

**Kantidevi Vs. Executive Engineer, M.S.E.B. Kannad and Another**

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**Court :** Mumbai Aurangabad

**Decided On :** Nov-14-2014

**Judge :** A.V. Nirgude & V.L. Achliya

**Appeal No. :** Writ Petition No. 2724 of 2002

**Appellant :** Kantidevi

**Respondent :** Executive Engineer, M.S.E.B. Kannad and Another

**Judgement :**

Oral Judgment: (A.V. Nirgude, J.)

1. This petition is filed by the petitioner, seeking relief to direct the respondent No.2/L.I.C. of India to pay the policy amount in respect of three life insurance policies, which the deceased husband of the petitioner secured in the year 1990 i.e. few months prior to his death under the salary saving scheme, in which the authority was given to the employer i.e. respondent No.1 to deduct the premium amount and credit the same with respondent No.2. It is contention of the petitioner that though the amount was deducted from the salary of her husband and paid to respondent No.2 by respondent No.1, respondent No.1 refused to release the payment on account of said three policies. The efforts made on the part of the petitioner resulted in-vain and therefore she was constrained to file the present petition.

2. In response to the facts pleaded in the petition, respondent No.1 filed affidavit. In nutshell it is stated that the premium amount for the period of four months (i.e. 16.06.1990 to 23.10.1990) at the rate of 45.70 p.m. deducted from the salary of the petitioner has been deposited by cheque in the office of Branch Manager, L.I.C., Aurangabad. It is also stated that respondent No.1 is misjoinder party to the petition as the respondent No.1 is not liable for any relief as claimed in the petition.

3. Respondent No.2 has also filed affidavit-in-reply and opposed the maintainability of the petition with contentions that the petition for the relief claimed, cannot be entertained by this Court in exercise of its writ jurisdiction. Respondent No.2 has denied the contention of petitioner that three policies were in force or continued as alleged by the petitioner. It is specific contention of respondent No.2 that the policies were lapsed. In the nutshell it is say of respondent No.2 that the premium amount was forwarded by cheque was not realized as while forwarding the cheque, policy numbers were not mentioned and intimated by respondent No.1 and therefore the amount could not be realized, so as to credit the same towards the premium on account of said policies. It is further stated that the premium under the salary saving scheme of the three policies was Rs.698.30, Rs.301/- and Rs.276/- respectively. Therefore, the remittance of Rs.45.70 in the month of July, August, September, October, 1990 is of no relevance towards payment of premium on account of three policies. In the nutshell, it is say of respondent No.2 that the policies were lapsed on account of non-receipt of premium against the polices purchased by the deceased husband of the petitioner.

4. It is an admitted position that the present petition is filed towards recovery of policies, which were obtained by the deceased husband of the petitioner, way back in the year 1990. It is also not in dispute that the husband of the petitioner died in the year 1990 and the cause of action for claiming the relief arose in the year 1990. Present petition has been presented after the period of 12 years after the cause of action arose for raising the claim on account of said policies. From the very nature of the pleadings and the reliefs claimed in the petition, it is apparent that the claim in the petition is in the nature of recovery of money, which is based upon disputed question of facts. Infact, the proper remedy for the

petitioner to claim the relief was by way of filing civil suit. Instead of adopting proper remedy under the law, present petition has been filed after lapse of 12 years. There is no justification to entertain the petition at belated stage, that too when the disputed question of law and facts are involved in the matter. The claim in the petition is based upon contractual liability. The petitioner ought to have made claim before the proper forum and that too within limitation. If she has not done the same in time, the claim becomes time-barred. Such time-barred claim cannot be entertain by way of writ petition. The petitioner apparently was advised devious method of reviving the time-barred claim by filing this petition. We are, therefore, not inclined to entertain the petition, which was filed after a period of more than 12 years, after the cause of action arose. So also we are not inclined to entertain the petition, as the petition involves disputed question of facts, which cannot be decided in the exercise of writ jurisdiction as it requires elaborate enquiry. We are, therefore, inclined the dismiss the petition.

5. The writ petition stands dismissed. In the circumstances, there shall be no order as to costs. Accordingly rule discharged.

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