(2019) 05 KL CK 0013

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 14736 Of 2015

Regional Manager APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 22-05-2019

Acts Referred:

Consumer Protection Act, 1986 — Section 17, 19, 21, 24A
Motor Vehicles Act, 1988 — Section 51(5)
Constitution Of India, 1950 — Article 226

Citation : (2019) 05 KL CK 0013

Hon'ble Judges : V.G. Arun, J

Bench : Single Bench

Advocate : Varghese C. Kuriakose, P.J. Jose, Babu Cherukara, Pramod Kumar

Final Decision : Dismissed

Judgement

1. The writ petition is filed on behalf of the M/s.IndusInd Bank (hereinafter called 'the Bank'), aggrieved by Exts.P7 and P8 orders issued by the District Consumer Disputes Redressal Forum (CDRF), Alappuzha and the Kerala State Consumer Disputes Redressal Commission (CDRC) respectively. The short facts leading up to the writ petition are as follows:

The 5th respondent had purchased an autorikshaw bearing registration No.KL-32-5716 registered in the name of one Devassia John in an auction conducted by the Bank on 8.2.2008 by paying an amount of Rs.1,02,000/- . The vehicle had been put in auction by the Bank consequent to the default committed by Devassia John in repaying the loan he had availed from the Bank for purchasing the autorikshaw. Despite purchase by the 5 th respondent, the registration of the autorikshaw continued in the name of Devassia John and was not transferred to the 5th respondent. As repeated requests and even lawyer notices did not yield any positive result, or even response, from the officials of the Bank, the 5th respondent filed a criminal complaint before the police followed by a private complaint before the jurisdictional magistrate court. Thereafter, the

5th respondent filed Ext.P4 complaint before the CDRF, Alappuzha, seeking the following reliefs:-

"(a) to direct the opposite parties to return back the sum of Rs. 1,02,000/- to the complainant with 18% interest from 08-02-2008 ie, the date on which the vehicle was sold by the opposite parties to the complainant and the above stated amount was collected and to take back the vehicle.

(b) to direct the opposite parties to pay a sum of Rs. 5,00,000- (Rupees Five Lakhs only) as compensation for the loss of income due to the complainant not able to operate the vehicle since 5 years due to lack of proper records with him which had to be arranged by the opposite parties as per the terms and conditions of sale of the above stated vehicle which the opposite parties have not done till date to the complainant.

c) to direct the opposite parties to pay a sum of Rs 1,00,000/- (Rupees One lakh) as damages for the mental agony suffered by the complainant."

2. On receipt of notice in the complaint, appearance was entered on behalf of the Bank and thereafter, Ext.P5 interlocutory application filed, seeking dismissal of the complaint on the ground that the complaint was filed way beyond the time limit of two years prescribed under Section 24A of the Consumer Protection Act, 1986. In the interlocutory application, it was submitted that Ext.P4 complaint was filed only on 13.3.2013 alleging deficiency with respect to transfer of the autorikshaw purchased by the 5th respondent in the auction conducted on 8.2.2008. That, even though the 5th respondent had sent a legal notice on 18.2.2010, calling upon the petitioners to transfer the ownership of the said vehicle to his name, the complaint was filed beyond two years of the date on which the auction was conducted and even the date on which the legal notice was sent. The 5th respondent submitted Ext.P6 objection contending that insofar as the petitioners had failed to transfer the registration of the vehicle to his name, the cause of action continued and was very much alive, even as on the date on which the complaint was filed. It was therefore contended that the complaint was filed well within the time limit stipulated under Section 24A of the Consumer Protection Act. By Ext.P7 order, the CDRF, Alappuzha upheld the contention of the 5th respondent and held that in view of the continuing cause of action, the complaint is not barred by limitation and was hence, maintainable. The Bank challenged Ext.P7 order by filing revision petition before the CDRC under Section 17 of the Consumer Protection Act. By Ext.P8 order, the State Commission dismissed the revision petition upholding the finding of the CDRF, that there was continuing cause of action as far as the 5th respondent is concerned and hence the complaint was not barred by limitation.

3. The main challenge in this writ petition is against the finding of the CDRF as confirmed by the CDRC that, there being a continuous cause of action, the complaint was not time barred and was hence maintainable. In support of the challenge, reliance is placed on Section 24A of the Consumer Protection Act, as

also the pleading in Ext.P4 complaint with respect to the cause of action for filing the complaint.

4. Before delving upon the merits of the challenge, the question to be considered is regarding the maintainability of the writ petition in view of efficacious alternative remedy by way of appeal available to the petitioners under Sections 19 and 21 of the Act. Undoubtedly, as against Ext.P8 order of the State Commission, an appeal is provided before the National Commission (NCDRC) under Sections 19 and 21 of the Act. The legality of entertaining writ petitions against the orders of the State Commission, in spite of availability of provision for filing appeal before the National Commission was considered by the Apex Court in Nivedita Sharma v. Cellular Operators Association of India and Others [(2011) 14 SCC 337]. In Nivedita Sharma's case, the Apex Court found fault with the Division Bench of the High Court of Delhi for having entertained the writ petition filed by the Cellular Operators Association against an order passed by the State Consumer Disputes Redressal Commission, Delhi. As a matter of fact, the limit of jurisdiction and exercise of discretion by the High Courts, while entertaining petitions under Article 226 was considered by the Honourable Supreme Court in a plethora of decisions, including Thansingh v. Superintendent of Taxes [AIR 1964 SC 1419], wherein it was held as follows:

"It is of course true that the jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restriction except the territorial restrictions which are expressly provided in the articles. But the exercise of jurisdiction is discretionary; it is not exercise merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitation. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily, the court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy which without being unduly onerous, provides an equally efficacious remedy."

5. This Court in Hajumma and others v. Bharat Plywood and Timber Products (P) Ltd and others [1964 KLJ 154] held that proceedings under Article 226 of the Constitution are not substitutes for ordinary remedies. The position, as held by the Apex Court as well as this Court hold good even today. No mitigating circumstances warranting interference under Article 226, deviating from the procedure prescribed under Sections 19 and 21 of the Consumer Protection Act having been made out in the writ petition, I find that the writ petition is not maintainable.

6. The only other question to be considered is as to whether the impugned orders are so perverse and contrary to the statutory provisions that they warrant interference in exercise of power under Article 226. For this purpose, the sole issue to be considered is as to whether the 5 th respondent had a continuing cause of action, which justified the finding of the CDRF and the CDRC that the

complaint was filed within the period of limitation prescribed under Section 24 A of the Consumer Protection Act. It is not in dispute that even today, the petitioners have not been able to transfer the registration of the vehicle purchased by the 5th respondent to his name. In fact, the Bank had approached this Court by filing W.P.(C) No.21257 of 2010 seeking expeditious decision on an application filed by the Bank for the issue of a fresh registration certificate under Section 51 (5) of the Motor Vehicles Act, 1988. An application under Section 51 (5) of the M.V.Act is filed by the person whose name has been specified in the certificate of registration as the person with whom the registered owner had entered into an agreement and who has taken possession of the vehicle from the registered owner owing to the default of the registered owner and on the registered owner refusing to deliver the certificate of registration or having absconded. On receipt of an application under Section 51 (5), the authority may, after giving the registered owner an opportunity to make such representation as he may wish to make and notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement. W.P.(C) No.21257 of 2010 filed by the Bank was disposed by this Court under Ext.P3 judgment, directing the registering authority to consider the application submitted by the petitioner Bank in accordance with law and to pass appropriate orders thereon as expeditiously as possible, and at any rate, within a period of six weeks from the date of receipt of a copy of the judgment, after issuing notice to and hearing all interested parties including the borrower, Sri.Devassia John. Surprisingly, the 5th respondent is not a party to Ext.P3 judgment and no mention regarding purchase of autorikshaw by the 5th respondent is seen to have been made in the writ petition filed by the Bank. The petitioners do not have a case that they had taken necessary steps for change of name in the registration certificate and had informed the 5th respondent about such steps, pursuant to Ext.P3 judgment. As such, the fact remains that the registration of the vehicle was not transferred in the name of the 5th respondent nor even necessary steps in that regard taken by the petitioners till the date of filing of the complaint. Hence, the finding of the CDRF, as confirmed by the State Commission, that there was continuing cause of action, due to the default of the Bank in getting registration certificate transferred in the name of the 5th respondent, cannot be termed as perverse or patently illegal. The following decisions of the Honourable Supreme Court lend support to the above finding. In Meerut Development Authority v. MukeshappellantKumrGupta [Laws (SC) 2012 - 584] , the challenge by the against the order passed by the National Consumer Disputes Redressal Commission on the ground that the cause of action of the appellant was hopelessly time barred, was rejected. The contention of the appellant therein was that the cause of action of the respondent/complainant before the Consumer Commission, had arisen in 1992, whereas the complaint was filed only in the year 2009. The dispute therein was regarding failure on the part of the appellant, an instrumentality of State, to provide the respondent with a plot of land for the construction of his residence, the price of which was collected from the respondent. While dismissing the appeal, the Honourable Supreme Court held as follows:-

"In our view, the complaint filed by the respondent who had patiently waited for 27 years with the hope that he will get the plot was rightly not dismissed by the District Forum as barred by limitation because he had a recurring cause for filling a

7. In Transport Corporation of India Ltd v. Veljan Hydrair Ltd [(2007) 3 SCC 142], the Honourable Supreme Court considered an appeal filed against an order of the National Consumer Disputes Redressal Commission, affirming the order passed by Andhra Pradesh State Consumercomplaintinthematterofnon-deliveryofpossessionoftheplot."

Redressal Commission. The State Commission had allowed a complaint by the consignee/complainant, holding that failure of the appellant to deliver the consignment amounted to deficiency of service. Therein also the main challenge was on the ground that the complaint was barred by limitation under Section 24 A, on the allegation that the cause of action arose on 8.11.1996, whereas the complaint was filed only on 5.7.2001. Repelling the contention, the Apex Court held as follows: "11. Section 24-A of the Consumer Protection Act, 1986 provides that neither the District Forum nor the State Commission nor the National Commission shall admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. The term "cause of action" is of wide import and 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. It refers to all circumstances or bundle of facts which if proved or admitted entitle the plaintiff (complainant) to the relief prayed for. In the context of limitation with reference to a contract for carriage of goods, the date of cause of action may refer to the date on which the goods are entrusted, date of issue of consignment note, the date stipulated for delivery, the date of delivery, the date of refusal to deliver, the date of intimation of carrier's request to wait for delivery as the goods are being traced, the date of intimation of loss of goods, or the date of acknowledgment of liability.

12. In this case, the consignment was entrusted to the appellant on 10-5-1996. On 8-11-1996, the respondent instructed the appellant to rebook the consignment. On 8-8-1998, 13-10-1998, 7-11-1998 and 8-12-1998, the respondent demanded delivery. By letters dated 15-12-1998, 21-6-1999 and 3-7-1999, the appellant assured the respondent that it was in the process of locating the goods and requested the respondent to wait and assured that it will inform about the status. Thereafter the appellant did not inform the status. The complaint has been filed within two years from the date of receipt of the said letter dated 3-7-1999 and is in time. In fact in view of the request of the appellant to the respondent to wait till the consignment was traced, the limitation for an action would not start to run until there was a communication from the

appellant, either informing about the loss or expressing its inability to deliver or refusal to deliver, or until the respondent makes a demand for delivery or payment of value of the consignment after waiting for a reasonable period and there is non-compliance. Therefore, the complaint is not barred under Section8.In24-A of the CP Act."

National Insurance Company Ltd v. Hindustan Safety Glass Wo ks Ltd [(2017) 5 SCC 776], the insured company had approached the National Commission aggrieved by the refusal on the part of the insurer to indemnify the loss sustained by the company for the damage caused to the raw materials, stocks and goods, furniture etc due to incessant rains. Yet again, repelling the challenge on the ground of delay, against the order of the National Commission, awarding compensation and cost to the insured, , the Apex Court held as follows:- "18. In our opinion, in a dispute concerning, it is necessary for the courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-a-vis the supplier of services of goods. It is to overcome this disadvantage that a beneficent legislation in the form of the Consumer Protection Act, 1986 was enacted by Parliament. The provision of limitation in the Act cannot be strictly construed to disadvantage a consumer in a case where a supplier of goods or services itself is instrumental in causing a delay in the settlement of the consumer's claim. That being so, we have no hesitation in coming to the conclusion that the National Commission was quite right in rejecting the contention of National Insurance in this regard."

9. As far as the instant case is concerned, there is no dispute that the 5th respondent had purchased the autorickshaw in an auction conducted by the Bank on 8.2.2008. The Bank, in a bid to transfer the registration of the vehicle, had approached this Court and obtained Ext.P3 judgment. In the meanwhile, the 5th respondent had caused Exts.P9 and P10 legal notices to be issued to the Bank demanding transfer of the vehicle in his name. Neither reply to the notices, nor any effort to comply with the demand of the 5th respondent was affected by the Bank or its officials. It was in the above factual background that the CDRF and the CDRC entered a finding that the cause of action of the 5th respondent remained live and as such the complaint was not barred by limitation.

10. Recently, the Honourable Apex Court, in Vibha Bakshi Gokhale and another v. M/s.Gruhashilp Constructions and others [Civil Appeal No.4767 of 2019], had occasion to consider the justifiability of orders passed by the NCDRC, dismissing appeals/complaints on the ground of the delay. It was observed by the Apex Court as follows:

"4. We have also been repeatedly observing that marginal delays are not being condoned by the NCDRC on the ground that the Consumer Protection Act 1986 stipulates a period within which a consumer complaint has to be disposed of. Though the Act stipulates a period for disposing of a consumer complaint, it is also a sobering reflection that complaints cannot be disposed of due to non-availability of resources and infrastructure. In this background, it is harsh to penalise a litigant for marginal delays that may occur in thebonajudicialfideprocess. The consumer fora should bear this in mind so that the ends of justice are not defeated."

For the aforementioned reasons, I find no merit in the writ petition and consequently, the writ petition is dismissed.

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 EXT.P1: TRUE PHOTOSTAT COPY OF THE QUOTATION DATED 7.2.2008 SUBMITTED BY THE 5TH RESPONDENT

EXHIBIT P2 EXT.P2: TRUE PHOTOSTAT COPY OF THE INDEMNITY BOND DATED 8.2.2008 EXECUTED BY THE 5TH RESPONDENT

EXHIBIT P3 EXT.P3: TRUE PHOTOSTAT COPY OF THE JUDGMENT DATED 21.7.2010 IN WPC NO.21257/2010

EXHIBIT P4 EXT.P4: TRUE PHOTOSTAT COPY OF COMPLAINT BEFORE THE CONSUMER DISTRICT REDRESSAL FORUM, ALAPPUZHA

EXHIBIT P5 EXT.P5: TRUE PHOTOSTAT COPY OF PETITION AS IA NO.65/2013 IN CC NO.100/2013

EXHIBIT P6 EXT.P6: TRUE PHOTOSTAT COPY OF OBJECTION FILED BY THE 5TH RESPONDENT IN IA NO.65/2013 IN CC NO,. 100/2013

EXHIBIT P7 EXT.P7: TRUE PHOTOSTAT COPY OF ORDER DATED 13.3.2013 IN IA NO.65/2013 IN CC NO.100/2013 ON THE FILES OF 3RD RESPONDENT

EXHIBIT P8 EXT.P8: TRUE PHOTOSTAT COPY OF ORDER DATED 7.1.2015 IN RP NO.17/2014 ON THE FILES OF THE 2ND RESPONDENT

Exhibit P9 TRUE COPY OF THE LAWYER NOTICE DATED 18.2.2010 ISSUED BY M.K.CHANDRAMOHAN DAS, ADVOCATE TO THE BRANCH MANAGER,

EXHIBIT P10 INDUSIND BANK, ALAPPUZHA. TRUE COPY OF THE LAWYER NOTICE DATED 8.6.2010.

