

CWP No. 1697 of 2015(O&M)

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218(3 cases)

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

CWP No. 1697 of 2015(O&M)

Date of decision : 28.07.2017

Satya Devi

..... Petitioner

versus

State of Haryana and others

..... Respondents

CWP No. 1698 of 2015(O&M)

Date of decision : 28.07.2017

Kiran Arora

..... Petitioner

versus

State of Haryana and others

..... Respondents

CWP No. 1699 of 2015(O&M)

Date of decision : 28.07.2017

Jay Guglani

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

**Present: Mr. N.C.Kinra, Advocate with
Mr. Harsh Kinra, Advocate
for the petitioner/s.**

Ms.Tanisha Peshawaria, DAG, Haryana

**Mr. Harit Sharma, Advocate
for respondent No.3.**

RAKESH KUMAR JAIN, J. (Oral)

This order shall dispose of three writ petitions bearing CWP

Nos. 1697, 1698 and 1699 of 2015, as the issue involved in these petitions is

common but the facts are being extracted from CWP No.1697 of 2015, Satya Devi v. State of Haryana and others.

In brief, the petitioner was a member of respondent No.3, society. She was expelled from the membership of the society by way of a resolution dated 10.11.2004. The petitioner, challenged the said order before the District Consumer Disputes Redressal Forum, Gurgaon in the year 2006 by filing a complaint under Section 12 of the Consumer Protection Act, 1986. On 19.10.2006, during the pendency of the complaint, the petitioner filed an appeal under Section 114 of the Haryana Cooperative Societies Act, 1984(in short 'the Act of 1984') before the Deputy Registrar, Cooperative Societies, Gurgaon. The said appeal was dismissed on 17.09.2010 on the ground of non-maintainability as the petitioner had the remedy under Sections 102 and 103 of the Act of 1984. The petitioner challenged that order dated 17.09.2010 by way of a revision before the Financial Commissioner which was filed on 09.01.2012. The said revision petition was dismissed on 01.10.2014 on the ground that the appeal was filed in the year 2008 against the order of expulsion passed in the year 2004, therefore, it was highly belated and there is no provision under Section 114 of the Act of 1984 to entertain any appeal beyond the period of 60 days as there is no provision for condoning the delay.

Learned counsel for the petitioner/s has submitted that the petitioner had filed an application under Section 5 of the Limitation Act, 1963 before the DRCS for seeking condonation of delay but that application was not decided. Rather her appeal was dismissed on the ground that she had the remedy of arbitration instead of appeal. However, during the course of hearing, learned counsel for the petitioner/s has submitted that even if she is

not entitled to invoke Section 5 of the Limitation Act, 1963 for seeking condonation of delay, stating sufficient cause for approaching the Court late, yet she could invoke Section 14 of the Act of 1963 to exclude the period spent before the Consumer Forum.

On the other hand, learned counsel for the respondents has submitted that the petitioner has been late through out in pursuing her remedies before the Court of law, muchless, she filed the complaint after the delay of two years, appeal after four years and revision after more than 1 ½ years. It is also submitted that Section 114 of the Act of 1984 would not apply because the petitioner had filed the appeal during the pendency of the complaint before the Consumer Forum in the absence of any finding recorded by the Consumer Forum that it cannot decide the complaint of the petitioner for lack of jurisdiction.

Learned counsel for the petitioner/s in order to substantiate his argument, referred to a decision of the Bombay High Court in the case of **Shangrilla Apartments Co-op. Housing Society Ltd., Goa and others v. M/s Rivin Builders, Goa and others**, 2016(2) Civil Law Journal 808 on the issue that the time spent in pursuing the complaint under the Consumer Protection Act is to be excluded in terms of Section 14 of the Limitation Act, 1963.

On the other hand, learned counsel appearing on behalf of respondent No.3-Society has submitted that the issue is no more res integra insofar as the application under Section 5 of the Limitation Act is concerned and in this regard, has referred to a decision rendered by this Court in CWP No. 3033 of 2012, **Balbir Singh Jammu v. Financial Commissioner, Cooperation, Punjab**, decided on 14.02.2013 in which it has been held that

the period provided for filing an appeal cannot be extended in terms of Section 5 of the Limitation Act. He has also submitted that the said decision of the Single Judge dated 14.02.2013 has been upheld by the Division Bench in LPA No. 755 of 2013 with the same title dated 13.07.2015. It is also submitted that Section 14 of the Limitation Act would not apply where the petitioner herself had withdrew the complaint filed before the Consumer Forum, before the Forum could have decided not to entertain the complaint on the ground of lack of jurisdiction.

I have heard learned counsel for the parties and perused the available record.

No dispute is raised by Mr. Harit Sharma that appeal was maintainable against the impugned order. In this view of the matter, the view of the DRCS is not correct where it had observed that the petitioner should availed the remedy under Sections 100 and 102 of the Act of 1984 i.e. to ask for the reference before the Arbitrator. However, issue in this case is as to whether the Financial Commissioner has rightly non-suited the petitioner on the ground of limitation? It is needless to mention that the impugned order was passed in the year 2004, complaint was filed by the petitioner before the Consumer Forum in the year 2006, appeal was filed before the DRCS in the year 2008 and the revision was filed before the Financial Commissioner after 1 ½ years. The petitioner appears to have been seeking the judicial remedies as per her own comfort and not in accordance with the provisions of the law which are mandatory in nature inasmuch as the period of limitation provided for the purpose of filing appeal cannot be condoned even under Section 5 of the Limitation Act. The question would now be as to whether the provisions of Section 14 of the

Limitation Act would be applicable for the purpose of exclusion of time. In this regard it would be relevant to produce Section 14 of the Act which read as follows:-

“14 Exclusion of time of proceeding bona fide in court without jurisdiction. —

- (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
- (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.
- (3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.— For the purposes of this section,—

- (a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;
- (b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;
- (c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

A bare reading of Section 14(1) of the Act provides that the period spent in any wrong Forum/Court under the wrong impression would

be excluded from the period of limitation for the purpose of taking his/her remedy before the proper Forum/Court but before that the remedy chosen by the petitioner before the Forum or Court has to decline to entertain the case of the petitioner on account of the lack of jurisdiction. In this case, there was no occasion for the Forum to decide as to whether it had the jurisdiction to decide the complaint made by the petitioner. Rather the petitioner herself suffered a statement, for the reasons best known to her, and withdrew the complaint before the Forum and filed the appeal.

In my considered opinion, in such circumstances, until and unless there is the decision of the Court before whom the petitioner was pursuing her remedies, declined the proceedings on account of lack of jurisdiction, otherwise the period spent before the said Forum/Court cannot be excluded for the purpose of giving chance to the petitioner to approach another Court by citing the delay.

In view of the abovesaid discussion, I do not find any force in the arguments of learned counsel for the petitioner/s and the petitions are hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

July 28, 2017
sunita

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No