

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 1130 OF 2016

(Against the Order dated 08/08/2016 in Complaint No. 04/2016 of the State Commission
Chhattisgarh)

1. M/S. YASH AGENCIES

THROUGH ITS PROPRIETOR AMIT BULANI S/O. LATE
SHRI MANOHARLAL BULANI, H NO 535/1 BEHIND B.P.
PUJARI SCHOOL RAJA TALAB

RAIPUR

CG

.....Appellant(s)

Versus

1. NEW INDIA ASSURANCE CO. LTD. & ANR.

THROUGH THEIR DEVISION MANAGER, DIVISIONAL
OFFICE NO 2, LIC BUILDING PANDARI TEHSIL AND
DISTRICT RAIPUR

CG

2. UNION BANK OF INDIA

THROUGH BRANCH MANAGER, PANDRI BARNCH,
BHATIA COMPLEX, MAIN ROAD, PANDRI, TEHSIL AND
DISTT.RAIPUR [C.G]

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER
HON'BLE DR. SADHNA SHANKER,MEMBER**

FOR THE APPELLANT :

Dated : 08 April 2024

ORDER

For the Appellant Mr R K Bhawnani, Advocate

For Respondent no.1 Mr Amit Kumar Singh, Advocate

For Respondent no.2 Mr O P Gaggar and Mr Sachindra Karn

Advocates

ORDER

PER MR SUBHASH CHANDRA

1. This appeal under section 19 of the Consumer Protection Act, 1986 (in short, 'the Act') challenges the order dated 08.08.2016 of the Chhattisgarh State Consumer Disputes Redressal Commission, Pandri, Raipur (in short, 'the State Commission') in CC no. 04 of 2016 dismissing the complaint as being barred by limitation. The complainant/ appellant is before this Commission praying for setting aside the order of the State Commission and allowing the appeal.
2. The relevant facts of the case in brief are that the complainant/ appellant who was a Wholesale Trader of FMCG goods had obtained a Special Fire Special Policy (SFSP) for Rs.60 lakh for the period 15.09.2011 to 14.09.2012 in respect of his goods stocked in the godown of the appellant. Following a fire on the insured premises on 10.02.2012, intimation of which was given to the Police and the Fire Brigade the same day, the respondent was informed the next day. A claim for Rs.55 lakh under the said insurance policy was filed. According to the appellant, despite providing all the information sought by the surveyor appointed by the respondent, the claim was not finalised for nearly 2 ½ years and further documents were sought on 21.07.2014. Surveyor S K Kansal had visited the site and conducted a preliminary inspection. However, despite the assessment of loss of Rs.10 lakh on net salvage basis, as per the Surveyor's Report dated 03.12.2012, and also mentioning that the complainant was agreeable to settle the claim for Rs.9,34,838/- in full and final satisfaction, the claim had not been settled. State Commission was approached by the appellant in CC no. 04/ 2016 which held that although the appellant/ complainant was a 'consumer' under section 2 (1) (d) of the Act, the fact that the respondent had closed the claim of the appellant vide letter dated 28.08.2012 whereafter the appellant had entered into correspondence with the respondent, the fact of such correspondence did not amount to extending the period of limitation. It was accordingly held that mere sending a letter under the RTI Act does not give rise to a fresh cause of action and the submissions of representation of letters to OP no.1/ respondent does not arrest the time. It was noted that the letter was sent on 17.04.2015 after a period of 2 years and the complaint itself had been filed on 06.02.2016 after two years of the cause of the action had accrued.
3. We have heard the learned counsel for the parties and perused material on records carefully.
4. Counsel for the appellant argued that the claim filed by him had not been settled and that the State Commission had erred in returning the finding that the appeal was barred by limitation since it was a case of a continuing cause of action, in view of the fact that the claim had not been settled by the respondent. It was also contended that the surveyor erred in arriving at his conclusion since all the required documents had been made available to him as and when required.
4. *Per contra*, the counsel for the respondent no.1 argued that the complaint is hopelessly barred by limitation since it was filed after over two years. It was also contended that the surveyor had contacted the appellant and advised them to prepare a room wise stock list which was not prepared till 12.02.2012. As per the surveyor's preliminary inspection, the conditions of the stock on the first floor of the premises was found to be good and therefore, the appellant was directed to prepare a separate list of stocks in each room and to make arrangements to segregate the good articles which was not done despite several letters and repeated reminders. The appellant did not cooperate with the surveyor where after on

31.07.2012 information was sought within 15 days which was also not complied with. Accordingly, the claim was closed on 28.12.2012 on account of non-supply of relevant documents. Surveyor's assessment as per report dated 31.12.2012 was for Rs.10 lakhs, of which settlement of Rs.9,34,838/- acceptable to the appellant could not be done since this was based on documents which were not supplied. It was contended that the impugned order on the grounds of limitation was justified on the basis of Hon'ble Supreme Court as well as this Commission's judgment in (i) **Kandimalla Raghavaiah and Company vs National Insurance Company and Another** (2009) 7 SCC 768; (ii) **Ganpat Rama Madhavi vs New India Assurance Company Ltd.**, 2011 SCC Online NCDRC 444; (iii) **National Flask Industries Ltd., vs Gujarat Electricity Board** 2015 SCC Online NCDRC 47; and **United Bank of India vs M/s Janata Paradise Hotel and Restaurant Solicitors' Road**, 2014 SCC Online NCDRC 588. It was contended that non-cooperation by the insured disentitled him from any relief and therefore, the appeal be dismissed.

5. Learned counsel for respondent no.2 (Union Bank of India) submitted that the appellant had availed Cash Credit (CC) loan facility from the Bank and for the security of the loan, the insurance policy for the stock and goods had been availed. It was submitted that the appellant lodged a report on 11.02.2012 with the Police Station, Civil Lines that all the stock kept in the premises worth Rs.55,00,000/- had been damaged in the fire and as per the report of the Nagar Palika Nigam, Raipur, the reason for the fire was electrical short circuit. It was alleged that respondent no.1 was intentionally not settling the claim of the appellant. It was also submitted that the appellant was a defaulter in payment of interest and settling the CC loan on the pretext of having not received the insurance claim. Due to non-settlement of the insurance claim by respondent no.1, i.e., the Insurance Company, the Bank was also impacted since it had not been able to realise its loan. On behalf of the Bank it was further stated that it was not liable for any deficiency in service *qua* the appellant. It was contended that the State Commission erred in dismissing the complaint of the appellant on the ground of delay and that respondent no.1 should be directed to pay the claim settlement amount to enable the CC loan amount to be closed from the Bank's end.

6. The impugned order has held that:

35. *Mere sending letter under RTI Act does not give rise to fresh cause of action and mere submission of representation to letter to the OP no.1 does not arrest time. It appears that letter was sent by the complainant to the OP no.1 on 7.04.2015 after period of two years, whereas the instant complaint has been filed by the complainant on 06.02.2016, i.e., after two years of accrual of cause of action, therefore, the complaint is barred by time.*

36. *In view of above discussion, we hold that the complaint of the complainant is barred by time, therefore, the same is liable to be and is hereby dismissed without going into merits of the case. No order as to the cost of this complaint."*

7. From the foregoing, it is evident that the State Commission's order is based on facts and legal principles with regard to the delay in filing of the complaint before it. Appellant has not provided any evidence to controvert the finding that the complaint was barred by limitation as it was filed two years after the cause of action except to contend that it was a continuing cause of action. The basis for this is that the issue was under correspondence with the

respondent. In *Vandan Pareshkumar Manghita vs Divisional Manager, National Insurance Co. Ltd., 2014 SCC Online NCDRC 618* it has been held that:

9. Mere correspondence does not extend limitation and complaint was to be filed within period of 2 years from first intimation dated 08.09.2009 regarding 'no claim'.

8. In *State Bank of India vs B S Agriculture Industries (I) (2009) 5 SCC 121* decided on March 20, 2009, it has been held by the Hon'ble Supreme Court that:

“It would be seen from the aforesaid provision that it is peremptory in nature and requires the 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 24 A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within the limitation period prescribed thereunder.**

12. 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 24 A 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.”**

[Emphasis added]

The Hon'ble Apex Court has laid down that the settled legal proposition of law of limitation under the Consumer Protection Act has to be applied with all its rigour when the statute so prescribes, though it may harshly affect a particular party.

9. The Hon'ble Supreme Court has also held that a party which has not acted diligently or remained inactive is not entitled for condonation of delay. The Hon'ble Supreme Court in *R. B. Ramlingam vs. R. B. Bhavaneshwari, I (2009) CLT 188 (SC)* has also described the test for determining whether the petitioner has acted with due diligence or not and held as under:

"We hold that in each and every case the Court has to examine whether delay in filing the special appeal leave petitions stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition."

10. For the aforesaid reasons, we do not find any merit in the appeal which warrants our interference in the matter. Accordingly, the appeal is dismissed. Both the parties shall bear their own costs.

11. Pending IAs, also stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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DR. SADHNA SHANKER
MEMBER