

State Bank Of India vs M/S. B.S. Agricultural Industries(I) on 20 March, 2009

Equivalent citations: AIR 2009 SUPREME COURT 2210, 2009 AIR SCW 2911, 2009 (5) ALL LJ 264, (2009) 4 MAD LJ 126, (2009) 2 PUN LR 496, (2009) 2 RECCIVR 628, (2009) 4 SCALE 467, (2009) 3 CIVLJ 160, (2009) 3 CPR 107, (2009) 4 JCR 101 (SC), (2009) 2 WLC(SC)CVL 254, (2009) 3 ALL WC 3132, (2009) 2 CURCC 50, (2013) 4 CPR 427, 2009 (4) KCCR SN 250 (SC)

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Bench: R.M. Lodha, D.K. Jain

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2067 OF 2002

State Bank of India

... Appellant

Versus

M/s B.S. Agricultural Industries (I)

...Respondent

JUDGEMENT

R.M. Lodha, J.

In this appeal by special leave an order passed by the National Consumer Disputes Redressal commission (hereinafter referred to as 'National Commission') on October 1, 2001 is under challenge. The District Consumer Disputes Redressal Forum, Ist, Agra (hereinafter referred to as 'District Forum') vide its order dated November 16, 2000 allowed the complaint filed by the present respondent (for short, 'the Complainant') and directed the present appellant (for short, 'the Bank') to pay to the complainant Rs. 2,47,154/- with interest @ 15% per annum from April 21, 1994 and Rs. 5,000/- towards compensation. The Bank challenged this order in appeal before the State Commission for Redressal of Consumer Disputes, Uttar Pradesh, Lucknow (for short, 'State Commission') but without any success. The National Commission upheld the concurrent orders of consumer fora to which the Bank is aggrieved.

2. The complainant filed a complaint against the Bank on May 5, 1997 claiming an amount of Rs. 2,47,154/- for deficiency in service alongwith interest @ 12% p.a., litigation expenses and

compensation. The complainant averred; that it has been carrying on business of manufacturing and supply of engines and pump sets all over India through their dealers and distributors; that it sent to the Bank seven bills amounting to Rs. 2,47,154/- drawn on M/s Unique Agro Service, P.O. Heria, District Midnapore (W.B.) together with GR's of transporters for collection of payment and remittance of proceeds to the complainant; that it instructed the Bank to deliver the bills and GR's against payment to the drawee (M/s Unique Agro Service) and charge interest @ 24% per annum from May 22, 1994 (if the documents are not retired by the drawee from the Bank within 30 days of the presentation of the bills); that the Bank was also instructed to return the bills and GR's if the drawee did not retire the bills within 45 days of the presentation of the bills i.e. upto June 7, 1994 and that despite repeated letters dated March 15, 1995, May 4, 1996, March 1, 1997 and March 20, 1997 and legal notice dated April 3, 1997, the Bank has neither sent the amount of Rs. 2,47,154/- nor returned the said bills and GR's necessitating the complaint before the District Forum, Agra.

3. The complainant admitted in the complaint that vide letter dated March 28, 1995, the Bank informed it that they have returned the bills and GR's to B.M Konar (complainant's sales manager) on May 10, 1994. However, according to the complainant on May 4, 1996, a letter was sent to the Bank asking them under what authority they delivered the documents to B.M. Konar and the Bank was asked to send either a demand draft for Rs. 2,47,154/- together with interest or return the documents without further delay. The complainant is stated to have again sent the reminder to the Bank on March 1, 1997 to which Bank asked the complainant to arrange to forward a copy of the letter dated May 4, 1996 for necessary action.

4. The bank resisted the complaint on diverse grounds, inter alia, (i) that the complainant was not a consumer within the meaning of Consumer Protection Act, 1986 (for short, 'Act, 1986'); (ii) that the complaint was clearly time barred and beyond the period of limitation; (iii) that the bills and GR's were returned to B.M. Konar, the Sales Manager of the complainant firm; (iv) that the drawee (M/s Unique Agro Service) had accepted the liability of payment of the bills to the complainant vide letter dated May 11, 1994 and also deposited a cheque to the complainant in that regard.

5. The District Forum framed two points for determination; (one) whether there is any deficiency on the part of the opposite party and (two) whether B.M. Konar was authorized agent in collecting the bills and GR's from the Bank? Pertinently, despite the specific plea having been raised by the Bank that the complaint was time barred, point for determination in this regard was neither framed nor considered.

6. The District Forum held that there was deficiency in service by the Bank and that the Bank was liable to compensate the complainant and consequently, directed the Bank to pay to the complainant a sum of Rs. 2,47,154/- with interest @ 15% per annum from April 21, 1994 and Rs. 5,000/- as compensation. As stated earlier, the State Commission affirmed the order of the District Forum and the National Commission also did not interfere with the concurrent orders of the consumer fora.

7. Section 24A of the Act, 1986 prescribes limitation period for admission of a complaint by the consumer fora thus:

"24A. 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 or the 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."

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.

9. In *Union of India and Another v. British India Corporation Ltd. and Others*, (2003) 9 SCC 50, while dealing with an aspect of limitation for an application for refund prescribed in Business Profits Tax Act, 1947, this Court held that the question of limitation was a mandate to the forum and, irrespective of the fact whether it was raised or not, the forum must consider and apply it.

10. In *Haryana Urban Development Authority v. B.K. Sood*, (2006) 1 SCC 164, this Court while dealing with the same provision viz., Section 24A of the Act, 1986 held:

"10. Section 24-A of the Consumer Protection Act, 1986 (referred to as the Act hereafter) expressly casts a duty on the Commission admitting a complaint, to dismiss a complaint unless the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that the complainant had sufficient cause for not filing the complaint within the period of two years from the date on which the cause of action had arisen.

11. The section debars any fora set up under the Act, admitting a complaint unless the complaint is filed within two years from the date of which the cause of action has arisen. Neither the National Commission nor the State Commission had considered the preliminary objections raised by the appellant that the claim of the respondent was barred by time. According to the complaint filed by the respondent, the cause of action arose when, according to the respondent, possession was received of the booth site and it was allegedly found that an area less than the area advertised had been given. This happened in January 1987. Furthermore, the bhatties which were alleged to have caused loss and damage to the respondent, as stated in the complaint, had been installed before 1989 and removed in 1994. The complaint before the State Commission was filed by the respondent in 1997, ten years after the taking of possession, eight years after the cause of alleged damage commenced and three years after that cause ceased. There was not even any prayer by the respondent in his complaint for condoning the delay.

12. Therefore, the claim of the respondent on the basis of the allegations contained in the complaint was clearly barred by limitation as the two-year period prescribed by Section 24-A of the Act had expired much before the complaint was admitted by the State Commission. This finding is sufficient for allowing the appeal."

11. In a recent case of Gannmani Anasuya and Others v. Parvatini Amarendra Chowdhary and Others, (2007) 10 SCC 296, this Court highlighted with reference to Section 3 of the Limitation Act that it is for the court to determine the question as to whether the suit is barred by limitation or not irrespective of the fact that as to whether such a plea has been raised by the parties; such a jurisdictional fact need not be even pleaded.

12. Insofar as the present case is concerned, at the first available opportunity in the written statement itself the Bank raised the plea that the complaint was barred by limitation. However, the objection with regard to limitation went unnoticed by all the three fora, namely, District Forum, State Commission and National Commission. Since the question relating to limitation goes to the root of the matter and may render the order illegal, we would now see whether the complaint was filed within time i.e., within two years of accrual of cause of action.

13. In this regard, the letter dated April 21, 1994 with which bills and GR's were sent by the complainant to the Bank assumes significance. We reproduce the said letter as it is ;

"M/s B.S. Agriculture Industries (India) 12/15 AA NAWAL GANJ AGRA -6 Ref. No. BA/659/94-95/30 Registered Dated:- 21.4.94 The Agent, State Bank of India Khejuri Branch Post. Khjuri Distt. Midnapur Dear Sir, Sub.:Our Invoice No. 17 Date 21.4.94 for Rs. 41,906.48 18 ,, Rs. 42,438.96 19 ,, Rs. 39,645.60 20 ,, Rs. 40,537.44 21 ,, Rs. 23,093.04 22 ,, Rs. 30,755.52 23 ,, Rs. 28,776.96 _____ TOTAL Rs.2,47,154.00 _____ Drawn on M/s Unique Agro Service P.O. Heria, Distt. Midnapur- 721 430 (W.B.) Enclosed please find herewith our invoice referred above alongwith GR. No. 8680, 81, 82, 83, 84, 85, 86 Dated 21.4.94. Please deliver

these documents to the party on collection of Rs. TWO LAC FORTY SEVEN THOUSAND ONE HUNDRED FIFTY FOUR ONLY.

Plus your collection charge and remit the proceeds to us by Demand Draft Payable at Agra under Regd. Post only.

Thanking you for your kind co-operation.

Yours faithfully, For B.S. Agriculture Ind.(India) Partner Instructions

1. Please collect your charges from drawee.
2. Please return the document if not honoured by dt. 07.06.94.
3. Please charge interest @ 24% PA from dt. 22.05.94
4. PLEASE COLLECT "C" FORM IF THE PARTY IS UNABLE TO FURNISH "C" FORM PLEASE COLLECT 6% EXTRA ON COST OF GOODS.

IF THE DOCUMENT RETIRED WITHIN 15 DAY FROM BILL DATE DISCOUNT WILL BE ALLOWED 5% AND WITHIN 20 DAYS @ 3% AND WITHIN 30 DAYS @ 1% Copy to:- M/s Unique Agro Service Heria, Distt. Mindnapur (W.B.) With a request to kindly retire the documents on presentation by the bank and oblige us with your kind intimation of date when the bill is paid by you.

CC TO PARTY ENCLOSE - AS ABOVE."

14. The said letter clearly instructs the Bank to return the documents if not honoured by drawee by June 7, 1994. Obviously, the cause of action accrued to the complainant on June 7, 1994 when it did not receive the demand draft for Rs. 2,47,154/- nor received the documents. The limitation, thus, began to run from June 7, 1994. The complaint ought to have been filed within two years therefrom which in fact was not done as the complaint was filed much thereafter i.e., on May 5, 1997. The complaint was apparently time barred. Learned counsel for the complainant would, however, submit that the complainant sent various letters to the Bank and vide their reply dated March 11, 1997, the Bank asked the complainant to forward a copy of the letter dated May 4, 1996 for necessary action. It was thus contended by the learned counsel for the complainant that complaint filed on May 5, 1997 was within time. We are afraid the letters dated March 15, 1995, May 4, 1996 and March 1, 1997 sent by the complainant to the Bank and the Bank's reply dated March 11, 1997 are of no help to the complainant. The Bank has not by their reply dated March 11, 1997 acknowledged its liability. The Bank only wanted the complainant to send a copy of the letter dated May 4, 1996 for necessary action. By no stretch of imagination, it can be said that the limitation came to be extended by Bank's reply dated March 11, 1997. As a matter of

fact, the Bank had communicated to the complainant long back vide its letter dated March 28, 1995 that the bills have been returned to B.M. Konar (Sales Manager of the complainant firm) on May 10, 1994 and the matter should be taken up with him (B.M. Konar). The complaint filed on May 5, 1997 is even beyond two years therefrom. There is no application for condonation of delay nor any sufficient cause shown and, therefore, the question of condonation of delay in filing the complaint does not arise.

15. On its plain averments, the complaint is barred by time and ought to have been dismissed as such but curiously this aspect was not examined by any of the consumer fora although specific plea to this effect was taken by the Bank.

16. Since the complaint is barred by time and liable to be dismissed on that count, it would be unnecessary to examine the other grounds of challenge.

17. By way of foot note, we may observe that the learned counsel sought to raise an equitable plea that the bank was under

an obligation to protect the interest of the complainant and in this regard placed reliance upon the decision of this Court in *Sumatidevi M. Dhanwatay v. Union of India & Ors.*, 2004 (4) SCALE 607. Firstly, the cited judgment has no application to the present fact situation. Secondly, and more importantly, the complaint having been held time barred, this plea is not of much significance.

18. In the result, the appeal is allowed, and the decision of the National Commission dated October 1, 2001, affirming the orders of State Commission and District Forum, is set aside. The complaint stands dismissed as time barred. The parties shall bear their own costs.

.....J (D.K. Jain)J (R.M. Lodha) New Delhi, March 20, 2009.