

(2011) 12 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

UNITED INDIA INSURANCE CO LTD

APPELLANT

Vs

Aristo Exports Pvt Ltd

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Citation : 2012 1 CPJ 207

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Final Decision : Revision Petition allowed.

Judgement

1. IN this revision petition there is challenge to order dated 11.1.2011 passed by West Bengal State Consumer Disputes Redressal Commission, Kolkata (for short "State Commission").
2. BRIEF facts giving rise to present revision petition are that respondent/complainant had obtained a standard fire and special peril policy insuring its plywood factory building, plant and machinery for the period of 20.9.2001 to 19.9.2002 for Rs. 25,00,000.
3. RESPONDENT vide letter dated 7.5.2002, informed the petitioner that in the night of 6.5.2002 due to heavy storm and cyclone their factory building/shed collapsed as a result of which they suffered losses.
4. THE Investigator appointed by petitioner submitted a report dated 6.1.2003, stating that there was no storm on the night of 6/7.5.2002 and building had collapsed on its own, as the same was lying without any attention in a state of disrepair since 1990. Petitioner vide letter dated 22.1.2003, repudiated the claim of the respondent on the ground that there was no natural calamity on 6.5.2002, therefore, the damage occurred did not come under the purview of standard fire and special peril policy.
5. AGAINST repudiation of the claim, respondent filed a Writ Petition before the High Court at Kolkata (being W.P. No. 1920 of 2004).
6. THEREAFTER, petitioner vide letter dated 25.10.2004, informed the

respondent that his claim was examined by the Grievance Committee and they found no reason to interfere with the decision of repudiation communicated to him.

7. RESPONDENT withdrew the writ petition stating that they do not want to prosecute the same. The High Court, vide its order dated, 19.2.2010 dismissed the writ petition for non-prosecution.

8. THEREAFTER, respondent filed a complaint before the State Commission at Kolkata on 16.8.2010. Respondent also filed an application seeking condonation of delay on the ground that the respondent was prosecuting his case in a wrong Forum for the period 12.10.2004 to 19.2.2010.

9. PETITIONER filed written objection to the application seeking condonation of delay.

10. THE State Commission, vide impugned order, condoned the delay in filing of the complaint.

11. IT is contended by learned Counsel for the petitioner that in the present case, period of limitation of two years started from the date of repudiation i.e. 22.1.2003; and respondent in order to maintain a consumer complaint ought to have filed the same on or before 21.1.2005. However, the complaint filed by respondent on 16.8.2010, is barred by delay of almost five years seven months.

12. IT is further contended that, while dismissing the writ petition for non-prosecution, the High Court did not grant the respondent any liberty to file the consumer complaint, after expiry of the period of limitation by condoning the delay nor the respondent sought any such liberty from the High Court.

13. OTHER argument advanced by learned Counsel is that, it is not the case of respondent that High Court did not have jurisdiction to entertain the writ petition and, therefore, there is no question of applicability of the provisions of Section 14 of the Limitation Act, 1963 (for short as "Limitation Act") in this case. Even, otherwise, after dismissal of the writ petition, respondent filed the complaint after about six months, for which no explanation whatsoever has been given in the application seeking condonation of delay filed. As such the impugned order is liable to be set aside.

14. ON the other hand, it is contended by learned Counsel for the respondent that respondent suffered loss and damages due to the subsistence of a valid insurance policy, as insured property was extensively damaged due to heavy storm and rain.

15. IT is further contended that petitioner vide letter dated 15.4.2004 have informed the respondent that his claim has been approved by Competent Authority and respondent was asked to contact Divisional No. VIII for payment of the claim. In spite thereof the payment was not released by the Divisional Office. Thereafter, respondent sought legal advice and lawyer advised the respondent to

file writ petition under Article 225 of the Constitution of India before the High Court and accordingly the same was filed in the year 2004. Since, the writ petition remained pending in the High Court for several years, thereafter respondent sought further legal advice and was told that the Court was not the appropriate Forum since the matter involves disputed question of facts arising out of a private contract and the appropriate Forum would be the Consumer Forum/Commission.

16. UNDER these circumstances, the writ petition was withdrawn as not pressed and thereafter, petitioner filed the complaint before the State Commission along with application for condonation of delay. The State Commission rightly condoned the delay in filing of the complaint before it. Further, learned Counsel has sought shelter under Section 14 of the Limitation Act. In support of its contention, Counsel has relied upon the following judgments: (i) Surajbhan v. M/s. Sadul Textiles, AIR 1988 Raj. 164; (ii) Life Insurance Corporation of India and Others v. Smt. Asha Goel and Another, I (2001) SLT 89=AIR 2001 SC 549; (iii) Life Insurance Corporation of India and Others v. Smt. Kiran Sinha, AIR 1985 SC 1265; and (iv) Phoolchand (deceased by L.Rs.) and Others v. Shankerlal and Others, AIR 1995 MP 222.

17. SHORT question which arises for consideration is as to whether, the State Commission was justified in condoning the period which was spent by the respondent in pursuing its litigation by way of writ petition in the High Court.

18. RELEVANT provision of Section 14 of the Limitation Act, read as under: "Section 14. Exclusion of time of proceeding bona fide in Court without jurisdiction-(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it." (3) xxx xxx xxx

19. APEX Court while interpreting Section 14 of the Limitation Act. in Ghasi Ram and Ors. v. Chait Ram Saini and Ors., VI (1998) SLT 293=III (1998) CLT 88 (SC)=(1998) 6 SCC 200, has held: "5. A perusal of the aforesaid provision would show that in order to get the benefit of Sub-section (1) of Section 14 of the Act, the party seeking its benefit must fulfil the following four conditions: (1) The plaintiff who filed the suit had been prosecuting another civil proceeding with due diligence. (2) The earlier proceeding resorted to by the plaintiff was based on the same cause of action. (3) The former proceeding was prosecuted by the plaintiff

in good faith in a Court. (4) The Court, due to the defect of jurisdiction or other cause of a like nature, was unable to entertain such proceeding."

20. THUS, it is well settled that the real purpose of Section 14 of the Limitation Act, is to extend the period of limitation prescribed by adding the period during which the suit or other proceeding has been prosecuted with due diligence and in good faith in a Court which either on account of defect of jurisdiction or other cause of a like nature, was unable to entertain it.

21. THIS section does not help a person who is guilty of negligence, laches or inaction. The test of good faith is real and bona fide belief of the plaintiff that he could institute the proceedings in the Court where he instituted it.

22. THE question material for the purposes of Section 14 of the Limitation Act, is whether given due care and attention, the plaintiff could have acted otherwise than he did. The burden of proving his case within the section lies on the plaintiff. Where he fails to satisfy this initial burden, the burden does not shift to the defendant to show the contrary.

23. IN *Suppiah Chettiar v. Chinnathurai*, AIR 1957 Mad. 216, where a proceeding under the Workmen's Compensation Act was withdrawn voluntarily by an applicant with the permission of the Commissioner and subsequently a civil suit was brought, it was held that: "Section 14 of the Limitation Act could not be invoked to save the suit from the bar of limitation."

24. IN the complaint filed before the State Commission, respondent has taken the plea that under the compelling circumstances and having been advised by their Advocate "Garodia Associates" respondent filed a writ application before the Hon"ble High Court at Kolkata in the end part of 2004 praying for reliefs inter alia on the grounds as stated therein.

25. FURTHER, in the complaint respondent stated that they had sent a legal notice dated 24.8.2009 through its Advocate Mr. Dikshabrata Chaudhuri to the Regional Manager of the petitioner with a request for payment of claim within seven days from the date of receipt thereof. But even after acknowledgement of the said notice on 25.8.2009, petitioner remained silent.

26. IT is also stated in the complaint that respondent was advised by its Advocate Mr. D.B. Chaudhuri to withdraw the writ from the High Court at Kolkata and then to file the complaint case in the State Commission at Kolkata for appropriate relief.

27. IN the entire complaint, it has nowhere stated that as to when the respondent was advised by his Advocate D.B. Chaudhuri to withdraw the writ petition from the High Court and what was the reason for withdrawal. Moreover, on the one hand, respondent was pursuing the writ petition in the High Court since 2004, while on the other hand, in 2009 he served a legal notice asking the petitioner for payment of the claim within seven days. This shows that respondent was pursuing its writ petition vigorously in the High Court and there

is nothing on record to show as to when respondent was given legal advice that his writ petition is not maintainable.

28. UNDER these circumstances, a valuable right has accrued to the petitioner when the complaint was filed in the State Commission after a period of more than five years after the cause of action arose in this case. It is nowhere alleged in the entire complaint filed before the State Commission, that respondent was under some bona fide mistake while he was pursuing the writ petition in the High Court.

29. IN the present case, as apparent from the record, petitioner has withdrawn the civil writ petition filed by him in the High Court unconditionally. Relevant portion of the order read as under: "Date 19.2.2010 Learned Counsel for the petitioners submits that the petitioners do not want to proceed with the writ petition. Accordingly, the writ petition stands dismissed for non-prosecution."

30. NOW, coming to the question as to whether same relief was sought in the writ petition filed by the respondent, which he is now seeking in the complaint before the State Commission. In the writ petition, respondent sought the following reliefs: (a) A writ of and/or in the nature of Mandamus do issue directing the respondents and each of them, their servants, agents and assigns to forthwith disburse the claim of your petitioner of Rs. 25.00 lakh under the said policy No. 030800/11/1/00571; (b) A writ of and/or in the nature of Mandamus do issue directing the respondent authorities to disburse the claim of Rs. 25.00 lakh to your petitioner in accordance with the directions so given under the letter dated 15th April, 2004 forthwith; (c) A writ of and/or in the nature of Certiorari do issue directing the respondents to forthwith transmit the records of the instant case so that the same may be enquired and necessary directions by this Hon'ble Court and conscionable justice may be done. (d) Rule Nisi in terms of the prayers (a), (b) and (c) above; (e) Interim order do issue directing the respondents and each of them, their men, agents, servants and assigns, (i) to forthwith disburse the claim of your petitioner of Rs. 25.00 lakh under the said policy No. 030800/11/1/00571; (ii) to disburse the claim of Rs. 25.00 lakh to your petitioner in accordance with the directions so given under the letter dated 15 April, 2004 forthwith; (f) Ad-interim order in terms of prayers above; (g) Costs of and/or incidental to this application be borne by the respondents; (h) Such further order or orders be passed and/or direction or direction be given as this Hon'ble Court may deem fit and proper."

31. WHEREAS, in the complaint filed before the State Commission respondent has sought the following reliefs: (a) A decree for Rs. 25,00,000 (Rs. 25 lakh) against the opposite party No. 1 in favour of the complainant on account of total loss of the insured goods due to cyclonic storm and rain. (b) A decree for Rs. 1,00,000 as compensation for tremendous harassment, inordinate delay in settlement of claim and serious monetary loss in the business. (c) Interest @ 12% p.a. from the date of lodging the claim till filing the instant complaint petition. (d) Interest @ 12% p.a. from the date of filing the complaint petition till

realization. (e) Other relief/reliefs which the complainant is entitled to in law and in equity."

32. IT is apparent from the above quoted reliefs that respondent is now seeking additional reliefs in the complaint namely: (i) a decree for Rs. 1,00,000 as compensation for tremendous harassment, inordinate delay in settlement of claim and serious monetary loss in the business; (ii) interest @ 12% p.a. from the date of lodging the claim till filing the instant complaint petition; and (iii) interest @ 12% p.a. from the date of filing the complaint petition till realization.

33. SINCE, reliefs claimed in the writ petition and reliefs claimed in the complaint filed under the Consumer Protection Act. 1986 are different, the respondent cannot get benefit of Section 14 of the Limitation Act in such circumstances. Moreover, the writ petition filed by the respondent in Kolkata High Court, was withdrawn unconditionally.

34. ADMITTEDLY, there was no technical or legal defect in the writ petition nor any permission of the Court was sought. Under these circumstances, respondent cannot get the benefit of Section 14 of the Limitation Act, seeking condonation of delay. Moreover, valuable right has accrued in the favour of petitioner since, complaint filed before the State Commission was hopelessly time barred.

35. THE judgments cited by learned Counsel for the respondent are not applicable to the facts of the present case at all, as in the case in hand, admittedly, the writ was withdrawn unconditionally nor there was any technical defect in the writ petition.

36. THE impugned order passed by the State Commission under these circumstances is not legally sustainable and the same is liable to be set aside.

37. ACCORDINGLY, we accept this revision petition filed by the petitioner and set aside the impugned order of the State Commission. Consequently, the complaint of the respondent stands dismissed.

38. THERE shall be no order as to costs. Revision Petition allowed.