non-settlement of his insurance claim, instead of filing Civil Suit for recovery or a consumer complaint, filed a Writ Petition in High Court of Kolkata being Writ Petition No.19091 (W) 2006. The Writ Petition was contested by the petitioner/ opposite party by filing a short reply, wherein, the petitioner/opposite party took the plea that it was ready and willing to examine the insurance claim provided certain documents which were demanded from the complainant were produced. The plea was also taken that the writ petition was not maintainable. The said writ petition remained pending with the Hon'ble High Court till 21.3.2014 on which date the respondent/complainant withdrew the writ petition with

liberty to approach the insurance Ombudsman or the consumer fora. Thereafter, the complaint was filed alongwith an application for condonation of delay explaining that the delay caused was unintentional because of the wrong legal advice, the complainant instead of filing consumer complaint filed the writ petition in Hon"ble High Court. The State Commission, after hearing the parties, accepted the explanation and condoned the delay in filing the complaint vide impugned order. This has led to the filing of revision petition.

3. Shri Vishnu Mehra, Advocate on behalf of the petitioner has contended that the State Commission has committed a grave irregularity in condoning the delay of more than 6 years and 2 months and 23 days in filing of the consumer complaint ignoring the Section 14 of the Limitation Act and the fact that for the aforesaid duration, the complainant was pursuing his remedy before the high Court in writ jurisdiction knowing fully well that writ petition was not maintainable. Therefore, it cannot be said that the complainant was pursuing the proceeding before the High Court with due diligence.

4. Learned Shri Ritesh Agarwal, Advocate for the respondent has argued in support of the impugned order.

5. We have considered the rival contention. State Commission has dealt with the issue in following manner :- "Obviously the complainant went for writ relief before the Hon"ble Kolkata High Court on 17.8.2006 and lastly on 21.3.2013, it was dismissed being not pressed alongwith liberty to the complainant to move the Ombudsman or the forum under the Consumer Protection Act as the case may be, in accordance with law. It cannot be said that the times spent thereon is a deliberate one of the complainant. It cannot also be said that the complainant is squarely liable for such delay in absence of any material to that effect. Section 14, sub-Section (2) of the Limitation Act, 1963 applies in this case, notwithstanding that it was a writ petition inasmuch as the Court has given liberty to the complainant to move the consumer forum. The underlying principle as envisaged under Section 14 of the Limitation Act, 1963 is to give protection against the bar of limitation and not to punish litigants unduly for mistakes of procedure, whether those mistakes are made by the court having no jurisdiction is entitled to exclusion of that period. Section 14 is intended to protect a party from time running against him during the pendency of a bona find proceedings which may eventually prove abortive by reason of want of jurisdiction or some similar cause. It is thus, to be liberally construed. Section 29(2) of the Limitation Act, 1962 also favours the complainant. Accordingly, the prayer of the complainant for condonation of delay stands allowed. The complaint case is admitted and it be registered. Fix 27.2.2014 for W.V. as last chance."

6. We do not find fault with the aforesaid order for the following reasons. It is undisputed that the respondent had filed the Writ Petition in the High Court way back in the year 2006 seeking the relief in respect of his insurance claim. The petitioner/opposite party in its reply to the writ petition has pleaded thus : "4. It is true that the surveyors and several concerned officers of your applicants at

high levels of decision making have recommended that the said claim be repudiated, in view of the records that have been submitted to your applicants. It is also true that any claim paid out by your applicants if liability is accepted and the contract is not repudiated would have to be justified by reference to the proposal form and the policy and if it is found that the opposite party no.1 has acted with less than absolute good faith, then the marine insurance policy itself, with the relevant institute cargo clauses would be vitiated and nullified by fraud by the opposite party no.1 as the law has been settled with such insurance policies. However, certain documents were required to be submitted by the opposite party no.1 before your applicants can take a final decision. Your applicants, through their concerned officers have on 23.6.2005 and 16.11.2005 and lastly on 11.7.2006 asked the opposite party no.1 through its concerned officers including Sri M.R.Mohanpatra, Deputy Manager to submit these documents in the interest of considering the claim of the applicants from all aspects including the question of repudiation. However, knowing everything, the opposite party no.1 has deliberately failed/omitted and/or neglected to submit the said documents but instead, on suppression of these material facts has instituted the above writ petition.

5. The documents that are required and have been demanded as above are as follows :

Carriers' Damage Certificate (Certificate by railway authorities and/or other road transport authorities) Certificate of Bangladesh Railways and/or the competent authority for railways in Bangladesh regarding receipt of consignment.

Certificate of Customs/Duties Paid.

These are all the more necessary since the goods were stated in the proposal form to be sent from Itarsi (India) to Rohanpur (Bangladesh) but actually are shown to have landed at Nowapara in Bangladesh, where the alleged damage seems to have been detected.

7. Even though it is your applicants' case that no writ petition is maintainable on the cause of action alleged in the writ petition, in the interests of expedition and to show the opposite party no.1 that your applicants act transparently even in purely private law commercial spheres, your applicants, without prejudice to their rights and contentions including the question of maintainability are prepared to take the above step if this Hon"ble Court is pleased to dispose of the writ petition by directing the opposite party no.1 to furnish the documents mentioned at paragraph 5 of this application such that your applicants can take such reasoned decision in accordance with law within such time as mentioned at paragraph 6 above and/or such other time as directed by this Hon"ble Court."

7. On reading of the above, it is evident that even the opposite party in response to the writ petition had given an impression to the complainant as well as High Court that the petitioner/insurance company was ready and willing to examine the insurance claim provided certain documents were produced by the

complainant. In our opinion, this stand of the petitioner also was instrumental in giving the impression to the petitioner that he had filed the Writ Petition before the right forum perhaps and he might get the relief. From the record, it is clear that all-through the intention of the respondent/ complainant was to pursue his remedy. Therefore, it

cannot be said for the State Commission has condoned the delay in dis-regard of Section 14 of the Limitation Act.

8. We have been informed that since there was no stay granted by this Commission, the State Commission has proceeded with the complaint and the matter is listed for final arguments. As the parties have already led evidence on merits and the matter is listed for final hearing, it would be appropriate that the matter is decided on merit.

9. In view of the discussion above, we do not find any jurisdictional error or material irregularity or infirmity in the impugned order in exercise of revisional jurisdiction which may justify the interference in the impugned order.

10. Revision petition is dismissed.