

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.01.2017

PRONOUNCED ON : .02.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.497 of 2011

& M.P.No.1 of 2011

Sri Sarbati Steel Tubes Ltd.,

Rep. by its Manager,

No.163/1, Broadway II nd Floor,

Chennai-600 108.

.. Appellant/Appellant/Plaintiff

Vs.

M/s. United India Insurance Co.Ltd,

Rep. by its Divisional Manager,

Divisional Office No.1,

Tarapore Towers, 7th Floor,

Anna Salai,

Chennai-600 002.

.... Respondent/Respondent/

Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 09.04.2010 made in A.S.No.364 of 2009 on the file of the Additional Judge, FTC-5, Chennai, confirming the Judgment and Decree dated 15.04.2009 made in O.S.No.1154 of 2008 on the file of the VI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.K.Ramasamy

For Respondent : Mr.G.Guruswaminathan
for M/s.Nageswaran and Naichania

JUDGMENT

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 09.04.2010 made in A.S.No.364 of 2009 on the file of the Additional Judge, FTC-5, Chennai, confirming the Judgment and Decree dated 15.04.2009 made in O.S.No.1154 of 2008 on the file of the VI Assistant Judge, City Civil Court, Chennai.

2.The second appeal has been admitted and the following substantial questions of law are formulated for consideration in this Second Appeal:

(a) Whether on the facts and circumstances of the case, can the plaintiff/appellant take advantage of Section 14(1) of the Limitation Act 1963 for the purpose of computing the period of limitation as per the order of State Consumer Disputes Redressal Commission?

(b) Whether the judgment and decree of the Courts below in dismissing the suit laid by the plaintiff are based upon the perverse findings and misdirected against the evidence on record?

3. The suit has been laid by the plaintiff for recovery of money on the basis of Insurance policy. As regards the case of the plaintiff that the machineries belonging to the plaintiff had been insured with the defendant, the same is not at issue. It is also found that certain machineries belonging to the plaintiff having been damaged, the plaintiff made a claim to the defendant Insurance Company for necessary reimbursement. It is found that the plaintiff made a claim for a sum of Rs.3,75,845/-. Further, it is found that the Insurance Company namely, the defendant through its surveyor had made the inspection of the damaged machineries and accordingly based upon the estimate of the damage upheld the plaintiff's claim of reimbursement only to the extent of Rs.1,83,797/-. Now claiming the balance amount with interest, the suit has been laid by the plaintiff.

4. As far as the institution of the suit is concerned, it is found that the plaintiff has not laid the suit, admittedly, within the time allowed by law. To the same, according to the plaintiff, inasmuch as he had been prosecuting the civil proceedings against the defendant Insurance Company before the Consumer District Forum as well as the appeal before the State Consumer Redressal Commission, Chennai with reference to the same subject matter, further as the State Consumer Redressal Commission had permitted the plaintiff to go before any other Forum if so advised to recover the balance amount, according to the plaintiff, invoking Section 14 of the Limitation Act 1963, he has laid the present suit and therefore, according to him, the period taken by him for prosecuting the civil proceedings before the Consumer District Forum and the State Consumer Redressal Commission, Chennai should be excluded under Section 14 of the Limitation Act 1963 and if so excluded, according to the plaintiff, the suit is not barred by limitation.

5. It is seen from the pleadings in the plaint, that the plaintiff has not made any plea that he has laid the civil proceedings before the District Consumer Forum, without being aware of the fact that he has to lay only the original suit against the defendant Insurance company for recovery of the

balance amount under the Insurance Company. On the other hand, sans any plea as regards the said aspect of the matter, it is found that the plaintiff thought it fit to move the civil proceedings against the Insurance Company namely the defendant for the very same subject matter before the District Consumer forum. The said lis was seriously contested by the defendant Insurance Company before the District Consumer Forum and ultimately the civil proceedings laid by the plaintiff had come to be dismissed on merits. Not stopping there, the plaintiff has also preferred an appeal before the State Consumer Redressal Commission, aggrieved over the order passed by the District Consumer Forum. Even the appeal was hotly contested by the defendant Insurance Company and ultimately the appeal had also come to be dismissed on merits by the State Consumer Redressal Commission. It could therefore be seen that the plaintiff having chosen to address his grievance with reference to the subject matter of the suit before the District Consumer Forum as well as the appeal remedy before the State Consumer Redressal Commission and having suffered a decree on merits, cannot be allowed to invoke Section 14 of the Limitation Act 1963 for bringing the present suit within the fold of limitation.

6.As rightly contended by the defendant's counsel, where in respect of the same subject matter in issue, if the plaintiff had prosecuted in good faith in a different Forum and finally the said proceedings had come to be not entertained on the ground of defect of jurisdiction or other cause of a like nature and thereby the plaintiff had been prevented from proceeding further with the matter before the said Forum, in such view of the situation, the plaintiff would be entitled to invoke Section 14 of the Limitation Act 1963. However, as far as the present claim of the plaintiff is concerned, it is found that the plaintiff had not invoked the jurisdiction of the District Consumer Forum as well as the appeal remedy before the State Consumer Redressal Commission on account of being not aware of the position that his remedy is only before the civil court. On the other hand, having chosen to invoke the other forum as above mentioned and having suffered a decree on merits, it could be seen that the courts below have rightly held that the plaintiff having not satisfied the parameters for invoking Section 14 of the Limitation Act 1963, rightly held that the suit laid by the plaintiff is hit by the law of limitation.

7.The learned counsel for the plaintiff mainly relied upon the observation of the State Consumer Redressal Commission that it is open to the plaintiff to go before any other Forum if so advised to recover the balance amount claimed by them. This observation as rightly found by the courts below would not entitle to the plaintiff to invoke Section 14 of the Limitation Act 63 as the said observation does not clothe the plaintiff to invoke Section 14 of the Limitation Act as such and it could

only be read that if the plaintiff is so advised, he could institute the other proceedings provided he is legally entitled to do so. In such view of the matter when on the date of filing of the present suit, it is found to be beyond the allowed time under law and when the above observation of the State Consumer Redressal Commission does not enable the plaintiff legally to invoke Section 14 of the Limitation Act, the above observation would not protect the plaintiff's case from the rigour of the limitation. Therefore, the findings of the courts below that the plaintiff's suit is clearly hit by time do not call for any interference. No infirmity is found in the above findings of the courts below for rejecting the plaintiff's claim.

8. On merits, it is also found that the courts below have found that the defendant Insurance Company had rightly assessed the entitlement of the plaintiff for the machineries damaged based upon the depreciation value etc as per the terms of the Insurance Policy and accordingly found that the insurance Company had granted only a part of the claim made by the plaintiff. The plaintiff has not placed any material to hold that the determination of the amount to which the plaintiff is entitled to claim for the damage caused to the machineries by the Insurance Company is without any basis or arbitrary. Further the witness examined on behalf of the plaintiff as PW1 is not able to state clearly as to how long the machineries in question had functioned properly and on what basis the Insurance Company had determined the reimbursement claim.

9. In the light of the above situation, when the plaintiff has not placed any material to show that the determination of the reimbursement sum to which the plaintiff is entitled to by the Insurance Company arbitrary or without any material and on the other hand when it is found that the determination had been made as per the terms and conditions of the Insurance Company marked as Ex.A1, it could be seen that no exception could be taken to the findings of the courts below that the Insurance Company had rightly fixed the amount to which the plaintiff is entitled to.

10. Further more, it is found that the plaintiff had also received the reimbursement sum given by the Insurance Company by way of cheque without protest, as it could be seen from the documents marked as Exs.B4 to 7. Only thereafter, it is found that the plaintiff had intimated the defendant Insurance Company that it had received the cheque under protest. Further, the plaintiff had also en-cashed the cheque and received the amount. In such view of the matter, when the offer of the defendant Insurance Company had been accepted by the plaintiff without any resistance and protest and also the cheque had been encashed by the plaintiff, it has to be inferred that the plaintiff had accepted the amount in full quit and therefore cannot

thereafter, turn around and contend that he had received the amount under protest. It is also found that the District Consumer Forum as well as the State Consumer Redressal Commission had also rejected the plaintiff's claim on the above lines.

11.It could therefore be seen that even on merits, the plaintiff is found to be not entitled to receive the suit claim from the defendants. Accordingly, no infirmity is found in the findings and conclusions of the courts below in rejecting the plaintiff's case. The courts below have rightly applied their mind to the evidence on record and come to the correct conclusions that the plaintiff is not entitled to get the suit amount from the Insurance Company.

12.The learned counsel for the plaintiff in support of his case, relied upon the decisions reported in 2009(7)MLJ 845(State of Tamil Nadu, rep. by the Superintending Engineer, Public Works Department/W.R.O., Madurai and Another Vs. E.R.Sundaram), 2000-3-L.W 683(P.Sarathy Vs. State Bank of India). The principles of law outlined in the above decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

13.In the light of the above discussions, the substantial questions of law formulated in this second appeal are answered against the plaintiff and in favour of the defendant.

14.In conclusion, the second appeal fails and accordingly is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Additional Judge,
FTC-5, Chennai.

2.The VI Assistant Judge,
City Civil Court, Chennai.

+ 1 cc to M/s.K.Ramasamy Advocate sr 6616

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