(2014) 08 NCDRC CK 0096

In the National Consumer Disputes Redressal Commission

Pappu Managaratanam APPELLANT

Vs

M/S. Sai Sha Finance And Chits, Rep. By Its Managing Partner, Pokala Roopa Devi RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Citation : 2014 0 NCDRC 549 : 2015 1 CPJ 105

Hon'ble Judges : V.B.GUPTA , SURESH CHANDRA J.

Advocate : K.RADHA RAO

Judgement

1. THE brief facts are that, Complainant - Pappu Mangaratnam, who is petitioner (in R.P. No.29/2012) and respondent (in R.P. No.821/2012)

had filed a Consumer Complaint No. 720/2004, before the District Consumer Disputes Redressal Forum -I, Visakhapatnam (for short, ''District

Forum '') on the allegations that on 01.04.2001 she had deposited a sum of Rs.3,45,000/ - with the Opposite Parties/Respondents (in R.P.

No.29/2012) and Petitioners (in R.P. No.921/2012) for a period of 12 months which was to be repaid with interest @ 24% p.a. on 31.03.2002.

It is further alleged that though the maturity period was over but the opposite parties did not make any payment in spite of several demands made

by her. Thereupon, the complainant issued legal notice dated 20.05.2004.

2. THE opposite parties contested the claim of the complainant and had taken a specific plea that the Fixed Deposit Receipt bearing Sl. No. 020,

dated 1.4.01 was issued consequent on Kum. P. Sujatha, daughter of the complainant herein and late P. Suryanarayana, on her retiring as partner,

after having settled all the accounts and a figure of Rs.3,45,000/ - was arrived at in full and final settlement of the claim due under the Partnership by name, M/s.Sri Saisha Finance & Chits. Late Suryanarayana had dealing with the firm in the name of her daughter Sujatha. There was never any

demand for payment of the same by the complainant. A suitable reply notice was given to the Legal notice dated 20.05.2004. The complaint is

barred by time as the cause of action has arisen, immediately after maturity date and the legal notice was admittedly issued after period of

limitation. In discharge of the FDR, the complainant was paid a sum of Rs.1,00,000/ - by cash on 29.12.2001, another Rs.1,00,000/ - by cash on

23.1.2002 under proper receipts of the even date and another sum of Rs.1,70,000/ - by way of cheque dated 6.3.2002 in the name of the

complainant on Cooperative Bank Limited, Marripalem, Visakhapatnam towards full and final settlement, including an amount of Rs.25,000/ -

interest accrued on the FDR. Though promised to return the FDR, it was not returned. The present complaint is filed only to harass the Opposite

Parties. Hence, the complaint is liable to be dismissed.

District Forum vide order dated 10.06.2005, disposed of the complaint with direction that the complainant can have recourse through the

competent civil court for adjudication, since it involved complicated issues.

3. AGGRIEVED by the order of the District Forum, complainant filed (First Appeal No.8/2008) before Andhra Pradesh State Consumer

Disputes Redressal Commission, Hyderabad (for short, ''State Commission '') which vide its order dated 21.09.2010, remanded the matter to the

District Forum for enquiry and disposal of the complaint.

4. AFTER remand, the District Forum vide order dated 25.03.2011, dismissed the complaint as barred by limitation as well as on merits.

Aggrieved by the order of the District Forum, complainant filed (First Appeal No.349/2011) before the State Commission. The State Commission

vide the impugned order dated 08.11.2011, partly allowed the appeal and directed the opposite parties to pay a sum of Rs.1,75,000/ - to the

complainant together with interest @ 9% p.a. from the date of complaint till its realization and also awarded cost of Rs.5,000/ -. Rest of the claim

of the complainant was dismissed.

5. NOT satisfied with the order of the State Commission, the complainant filed (Revision Petition No. 29/2012) for enhancement, whereas

opposite parties have filed (Revision Petition No. 821/2012) for setting aside the impugned order and for dismissal of the complaint.

6. THE complainant had sent her revision petition by post but never appeared, either in person or through the counsel to argue the matter.

However, she has sent her written arguments in support of her case.

We have gone through the written arguments sent by the complainant and have heard Mrs. K. Radha Rao, learned counsel for the opposite parties

and have perused the record.

7. AS per averments made in the complaint, the cause of action arose on 01.04.2001 when the complainant deposited a sum of Rs.3,45,000/ -

with the opposite parties as fixed deposit for the one year. Finally, it arose when the complainant got issued notice dated 20.05.2004.

8. IN this regard, it would be fruitful to go through the averments made in Para No. 4 of the complaint and the same read as under: -

''''4. The cause of action of the complaint arose on 01.04.2011 when the complaint deposited a sum of Rs.3,45,000/ - with the opposite parties as

fixed deposit for term of a year and when the opposite parties failed to give the amount after the efflux of maturity period and when the complainant

demanded for many times and finally when the she got issued a reply notice on 20.05.2004 and when the complainant issued a rejoinder and all at

2004 for which the opposite party failed to respond and all at Vishakhapatnam with the jurisdiction of this Hon ''ble Forum. ''''

Thus, the main question which arise for consideration in the present case is, as to whether the complaint filed by the complainant before the District

forum was within time or the same is barred by limitation.

9. SECTION 24 -A of the Consumer Protection Act, 1986, deals with such situation and same is reproduced as under ;

''''24 -A. Limitation period : - (1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is

filed within two years from the date on which the cause of action has arisen. (2) Notwithstanding anything contained in sub -section (1) a complaint

may be entertained after the period specified in sub -section (1), if the complainant satisfies the District Forum, the State Commission or the

National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period. Provided that no such

complaint shall be entertained unless the National Commission, the State

Commission or the District Forum, as the case may be, records its

reasons for condoning such delay. ''''

10. THE above provision is clearly peremptory in nature requiring the Consumer Fora to see at the time of entertaining the complaint, whether it

has been filed within the stipulated period of two years from the date of cause of action.

Hon ''ble Apex Court in case of Kandimalla Raghavaiah and Co. versus National Insurance Co. Ltd. and another, 2009 CTJ 951 (Supreme

Court)(CP)took view of the observations made in case State Bank of India vs. B.S. Agricultural Industries, 2009 CTJ 481 (SC) (CP) = JT 2009

(4) SC 191, as under: -

''''12. Recently, in State Bank of India Vs. B.S. Agricultural Industries, 2009 CTJ 481 (SC) (CP) = JT 2009 (4) SC 191, 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 thereunder. 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. ''''

In para No.13, it has been held by the Hon ''ble Supreme Court that;

''''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. 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. ''''

11. NOW coming to the case of the complainant that cause action will arise from the date of service of the legal notice dated 20.5.2004. This plea

is of no help to the complainant. It is well settled that by serving the legal notice or by making representation, the period of limitation cannot be

extended by the petitioner. In this context, reference can be made to Kandimalla Raghavaiah & Co. (supra), in which it has been held;

''''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. ''''

12. THEREFORE , on the face of it, the complaint filed by the complainant before the District Forum was barred by limitation. Moreover, no

application for condonation of delay was filed on behalf of the complainant. Under these circumstances, the complaint being barred by limitation

was not maintainable before the District Forum. The District Forum rightly dismissed the complaint on the point of limitation. The impugned order

of the State Commission setting aside the order of the District Forum with regard to the limitation is not sustainable.

Consequently, the complaint filed by the complainant before the District Forum stands dismissed being barred by limitation. With the result,

Revision Petition No.29/2012 filed by the complainant stands dismissed, whereas Revision Petition No. 821/2012 filed by the Opposite Parties stands allowed. No order as to costs.