(2012) 07 NCDRC CK 0128

In the National Consumer Disputes Redressal Commission

Sunil Kumar S/O Late Lakhan Ram APPELLANT

Vs

B M Sahara India Commercial Corporation Ltd RESPONDENT

Date of Decision : 11-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 350 : 2012 3 CPJ 383 : 2012 3 CPR 378

Hon'ble Judges : V.B.Gupta , Vinay Kumar J.

Advocate : Sanjeev Kumar , Rajeev Singh

Judgement

1. IN this revision, there is challenge to order dated 25.08.2011, passed by Jharkhand State Consumer Disputes Redressal Commission, Ranchi (for short as ''State Commission''). Vide impugned order, appeal filed by Respondent/ OP was accepted and complaint of petitioner/complainant was dismissed.

2. PETITIONER''s case is that her mother had purchased a bond of Rs.10, 000/- from respondent on 9.12.2000 and he was the nominee. His mother died on 29.10.2003. Petitioner being the nominee, claimed from respondent death help which is provided without any interest, as per terms and conditions of the bond. However, respondent failed and neglected the matter of entitlement for death help facility. At the time of death, bond-holder was not suffering from any chronic disease within three years from her death. Accordingly, complaint was filed before District Consumer Disputes Redressal Forum, Dhanbad (for short as "District Forum").

3. IN its written statement, respondent took the plea that petitioner had received the payment of disputed bond on 6.8.2004, as full and final payment. The cause of action arose on 6.8.2004, whereas complaint was filed on 7.5.2008, hence the complaint filed before District Forum was time barred.

4. DISTRICT Forum, vide its judgment 17.06.2009, allowed the complaint and passed the following directions; " Accordingly, OP is directed to pay arrear of death help as per terms and conditions from the date of death of admissible within 30 days from the date of order i.e. 17.6.2009. It is also directed to OP to

continue death help and OP will pay Rs.10,000/- (Ten thousand) a compensation for harassment and mental agony and Rs.2,000/- (Two thousand) as litigation costs to the complainant within 30 days from the date of order i.e. 17.06.2009. With the above direction, the case is allowed in part and finally disposed off ".

5. AGGRIEVED by the order of District Forum, respondent filed an appeal before the State Commission, which allowed the same vide its impugned order and complaint of the petitioner was dismissed.

6. THIS is how the matter has reached before this Commission.

7. WE have learned counsel for the petitioner and have gone through the record.

8. IT is well settled that a litigant must approach judicial forum with clean hands and should not conceal the material facts. If any litigant approaches the judicial forum by concealing the material facts, then he is not entitled to any relief under equity and such petitions should be thrown away at the threshold.

9. PETITIONER in the present case, after having received the bond amount as far as back in the year 2004, concealed this material fact from the District Forum. Thus, due to concealment of material facts, present petition is not maintainable and is liable to be dismissed on this ground alone.

10. FURTHER, as per petitioner''s own case, cause of action in this case has arisen on 06.08.2004. However, the complaint was filed before the District Forum only in the year 2008. Thus, on the face of it, the complaint is barred by limitation. We are really surprised as to how District Forum admitted a complaint which was time barred.

11. STATE Commission in this regard in its impugned order observed; "5. We have heard both side at length and perused the written arguments with admitted bond and money receipts. The clause of death help mentions the amount if any received by the nominee was to be paid back with interest after the bond period. No such petition was brought on the record. The payment of Rs.10,000/- to the complainant is not disputed by him. It is also found that the complaint was lodged after four years of such payment. 6. Shri Tandon relied up on a decision by this Commission in FA No. 26/06, decided on 31.08.08 by which any claim for such death help after more than two years was held barred u/s 24 A of CP Act, 1986. We find ourselves in conformity with the above decision. 7. Having considered the above stated facts and circumstances we find that the complaint was filed without any valid grounds. The complaint has not been able to show the deficiency alleged against the appellant. Accordingly, we find that the impugned order cannot be sustained. In the result this appeal be allowed and impugned order is here by set aside but without cost. The complaint case No. 188/08 be dismissed."

12. IT is well settled principle of law that any relief can be claimed under the Consumer Protection Act, 1986 (for short as ''Act'') within two years from the date on which the cause of action accrues.

13. SECTION 24-A of the Act, deals with this situation which 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 orthe 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."

14. 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.

15. 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 v. 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; " 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."

16. THUS, complaint is hopelessly barred by limitation and same is liable to be dismissed on this ground.

17. EVEN on merits, we find that there is no infirmity or illegality in the impugned order. Since, petitioner has concealed the material facts, we dismiss this Petition with costs of Rs.5,000/- (Rupees Five Thousand only)

18. PETITIONER is directed to deposit the costs of Rs.5,000/-by way of demand draft, in the name of "Consumer Legal Aid Account" of this Commission, within four weeks from today.

19. IN case, petitioner fails to deposit the said costs within the prescribed period, then he shall also be liable to pay interest @ 9% p.a., till realization.

20. PENDING application stands disposed off.

21. LIST on 24.8.2012 for compliance.

