(2014) 02 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

Pavel Garg, Proprietor APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 120

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : JOS CHIRAMEL , RAMESH KUMAR , P.K.SETH

Judgement

1. APPELLANT /Complainant has filed the above noted First Appeals against common order dated 21.12.2012 passed by State Consumer Disputes Redressal Commission, Haryana, Panchkula (for short, ''State Commission '') in (Complaint No.03 of 2006) and (Complaint Nos.03 to 20 of 2010) vide which 19 complaints filed by the appellant against Respondent/Opposite Party -Insurance Company were dismissed.

2. SINCE , facts are common and similar question of law is involved, as such these appeals are being disposed of by this common order. On 25.5.2006, appellant had filed 19 complaints before the State Commission, Haryana at Panchkula. It is alleged that, thereafter on the legal advice appellant filed 19 fresh complaints on 16/17.11.2006 before the State Consumer Disputes Redressal Commission, Union Territory, Chandigarh, since the Competent Authority of the respondent to take decision on the claims was at Regional Office at Chandigarh. Thereafter, appellant on 13.3.2007 withdrew 18 complaints pending before the State Commission, Haryana, Panchkula, whereas one complaint mistakenly was left behind and was dismissed for non -prosecution.

3. WITH this background, we have to deal with above appeals. Appellant in the consumer complaints alleged that he was having a business of export of pharmaceutical products out of India and was holding valid licence for carrying on such export business. The petitioner firm purchased a Marine Insurance Open Cover from the respondent, vide Cover Note No.004196 for a sum insured of Rs.10 Crores covering the pharmaceutical products. The premium amount of

Rs.2,00,000/ - was deposited with the respondent. On 3rd May, 2002, appellant signed an agreement with the intermediatory, M/s. Paktiya Trading LLC, Bur Dubai, UAE to provide good export orders. The appellant obtained two orders for supply of pharmaceutical products from M/s. ""OOO "" STROI - CONTROL,St.Petersburg through M/s.Paktiya Trading LLC on 4.11.2002 and 29.1.2003. The pharmaceutical products were dispatched to the buyer as per the terms and conditions of the contract. Total 19 invoices for a total amount of $11,35,578 were issued against the said sales. The present complaint is in respect of invoice No.119 dated 2.1.2003 issued for an amount of $ 43425 to the buyer M/s. ""OOO "" STROI -CONTROL. The dispatch of the consignment was declared/informed to the respondent and premium amount of Rs.3121/ - was also debited to the firm ''s deposit account with the respondent. An amount of Rs.1,46,667/ - was further deposited by the Firm with the respondent on 10.1.2003. The extension of the duration period of the insurance cover by 28 days was made by the respondent on 11.4.2003 for which additional premium of Rs.2553/ - was debited to the appellant firm ''s deposit account with the respondent on 11.4.2003. The consignment was handed over to Multimodal Transport Company for final delivery at consignee ''s place. On 14.5.2003, appellant received an E -mail from the consignee that the consignment in question had not reached the destination. Upon intimation, notice was sent to the M/s. Multimodal Transporter, M/s. Seasky Cargo & Travel Private Limited, New Delhi and forwarder Transporter, Aleborg Oy Vanha, Finland. Intimation was given to the respondent with regard to the notice. On 10.7.2003, appellant informed the respondent for non -delivery of consignments and consignee ''s mail regarding ''Non -locating of M/s. Ingosstrakh Insurance Company Ltd. at given address to whom respondent asked to contact. On 23.7.2003, M/s. Ingosstrakh Insurance Company Ltd. asked through E -mail for certain documents, which were sent on 25.7.2003. The respondent raised some queries and appellant submitted the required documents. Appellant requested the respondent for consignment but the respondent neither gave the consignment nor any payment. Surveyor Mr. J.R.Sharma was appointed by the respondent to investigate the matter. The surveyor demanded FIR from the appellant, but the appellant only gave DDR. The representative of the appellant lodged the police report regarding non -delivery of respective consignments at Police Station, St. Petersburg, Russia, on 11.8.2005 against the transporters. The respondent did not settle the claim of appellant despite various written requests. Thus, there was deficiency in service on the part of the respondent.

4. RESPONDENT contested the complaint and took the plea that, neither FIR was lodged nor non -delivery certificate was produced. The delivery of the consignment had already been taken by the representative of the consignor. Upon intimation regarding loss of consignment, the respondent appointed surveyor, who submitted his report. In his report, surveyor has mentioned that after going through the documents, it was confirmed that they had already received payment in respect of the claim from the guarantor. It is not disputed

that respondent issued cover note to the appellant and received an amount of Rs.2,00,000/ - as premium. Further, as per Multimodal Transport Company ''s documents, the liability of the respondent was upto Kotka Port only. The delivery of the material at the Kotka Port was taken by the authorized representative of the consignor. The appellant/consignor did not supply the required documents to M/s. Atul Kapur & Company in spite of various reminders. There was no delay on the part of the respondent and hence there was no deficiency in service on the part of the respondent. With similar facts, the claim of the appellant with respect to other 18 invoices were also filed.

5. 16 (SIXTEEN) complaints out of eighteen (18) filed before State Commission, Chandigarh (UT) were decided by common judgment dated 01.10.2007, vide which complaints were allowed. However, two complaints i.e. Complaint No.10/2008 with respect to Invoice No.123 dated 02.01.2003 for US$23908 and Complaint No.13/2008 with respect to Invoice No.126 dated 02.01.2003 for US$ 40791 were decided vide common judgment dated 14.01.2009.

6. RESPONDENT challenged the award passed by State Commission, Chandigarh (UT) before this Commission. Vide order dated 15.12.2009 passed by this Commission, appeals of the respondent were allowed and order of the State Commission, Chandigarh (UT) was set aside on the ground that it had no jurisdiction to decide the complaints. However, liberty was granted to the appellant to file complaints before Haryana State Commission, Panchkula within four weeks of the order. Thereafter, State Commission, Haryana, Panchkula vide impugned order dated 21.12.2012, dismissed all the complaints being barred by limitation.

7. HENCE , the present appeals.

8. WE have heard the learned counsel for both the parties and gone through the written synopsis filed by the appellant and have perused the entire record. It is well settled that where a litigant approaches any judicial fora with unclean hands, conceal and suppress material facts and also try to hoodwink the foras, then the petition of such litigant should be thrown out on the threshold itself. Further, if such litigant choose to file the documents on a selective basis and withhold the relevant documents, then on that score also the petition is liable to be dismissed.

9. IT is an admitted fact that appellant initially had filed 19 complaints before the State Commission, Haryana, Panchkula, on 25.5.2006. It is also an admitted fact that during pendency of these complaints, appellant filed another set of the complaints before State Commission, Chandigarh (UT) on 16/17.11.2006. There is nothing on record to show that appellant ever brought to the notice of the State Commission, Chandigarh (UT) that the earlier complaints filed by it before State Commission, Haryana, Panchkula, are already pending. Appellant has cleverly in the present appeals not filed the copies of the second set of the complaints filed before the State Commission, Chandigarh (UT). This goes on to show that the appellant was pursuing two set of the complaints before two

different fora at the same time and that too, after concealing this important and relevant fact from both the State Commissions.

10. IT is case of the appellant that second set of complaints were filed on legal advice before the State Commission, Chandigarh (UT). However, who gave the appellant such legal advice, has nowhere been mentioned nor the name of the legal advisor has been furnished. Be that as it may, as per appellant ''s case it withdrew 18 complaints from the State Commission, Haryana, Panchkula. However, for reasons best known to the appellant, he has not placed on record second set of complaints which were filed before he State Commission, Chandigarh (UT), so -called legal advice nor copy of the order passed by the State Commission, Haryana, Panchkula, permitting the appellant to withdraw those complaints. In view of the facts narrated above, it is manifestly clear that appellant had sought to hoodwink both the State Commissions by concealing the material facts.

11. IN this regard with advantage we quote the following observations made by Hon''ble Supreme Court in M/s. Sam Fine O Chem Limited Vs. Union Bank of India (Civil Appeal No.7141 of 2013) decided on August 19, 2013; ''''In our considered view, the appeal is liable to be dismissed not only because it lacks merit but also because the appellant has deliberately omitted to place on record the most important document, i.e., complaint filed under Section 21 of the Act and without going through the same it is not possible for this Court to record a finding that the appellant falls within the definition of ''consumer '' under Section 2(1)(d) of the Act. ''''

12. ANOTHER aspect to be noted in the present case is that, no ''Forum Hopping '' can be permitted to any litigant meaning thereby a litigant, cannot be allowed to go on filing different petitions/appeals as per his choice in different fora as per his sweet -will. Therefore, on this score also present appeals are liable to be dismissed. The State Commission, in this regard in its impugned order observed; ''''The contention of the complainant with respect to initially filing complaints before Haryana State Commission and simultaneously also filing complaints before U.T. Commission without withdrawing the complaint filed before Haryana State Commission and after filing complaint before U.T. Commission withdrawing the complaint filed before Haryana State Commission with prayer that on account of technical reasons the same were being withdrawn shows that the complainant was not fair in his approach despite being pointed out by opposite party in complaint filed before U.T. Commission that the complainants were pending before Haryana State Commission and still pursuing the same and also keeping in view the observation of Hon''ble National Commission with regard to the conduct of complainant in ''Forum Hopping '' or ''Forum Shopping '' by the complainant, Hon''ble National Commission observed ''''it does not appear to us to be an innocuous or bona fide move and evidently smacks of ''Forum Hopping '' or ''Forum Shopping '' by the complainant ... ... '''' indicate that the complainant was not bonafide in pursuing the case, no relief can be granted. Since the

complainant has been availing remedy in parallel proceedings befoe two State Commission at same time with respect to same claims for same invoices and concealed this fact, therefore, he cannot take the benefit for condonation of delay in filing of these complaints in view of law settled by Hon''ble Supreme Court in case cited as 2011 (3) RCR (Civil), Ramji Pandey and others versus Swaran Kali (SC) wherein it was held that a party pursuing remedy in the complainant are barred by limitation, the same cannot be decided on merits. Support in this regard can be taken from the judgement cited as State Bank of India Vs. B.S. Agricultural Industries, 2009 CTJ 481 (SC) (CP) = JT 2009(4) S C 191, wherein Hon''ble Supreme Court has observed that; ''''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. ''''

Further reference is made to case cited as V.N. Shrikhande (Dr.) Versus Anita Sena Fernandes 2011 CTJ 1 (SUPREME COURT) (CP) wherein Hon''ble Supreme Court has held that; ''''Section 24A(1) contains a negative legislative mandate against admission of a complaint which has been filed after 2 years from the date of accrual of cause of action. In other words, the consumer forums do not have the jurisdiction to entertain a complaint if the same is not filed within 2 years from the date on which the cause of action has arisen. This power is required to be exercised after giving opportunity of hearing to the complainant, who can seek condonation of delay under Section 24A(2) by showing that there was sufficient cause for not filing the complaint within the period prescribed under Section 24A(1). If the complaint is per se barred by time and the complainant does not seek condonation of delay under Section 24A(2), the consumer forums will have no option but to dismiss the same. ''''

The facts of the instant case are fully attracted to case law Ramji Pandey ''s case (Supra) State Bank of India versus B.S. Agricultural Industries (Supra) and V.N. Shrikhande (Dr.) Versus Anita Sena Fernandes (Supra). Hence, these complainants are not maintainable being barred by limitation and therefore cannot be decided on merit in view of the law settled by Hon''ble Supreme Court.

For the reasons recorded above, all these complaints are dismissed being barred by limitation. ''''

13. FURTHER , it would also be pertinent to quote the following observations made by this Commission earlier in this litigation in order dated 15.12.2009; ''''The decision of the Supreme Court is applicable with all force to the facts and circumstance of the present case because as mentioned above the entire cause of action for filing the complaints had arisen under the territorial jurisdiction of Haryana State Commission and no part of the cause of action arose within the territorial jurisdiction of the UT Commission. We have, therefore, no manner of doubt that the UT Commission did not have the territorial jurisdiction to entertain and adjudicate the complaints which it has answered by means of the impugned order. It would appear to us that the complainant had rightly filed the complaint No.5 to 21 of 2006 before the Haryana State Commission, which had the jurisdiction and competence to entertain and adjudicate the complaints. However, it is not easy to understand the reasons why the complainant filed soon thereafter another set of identical complaints based on the same cause of action claiming the same relief before the UT Commission, Chandigarh in November, 2006, when the complaints filed by him were still pending in the Haryana State Commission. It does not appear to us to be an innocuous or bona fide move and evidently smacks of ''Forum Hopping '' or ''Forum Shopping '' by the complainant. No doubt, at a subsequent stage, after the Insurance Company objected to the maintainability of two sets of identical complaints before the two Commission that the complainant filed an application before the Haryana State Commission seeking withdrawal of the said complaints. However, the only ostensible ground set out in the application for withdrawal was '''' ... ...There are some mistakes in the drafting of the complaint and some technical difficulties as a whole. The deponent does not want to pursue this complaint and he wants to withdraw the same '''' and ''''That the deponent will seek his remedy against the respondents before the appropriate forum."

14. SO , ''''Forum Hopping '''' or ''''Forum Shopping '''' is writ large in these cases on behalf of the appellant. In view of the mischievous conduct on the part of the appellant, the present appeals are liable to be thrown away at the threshold. It would be fruitful to quote the observations made by Hon ''ble Supreme Court in Dalip Singh Vs. State of U.P (2010) 2 SCC 114, which are fully applicable to the facts and circumstances of the present case; ''''1. For many centuries Indian Society cherished two basic values of life i.e. ''''satya '''' (truth) and ''''ahinsa '''' (non -violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice -delivery system which was in vague in the pre -Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post -independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of

falsehood, misrepresentation and suppression of facts in the court proceedings. 2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. ''''

15. AGAIN the Hon''ble Apex Court in Ramrameshwari Devi and Ors. Vs. Nirmala Devi and Ors., Civil Appeal Nos.4912 -4913 of 2011 decided on July 4, 2011, has observed ; ''''We are clearly of the view that unless we ensure that wrong -doers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court ''s otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In Swaran Singh Vs. State of Punjab (2000) 5 SCC 668 this Court was constrained to observe that perjury has become a way of life in our courts. It is a typical example how a litigation proceeds and continues and in the end there is a profit for the wrongdoers. Learned Amicus articulated common man ''s general impression about litigation in following words ; ''''Make any false averment, conceal any fact, raise any plea, produce any false document, deny any genuine document, it will successfully stall the litigation, and in any case, delay the matter endlessly. The other party will be coerced into a settlement which will be profitable for him and the probability of the court ordering prosecution for perjury is less than that of meeting with an accident while crossing the road. ''''

16. THUS , there is not an iota of doubt in the present case that the appellant is guilty of withholding the fact that it had simultaneously filed separate set of complaints on the same cause of action before the State Commission, Chandigarh (UT) as well as State Commission, Haryana, (Panchkula) which amounts to ''''Forum Hopping ''''. From what we have stated above, it is clear that the appellant has not approached the fora below with clean hands. Therefore, he is not entitled to be heard on the merit of his grievance.

17. HENCE , for filing these complaints by concealing material facts and misleading the fora below, the appellant is saddled with cost of Rs.25,000/ - (Rupees Twenty Five Thousand only) in each appeal. The appellant is directed to deposit the aforesaid cost in the name of ''Consumer Legal Aid Account '' of this Commission, within four weeks.

18. IN case, appellant fails to deposit the aforesaid costs within the prescribed

period, then he shall also be liable to pay interest @ 9% p.a., till realization. List for compliance on 11.4.2014.