

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.2083 of 2015 (O&M)
Date of decision: 24.03.2015

Laxman Dass

.....Petitioner

Versus

Dr. G.C. Gupta

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Kamal Sharma, Advocate for the petitioner.

RAJESH BINDAL, J

Challenge in the present petition is to the order dated 22.10.2014 passed by the learned court below, whereby the application filed by the petitioner/defendant under Section 14 of the Limitation Act, 1963 (for short “the Act”) seeking condonation of delay in filing the counter claim was dismissed.

Learned counsel for the petitioner submitted that the petitioner was operated upon by the respondent on 9.2.2005 and was implanted intraocular lense in his right eye. As the problem was not cured despite repeated visits of the petitioner to the respondent and even to the Eye Hospital, to which he was referred to, a complaint was filed before the District Consumer Disputes Redressal Forum, Panipat (for short “the Forum”) on 18.7.2005 alleging deficiency on the part of the respondent, which was dismissed on 28.3.2006. Appeal against the aforesaid order was dismissed by the State Consumer Disputes Redressal Commission, Haryana on 12.12.2008. The order was upheld by the National Consumer Disputes Redressal Commission, New Delhi vide order dated 16.9.2009. The respondent filed a suit for damages and compensation against the petitioner on 19.5.2010, in which the petitioner besides filing the written statement, filed counter claim for permanent loss of vision on account of medical

negligence of the respondent. Application under Section 14 of the Act was also filed seeking condonation of delay in filing the counter claim. The period spend by the petitioner before different forum/commissions under the Consumer Protection Act, 1986, was sought to be excluded. The application having been dismissed, the petitioner is before this Court.

Assailing the order, learned counsel for the petitioner submitted that in terms of Section 14 of the Act, the period spent by a party before a wrong forum was to be excluded. In the case in hand, the authorities under Consumer Protection Act, 1986 could not go into the issue of medical negligence, hence, it did not have jurisdiction. The period spent by the petitioner deserved to be excluded and the counter claim filed by him was to be entertained.

After hearing learned counsel for the petitioner, I do not find any merit in the submissions made.

The cause of action to claim damages arose to the petitioner on 9.2.2005, when he was operated by the respondent or at the most, as claimed by the petitioner on 18.7.2005, when he filed the complaint before the Forum, which was rejected on 28.3.2006. As has been pleaded in the petition, against the order of dismissal passed by the Forum on 28.3.2006, the petitioner preferred appeal before the State Consumer Disputes Redressal Commission, Haryana on 27.4.2007, which may be highly belated. The same was dismissed on 12.12.2008. The order was challenged before the National Consumer Disputes Redressal Commission, where the revision was dismissed on 16.9.2009. Though the orders have not been placed on record, however, it is not the case of the petitioner that the authorities under the Consumer Protection Act, 1986 refused to entertain the claim of the petitioner on account of subject matter in dispute being of medical negligence. Meaning thereby, the claim was considered on merits and rejected. The petitioner felt satisfied.

A suit for claiming damages and compensation was filed by the respondent on 19.5.2010, in which, while filing the written statement, the petitioner filed counter claim, along with application under Section 14 of the Act seeking condonation of delay in filing the counter claim seeking exclusion of the period spent before the authorities under the Consumer

Protection Act, 1986 from 18.7.2005 till 16.9.2009 on the ground that the authorities under the Consumer Protection Act, 1986 did not have the jurisdiction to go into the issue. The argument is totally mis-conceived. Section 14 of the Act only provides that the period can be excluded, if the party was before a wrong forum, which did not have the jurisdiction. The jurisdiction of the authorities under the Consumer Protection Act, 1986 was not barred, rather Section 3 thereof provides that the remedies are in addition to and not in derogation to the provisions of any other law for the time being in force. Once, the authorities under the Consumer Protection Act, 1986 did not lack jurisdiction to go into the issue raised by the petitioner, there was no question of exclusion of the period spent before them for the purpose of filing of counter claim, which admittedly was highly belated.

For the reasons mentioned above, I do not find any infirmity in the order passed by the learned court below. The petition is dismissed.

(RAJESH BINDAL)
JUDGE

24.03.2015

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