

Dr. C. Vijayakumar, Consultant Physician Vs. K.M. Raju and Another

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC
Chennai

Decided On : Sep-02-2010

Judge : Honourable Thiru Justice M. Thanikachalam President, Tmt. Vasugi Ramanan, M.a.,B.L., Member I & Thiru S. Sambandam, B.SC., Member II

Appeal No. : R.P.NO.43 of 2007 (Against order in CMP.NO.97 of 2006 IN CC.No.475 of 2005 on the file of the DCDRF, Chennai (South))

Appellant : Dr. C. Vijayakumar, Consultant Physician

Respondent : K.M. Raju and Another

Judgement :

M. THANIKACHALAM J, PRESIDENT (Open court)

1. The unsuccessful opposite party, as petitioner before the District Forum, in CMP. No.97/2006, is the Revision petitioner.
2. The respondent in this revision, as complainant, filed a case against the opposite parties, leveling medical negligence, for that claiming a sum of Rs.7 lakhs, as compensation, which is opposed by filing written version.
3. The 2nd opposite party, who is attached with the 1st opposite party, as consultant, by going through the averments in the complaint, felt that the claim is barred by limitation. Therefore a petition came to be filed before the District Forum,

to reject the claim, or dismiss the claim, as barred by limitation, which was opposed.

4. The District Forum, taking the view, that the complaint has been filed within two years, from the date of notice, which should be construed, as within the time, dismissed the petition, thereby giving cause of action to the 2nd opposite party, to come to this commission, as Revision Petitioner.

5. According to the complainant, which is also not seriously disputed, regarding the dates and events, on 10.10.01 the complainant was admitted in the 1st opposite party hospital, where the 2nd opposite party was the consultant. After treatment, according to opposite party, after fully cured, the complainant was discharged on 15.10.01. Thereafter, it seems the complainant had some problems, and once again he was admitted in the same hospital on 26.10.01, then after treatment, he was discharged, at the request of the patients relative, on 21.11.2001. Thereafter, he was admitted in Sri Ramachandra Medical College Hospital on 2.12.2001, where it appears, as per the case of the complainant, he recovered fully, discharged from the said hospital on 6.2.2002.

6. After the discharge of the complainant, from Sri Ramachandra Hospital, there was no correspondence no connection between parties, no complaint by the complainant also, about the treatment given by the opposite parties, till the date of issue of notice on 18.8.2004, thereby showing the complainant is beyond two years. As represented by the learned counsel for opposite parties, reply has been given for the notice dt.18.8.2004, on 21.3.2005, proceeded by interim reply dt.26.10.2004.

7. Admittedly, this complaint came to be filed before the District Forum, only on 5.8.2005, later numbered as OP.No.475/2005. As said above, by filing written version, case is contested.

8. Sec.24A of the Consumer Protection Act, prohibits the District Forum, State Commission, or the National Commission, as the case may be, from taking the case on file, if the case has been filed after two years, from the date of cause of action. Thus, prohibiting, a benevolent provision also given, for the consumers, to

move the Fora, for relaxing the period of limitation, under Sec.24A of the Consumer Protection Act itself. In this case, admittedly, as conceded before us, invoking Sec.24 A(2) of the Act, no petition has been filed. It is also not the case of the District Forum, that the complainant has filed any such application, time granted, and in this view, the petition is in time of something like that. Thus deciding, now we have to see once again the date of cause of action, in order to ascertain whether the complaint was filed in time.

9. As seen from paragraph 13 of the complaint, last date of cause of action is, given as the date of notice viz. 21.3.2005, i.e., reply notice, proceeded by the notice issued by the complainant dt.18.8.2004. Mere, issuance of notice by the aggrieved parties, cannot extend the period of limitation, and therefore, neither the issuance of notice, nor the reply given by the opposite party, will not extend the period of limitation, fixed under 24(A)(i) of the Act. Thus, ignoring these two dates, it is to be seen further.

10. Admittedly, from Sri Ramachandra Medical College Hospital, after fully cured, the complainant was discharged on 6.2.2002, which can be taken as the cause of action, if known to the complainant, where the opposite parties have committed negligence. If that is to be taken, within two years from 2.6.2002, on or before 5.2.2004, the complainant ought to have been filed. In this case, as said above, only on 5.8.2005, i.e., after the lapse of more than two years, the complaint has been filed, which is clearly barred by limitation. Other dates given in cause of action paragraph are prior to 6.2.2002.

11. It is the duty of the Forum, whether the question of limitation has been raised by the otherside, or not, to check and find out, whether the claim is in time or not, in view of the mandatory provisions, available under Sec.24A of the Consumer Protection Act. Jurisdiction of the Fora, will come into operation, if a case has been filed within two years, from the date of cause of action, otherwise the Fora or commission, as the case may be, cannot have jurisdiction. In this view, even at the time of inception, as ruled by the Apex Court in SBI Vs. B.S. Agriculture Industries (I) (2009) 5 SCC 121, it is the duty of the For a, to find out whether the claim is in time or not, which the District Forum failed. It is most unfortunate, when the

opposite party has filed a petition, atleast the District Forum should have analysed the matter properly, in order to have jurisdiction, to decide the case, which it failed, in our considered opinion.

12. The order would reveal, issuance of notice, will renew the cause of action, which cannot be correct. Therefore, we find much substance in the submission made by the Revision Petitioner, that when the claim is barred, the District Forum has no jurisdiction to entertain, which was not properly considered, and thereby we are constrained to consider the same. For the above reasons, we are unable to concur with the finding of the District Forum, and by going through the pleadings, we are of the firm opinion, that the claim is barred by limitation, not only against the 2nd opposite party, but also against other parties, then no useful purpose would be served in conducting the case, which should be an unnecessary time consuming, which should be prevented by allowing the petition.

13. In the result, the Revision Petition is allowed, setting aside the order of the District Forum in CMP.No.97/2006, and allowing the same. The Complaint in CC.No.475/2005, on the file of District Forum, Chennai (South) is ordered to be dismissed, as barred by limitation. There will be no order as to cost.

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