(1990) 11 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

PRABHAT BAG FACTORY APPELLANT

Vs

United India Insurance RESPONDENT

Date of Decision : 13-11-1990

Acts Referred:

Citation : 1991 0 CPC 430 : 1991 2 CPJ 327

Hon'ble Judges : R.N.Mittal , B.L.Anand , Avtar Pennathur J.

Final Decision : Complaint adjourned

Judgement

1. BRIEFLY the facts are the complainant is carrying on the business of manufacturing rexine and cotton coated fabrics bags, file covers, folders, documents cases, etc. He took an insurance policy from United India Insurance Company, defendant, vide Policy No. 4030/57/1/0247/86 for Rs. 2,00,000/- on 31.3.86. It was valid up to 30th March, 1987. On 9th May, 1986, it is alleged that water entered his godown, on account of which, all the goods laying there were damaged.

2. HE reported the incident to the respondent and M.C.D. on the same day for taking action. The premises and the damaged goods were surveyed by M/s R.N. Sharma & Sons, G-28, Cannaught Place, New Delhi on 28.5.1986 and they submitted a report according to which the complainant suffered a loss of Rs. 1,39,130/-. It is further averred that a number of meetings took place between the complainant and the respondent but till now the amount of loss suffered by him has not been paid. It is therefore, prayed that a decree for recovery of Rs. 1,39,130/- alongwith interest @ 24 % per annum be passed in favour of the complainant.

The respondent filed an application dated the 28th June, 1990 inter alia stating that the complaint was not maintainable as the Consumer Protection Act was not in existence at the time when the alleged loss was caused; that policy No. 4030/57/1/0247/86 mentioned in the complaint related to some other goods; that the complainant did not make any report to the police, which was necessary in order to claim the insured amount and that the claim is barred by limitation.

3. THE complainant filed a reply to the application wherein he controverted the allegations of the respondent and pleaded that the claim was maintainable. First question that arises for determination is whether the complaint is maintainable regarding cause of action which arose prior to coming into force of the Act. In order to determine the question it is necessary to refer to the preamble and some of the sections of the Consumer Protection Act. The preamble of the Act provides that the Act has been enacted to provide for better protection of the interests of consumers. Under Section 9, Consumer Disputes Redressal Agencies have been constituted to decide the cases. The Minister of Food & Civil Supply while piloting the Consumer Protection Bill in Lok Sabha observed : "After careful consideration of various ideas, this Consumer Protection Bill, 1986 now the designation given to the Bill is slightly different for redressal of grievances, etc., has been introduced for kind consideration of the House. This Bill is landmark in the filed of socio-economic legislation of the country. This comprehensive Bill is. in addition to and not in replacement of any other law on the subject of Consumer Protection. The Bill enshrines the rights of the consumers to be promoted and protected by the Consumer Protection Councils in the Centre and the States and Redressal machinery at the National, State and District levels. The legislation intends to provide prompt and meaningful remedy for consumer grievances, but its success will depend on effective implementation of its provisions by the Central and State Governments. More than that, there is no hesitation in saying that the success of the legislation would depend on the development of a strong broad-based voluntary consumer movement at the grassroot level. I also take this opportunity to request my brethren in the trade and industry to rise to the occasion and set up consumer redressal cells within their organisations which would minimise consumer complaints and improve their image. Trade and'' industry should not only evolve a Code of Ethics for fair business practices but also implement them in letter and spirit. Now I may briefly summarise the salient features of the Bill. (i) To give speedy redressal to consumer complaints, the Bill provides for setting up of Consumer Disputes Redressal Forum in every District, a Commission at the State level and the National Commission at the Centre. The Forum in the district will have Original Jurisdiction to redress complaints upto a claim amount of Rs. one lakh. The State Commission will have original jurisdiction to settle claims upto an amount of Rs. 10 lakhs. The National Commission can entertain any claim for damages above Rs. 10 lakhs. The State Commission and the National Commission will be vested with appropriate Appellate and Revisionary powers. (ii) x x x x x x x (iii) It shall apply to all goods or classes of services except those which are specifically exempted by notification by a Central Government. (iv) The provisions of the Bill shall be in addition to and not in derogation of any other law for the time being in force. (v) Necessary penal and punitive provisions have been incorporated to ensure that the proposed egislation is effective in protecting consumers. (vi) The complaint can be filed by a consumer or an organisation being a society registered under the Societies Registration Act or a company registered under the Companies Act, representing consumers or by the Central or a State

Government. (vii) x x x x x x x The Hon''ble Members will agree that legislation will meet the objectives of providing speedy and inexpensive redressals to the aggrieved consumers and promote a strong and broad-based voluntary consumer movement in the country. I am sure that this important social and economic legislation will receive support from Hon''ble Members of this House. I would like to add only two more words, that is, that each Indian is a consumer including a producer, a trader or an industrialist. This Bill is pro everyone against none. With these words, I commend the Bill. I move."

The remedies provided to the consumers under the Act are in addition to the remedies provided to them earlier. A new procedure has been evolved to provide relief to the consumers expeditiously and without going into technicalities of procedure. It is well settled that the laws which make a change in procedure are retrospective. The matter has been dealt with by Maxwell on the Interpretation of Statutes (12th Edition) at page 222 as follows : "The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the Courts. No person has a vested right in any course of procedure, but only the right of prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues, and if an Act of Parliament alters that mode of procedure, he can only proceed according to the altered mode. Alteration in the form of procedure are always retrospective, unless there is some good reason or other why they should not be".

It is also well settled that if a statute is passed with the object of protecting the public against some evil or abuse it may be allowed to operate retrospectively, even if by such operation it deprives some person or persons of his vested right [see Sree Bank Ltd. (in liquidation) v. Sarkar Dm Raj & Co., A.I.R. 1966 S.C. 1953]. Consequently, we are of the opinion that the Consumer in whose favour cause of action arises prior to coming into force of the Act, can take benefit of its provisions and file a complaint under it The second question that arises for determination is as whether the complainant has filed the complaint on the basis of correct Insurance Policy or not. The learned Counsel for the complainant has conceded that though in the complaint the complainant has not given correct number of the policy, yet it has filed correct copy of the Insurance Policy with it. We are not inclined to dismiss the complaint on this ground, when the complainant has filed the correct policy with the complaint The third question that requires determination is whether the provisions of Limitation Act are applicable to the complaints under the Act. Section 3 of the Act provides that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being inforce. It is evident from the perusal of the said Section that the provisions of other Acts which are not repugnant to the provisions of the Act are applicable to the complaints.

4. AT this stage it is necessary to peruse the provisions of Limitation Act, 1963, hereinafter referred to as the 1963 Act. The preamble of the said Act is as follows : - "An Act to consolidate and amend the law for the limitation of suits

and other proceedings and for purposes connected therewith". The preamble of the Limitation Act, 1908 was as under : - "Whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts; and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other properties it is hereby enacted as follows". It is evident from a comparison of two preambles that the word "Courts'' in the preamble of 1963 has been omitted. That shows that the application of 1963 Act cannot be said to be confined to proceedings in the Courts only. We are, therefore, of the opinion that the provisions of Limitation Act can be made applicable to Forums other than the Courts. AT this stage it is relevant to know what suit means. The word ''suit'' has been defined in the 1963 Act as follows : "Suit'' does not include an appeal or application".

It is evident from the definition that it is not an exhaustive definition. So it is for the Courts to interpret what the word suit includes. It has been held in Hayatkhan and others v. Mangi Lai and others, A.I.R. 1971 M.P. 140 that the word ''suit'' as contemplated in the provisions of Limitation Act has a wider meaning and includes any legal proceedings commenced by one person against another in order to enforce a Civil Right. We are in respectful agreement with the above said view. In that case the question was whether the proceedings under-Section 110-A of the Motor Vehicle Acts were in the nature of the suit. It was held by the learned Division Bench that such applications fall within the scope of the word ''suit'' as used in Section 6 of the Limitation Act. The Forums constituted under the Act determines Civil Rights between die parties and have all the attributes of a Civil Court. The complainant is, therefore, in the nature of suit. Consequently, we are of the view that the provisions of Limitation Act are applicable to the proceedings under the Act.

5. NOW it is to be seen, whether the complaint is barred by limitation or not. Reference may be made to Article 44, which reads as follows : Description Period of Time from which of Suit. limitation. period begins to run. 44(a) xxx xx (b) On a policy of Three years The date of the insurance when occurance causing the sum insured loss or where the is payable after claim on the policy proof of the loss is denied, either has been given to partly or wholly, received by the the date of such insurers. denial. From a reading of the article it is clear that cause of action in the case of loss arises twice, firstly, from the date of occurence causing the loss and secondly, if claim of the claimant is denied, from the date of denial of whole or part of the claim. The intention of the Legislature is that if the claim is denied, in that situation the claimant can take benefit of that and file the suit within three years from that date, otherwise he is required to file the suit within three years of the date of loss. Keeping in view the above interpretation it is to be found out whether the claim of the complainant has been denied by the Insurance Company, and if so, on what date. The complainant has annexed a copy of the letter dated 8.10.87 of the Insurance Company in which the claim made by the complainant has been denied. It is stated therein that in terms of the policy his claim was not payable. In our view the cause of action arises to the

complainant from that date. The complaint was filed in March, 1990. Thus, it is within limitation. Therefore, it cannot be dismissed on the ground of limitation. The complaint is adjourned to 4.12.90 for the evidence of the complainant by way of affidavits. Complaint adjourned. _____________

