

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10924 OF 2014

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| Krishna Institute of Medical Science<br>University, Karad, Satara & Anr. | .. | Petitioners |
| VS.                                                                      |    |             |
| Mrs. Amrapali Sachin Deshpande<br>& Ors.                                 | .. | Respondents |

Mr. A. V. Anturkar – Senior Advocate with Mr. Tanaji Mhatugade  
and Mr. S. B. Deshmukh for Petitioners.  
None for Respondent

**CORAM : M. S. SONAK, J.**  
**DATE: 13 JANUARY 2015**

**P.C. :-**

1] This petition takes exception to the orders dated 28 August 2014 and 7 October 2014 (“impugned orders”) made by the State Consumer Disputes Redressal Commission, Mumbai. The impugned orders have the effect of admitting the consumer dispute, by keeping open the point of limitation. The impugned orders record that the applicant is not sure whether there is any delay in filing the complaint and the applicant argued that the cause of action being of the continuing nature, the bar of limitation may not apply. The impugned orders do not accept this case set out by the original complainants and therefore keep the point of limitation open to be considered on its own merits.

2] Mr. Anturkar, the learned senior counsel appearing for the petitioners however submits that unless delay is condoned, the State Commission would have no jurisdiction to entertain the complaint on its merits. Mr. Anturkar points out that in the present case the child of the original complainants is alleged to have suffered Retinopathy of Prematurity some time in April 2010. The complaint has been admittedly filed on 20 February 2013. The original complainants themselves made application seeking condonation of delay on 7 March 2014. However, by a pursis dated 10 April 2014, the original complainants stated that they do not wish to press this application seeking condonation of delay. Mr. Anturkar, therefore relying upon the decisions of this Court in the cases of ***Shankar Ramrao Rangnekar vs. Narayan Sakharam Sawant & Ors.***<sup>1</sup> and ***Sidappa Rama Patil vs. Sattur Laxman Kole & Ors.***<sup>2</sup>, submitted that the State Commission would lack jurisdiction to proceed with the complaint any further, until it decides to condone the delay in filing the complaint. Mr. Anturkar also placed reliance upon a decision of the Apex Court in the case of ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.***<sup>3</sup>, to submit that an alternate remedy cannot be regarded as a bar where any order or proceeding is wholly without jurisdiction.

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1 2012 BCI 759

2 2005(2) Bom. C.R. 419

3 (1998) 8 SCC 1

3] Having heard the learned counsel for the petitioners, I am not inclined to exercise extra ordinary jurisdiction under Article 227 of the Constitution of India, in this matter. In this case the issue as to whether or not the original complaint came to be filed beyond the prescribed period of limitation, is itself an issue that would require decision of the State Commission. Besides, this is not a case where the State Commission has completely shut out the petitioners from raising the issue of limitation. The original complainants, for reasons best known to them, have not pressed the application seeking condonation of delay. It appears to be the case of the original complainants that the cause of action being of a continuous nature, there is no delay involved in filing the complaint. All these are matters that will have to be gone into by the State Commission. In such circumstances, it cannot be said that the proceedings before the State Commission are wholly without jurisdiction. In any case, this is clearly not an exceptional circumstance, for which the present petition should be entertained, particularly when the petitioners have an alternate remedy by way of approaching the National Commission.

4] So far as the decisions of this Court are concerned, there was no issue therein as to whether or not the proceedings in question were indeed barred by law of limitation. In the present case, the

original complainants wish to contend that the complaint is within the prescribed period of limitation. True, an application was filed seeking condonation of delay, but as noted earlier, the same has not been pressed. In such circumstances, the decisions of this Court did not apply to the fact situation of the present case and are clearly distinguishable.

5] This petition is accordingly not entertained, as the petitioners have an alternate remedy available to them. The petition is accordingly dismissed. There shall be no order as to costs.

6] It is made clear that nothing in this order is intended to in any manner affect the merits or otherwise of the position set out by the respective parties. All issues are expressly kept open. This petition is not being entertained, as the petitioners have an alternate remedy available to them.

**(M. S. SONAK, J.)**