

Dr. B. Balasundaram Vs. M/S. Proventus Life Sciences Pvt. Ltd., Rep. by Its Managing Director Mr. Manoj Bhaiya and Others

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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC Chennai

Decided On : Nov-06-2009

Judge : Hon'Ble Thiru Justice M. Thanikachalam President Thiru Pon. Gunasekaran B.a.,B.L., Member - I

Appeal No. : F.A.NO.271 of 2009 (Against order in S.R.No.304/2009 on the file of the DCDRF, Chennai (North))

Appellant : Dr. B. Balasundaram

Respondent : M/S. Proventus Life Sciences Pvt. Ltd., Rep. by Its Managing Director Mr. Manoj Bhaiya and Others

Judgement :

M. THANIKACHALAM J.

1. The appellant, as complainant approached the District Forum, for the recovery of a sum of Rs.1,06,231/-, in addition to Rs.50000/- as compensation, for mental agony, on the ground with among other grounds, that there was a settlement between the parties for payment of Rs.1,06,231/-, as per the settlement dt.13.02.2004, and despite repeated request and notice, they have failed to pay the same, which should be construed as deficiency in service, as well the

complainant should be construed as consumer.

2. The District Forum, felt that the complaint may not be maintainable, heard about the maintainability of the case, without ordering notice to the opposite parties. After hearing the complainant, and scanning the definition for consumer, as well service, the District Forum felt that the settlement between the parties and the agreement to pay a specific amount, will not come within the meaning of service, and if at all for the agreed amount, if not paid, it is open to the complainant to approach the Civil court for recovery of the money. Thus coming to a conclusion, the complaint was rejected on 30.7.2009, against which the appeal has been filed before this Commission.

3. The Registry, after perusing the appeal grounds, felt the same is not maintainable, and placed before us for maintainability.

4. In view of the admitted position, before the District Forum, no notice has been taken to the opposite parties, here also notice was dispensed with.

5. Heard the learned counsel for the appellant, and perused the documents as well as the order of the Lower Forum.

6. The complainant was working as the Manager of the second opposite party company. In order to have better prospectus, being a doctor, he resigned from the service of the company, though he had served, more than 9 years. After resignation, or to accept the resignation, there was negotiation between the complainant and the 2nd opposite party, and as seen from paragraph 6 of the complaint, they had arrived at a final settlement, for a payment of Rs.1,06,231/- to the complainant, and the complainant also accepted the said settlement dt.13.2.2004. Thereafter, it is not known, what is the difference of opinion arose between the parties, and it seems the said amount was not paid. Hence the complainant approached the consumer Forum, for the recovery of the above said amount, from the opposite parties, as if he is the consumer, and the opposite parties have committed deficiency in service, vesting jurisdiction in the consumer fora. Therefore, we have to see whether the complainant is a consumer, whether the case projected by the complainant, comes within the jurisdiction of the

Consumer Forum.

7. The complainant was working as a Manager in the 2nd opposite party company. While resigning from the post, they have reached a settlement and pursuant to the same, the 2nd opposite party had agreed to pay some amount, for which there was a settlement also on 13.2.2004. By going through the definition of consumer, as well as service, we are afraid that the complaint will come within the jurisdiction of the consumer fora, though invoking the jurisdiction of Consumer Fora, it is not generally prohibited, whereas the provisions available under this Act are in addition to other facilities, and provisions available under the common law. For that, it is not always necessary that all the cases on earth, should be taken by the consumer fora, since it aims speedy justice, less expensive, etc, whereas, the person who knocks the doors of this Fora, should be a consumer. Certainly, the complaint, will not come within the meaning of consumer, as defined under Sec.2(1)(d)(i), whereas if at all he may attempt to fit in, himself under Sec.2(1)(d)(ii) coupled with (o). By going these provisions also, we are unable to say that the complainant is a consumer, considering the admitted position.

8. The amount sought for in this case is admittedly pursuant to the settlement reached between the parties. It does not relate to any service, said to be rendered by the opposite party. The amount should have been arrived, for the services rendered by the complainant and not for the service to be rendered by the opposite party. At no point of time the opposite party, should have undertaken to provide any service, even as defined under the heading service. The act complained by the complainant, also will not come within the meaning of deficiency as defined under Sec.2(1)(g) of the Act. The District Forum, considering these facts elaborately, has come to the conclusion, that as per the averments in the complaint, the case will not come within the jurisdiction of the consumer Fora, in which we are unable to differ.

9. The case also appears to be barred by limitation; and on this ground also the case is liable to be rejected, though it is not the case by the District Forum. The settlement was arrived on 13.2.2004; thereby the date of cause of action is only this date. Within two years from the date of cause of action, the complaint ought to

have been filed before the fora concerned. While prescribing the limitation under Sec.24-A, it is not stated that date of cause of action should be taken, from the date on which the claim was denied, or had come to the knowledge of the complainant, etc. Whereas it is specifically stated, under Sec.24 (A) of the Act, that the District Forum or Commission shall not admit the complaint, unless it is filed within two years from the date on which the cause of action has arisen, thereby making it abundantly clear, that the period should be reckoned by the date of cause of action. If we calculate the period of limitation from 13.2.2004, the complaint ought to have been filed before 12.2.2006. Admittedly, the case came to be filed only in the year 2009, and in this view, the complaint is barred by limitation also. Irrespective of the defense to be raised by the opposite party, the case can be rejected, since Act says, the District Forum shall not admit the complaint unless it is filed, within two years from the date on which the cause of action had arisen.

10. Before filing the case on 21.7.2004, the complainant issued a letter to the 2nd opposite party, demanding the settled amount, for which on 5.8.04, and thereafter through lawyer on 7.9.004, for the notice dt.7.9.2004, the 2nd opposite party issued a reply on 29.9.2004, informing that they are willing to pay only a sum of Rs.91,938/-, asking them, if the complainant is willing to receive the amount, requesting further, to send an advance receipt for which there was no proper reply, which was also reported to the counsel for the complainant on 11.10.2004, for which a reply has been sent by the counsel for the complainant on 14.10.2004, informing that he will advise the complainant and thereafter there is no correspondence, except the legal notice. Thus it is seen when the amount was demanded, refused in the year 2004 itself, though agreed to pay some amount, which will not save the limitation in this case. Hence, the complainant has not filed the complaint within two years even from the date of denial, and this being the position, it should be held that, the case is barred by limitation also under Sec.24(A) of the Consumer Protection Act, and in this view, in addition to the rejection by the District Forum, the complaint is liable to be rejected, on the point of limitation.

11. We are fully satisfied, prima-facie, there is no case for the complainant before this Forum, and therefore the request or submission by the learned counsel for the

appellant, relying upon certain decision, to issue notice to the opposite parties, is negatived.

12. In the result, we find no merit in the appeal, and the same is dismissed.

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