

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

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**RSA No. 4520 of 2013 (O & M)
Date of decision : 30.9.2022**

M/s Em Cee Cee Sports Agency Private Limited, Jalandhar**.....Appellant****Vs.****United India Insurance Company Limited and another****.....Respondents****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA****Present: Mr. Vijay Lath, Advocate, for the appellants****Mr. Lalit Garg, Advocate, for the respondents**

TRIBHUVAN DAHIYA, J. (Oral)**CM No. 12179-C-2013:**

This is an application for condonation of 384 days delay in re-filing the present appeal.

Notice in the application was issued on 2.12.2015. But no reply has been filed to date.

For the reasons stated in the application, the same is allowed. Delay of 384 days in re-filing the present appeal is condoned.

RSA No. 4520 of 2013:

1. This is appellant/plaintiff's (hereinafter referred to as 'the plaintiff') first appeal against the judgment of reversal.

2. Facts in brief are, the plaintiff filed a suit for declaration to the effect it is entitled to recover a sum of Rs.1,53,275/-, which has been illegally deducted by the respondents/defendants (hereinafter referred to as 'the defendants') insurance compny out of the claim raised; and for recovery of the amount along with interest @ 18% per annum w.e.f. 31.8.1998. It has

been averred that on 5.10.1997 a fire broke out in the premises of the

plaintiff's company due to short circuit in electricity. The loss was assessed to be approximately Rs. 8 lakhs. This was reported to the police also. Since the company was insured with the defendants, a claim was raised. The surveyor appointed by the defendants for assessment of loss was provided all the required information. The defendants kept on sleeping over the claim and only on 31.8.1998 paid a sum of Rs.4,50,828/- against the claim of Rs.7,82,988/- through cheque. It has further been averred the claim has illegally and arbitrarily been settled for the lesser amount of Rs. 4,50,828 and the defendants are liable to pay the remaining amount along with interest. It was also pleaded that the plaintiff filed a complaint against the defendants before the District Consumer Forum, Jalandhar, on 30.8.2000 under the Consumer Protection Act, 1986. The Consumer Forum, vide order dated 15.3.2002, disposed of the complaint on the ground the matter involved questions of law which could only be adjudicated by a civil Court.

3. The defendants disputed the suit by stating the payment had been made according to loss assessed by the surveyor, which was duly accepted without any protest by the plaintiff. The exaggerated claim raised by the plaintiff was incorrect. It was further pleaded that the suit for recovery filed against the defendants was barred by limitation. Besides, as the plaintiff had also filed a complaint before the District Consumer Forum on 30.8.2000, the suit was not maintainable.

4. On these pleadings, the following issues were framed by the trial Court;

1. Whether the plaintiff is entitled to the amount of Rs.1,53,275/-as prayed for? OPP
2. Whether the plaintiff is entitled for the declaration as prayed for? OPP
3. Whether the suit is barred by limitation? OPD

4. Relief.

5. The parties led their evidence, and the trial Court decreed the plaintiff's suit by holding it to be within limitation. The application moved by the plaintiff for condoning delay under Section 14 of the Limitation Act was allowed, against which no revision or appeal was preferred by the defendants. It was further held by the trial Court that the amount deducted by the defendants out of the insurance claim raised was without any reason. The plaintiff, accordingly, was held entitled to recover the amount along with interest @ 12% per annum.

6. The defendants preferred first appeal against the judgment and decree of the trial Court dated 28.5.2009, which was accepted by the lower Appellate Court, firstly, on the ground that the suit was barred by limitation. Section 14 of the Limitation Act was held not applicable as there was nothing to show the District Consumer Forum had no jurisdiction to entertain the complaint filed by the plaintiff. The complaint was filed on 30.8.2000, i.e., after two years of settlement of the claim, and the period of filing the suit had already expired as per clause of the insurance policy, even if the period spent by the plaintiff before the District Consumer Forum was to be excluded. Secondly, it was held that on merits also the plaintiff had no case. As it could not be explained as to how the plaintiff reached the figure of Rs.1,53,275/-. There was no specific pleading on record to that effect and it was only during the course of arguments that three specific items (i) the moulds, (ii) building and (iii) 50% depreciation made by the defendants, were claimed to be of total amount of Rs.1,53,275/-. It was further held though two out of three claims were genuine, since these claims were not specifically pleaded in the complaint or evidence and the defendants did not

get any opportunity to rebut the same, the plaintiff could not be allowed these deductions being beyond pleadings and proof. With these findings, the appeal was allowed and the plaintiff's suit was dismissed.

7. Learned counsel for the parties have been heard and record perused.

8. So far as findings of the lower Appellate Court on the issue of limitation are concerned, the same are not sustainable. It is not in dispute that the claim was partially paid by the defendants only on 31.8.1998, and the plaintiff thereupon filed complaint before the District Consumer Forum on 30.8.2000. The complaint was disposed of vide order dated 15.3.2002 (Ex.P-13) with the following observations;

8. However, we feel that the matter being serious, it requires to be gone into in more details. To level allegations of the perjury and fraud against a Member of the Bar by another Member of the Bar is a very serious matter and cannot be taken lightly. The Consumer Forum is not the proper place where this matter can be further investigated as we decided the matters summarily on the basis of affidavits. We feel that Civil Court is the appropriate Forum where this matter should and must be agitated. As the Mould is the main item on the basis of which the complainant is seeking his entitlement for the further amount of Rs.90,000/- and document which has been produced in support of his contentions, that document itself is being challenged on the ground of fraud and perjury and that too against a Member of the Bar. We find our hand tied in giving any findings in one way or the other. So without giving any findings on the merits and demerits of the complaint, we direct the applicant i.e. counsel for the opposite party to lodge and prove these allegations before the appropriate Forum i.e. Civil Court.

9. With these observations, the complaint is disposed off with no order as to costs. Copy of the order be sent to the parties free of costs under the rules. Record be consigned.

It is, therefore, apparent that no findings on the merits of the claim were recorded, and the counsel for the opposite party was directed to prove the allegations regarding perjury and fraud against a member of the Bar before the Civil Court. But the defendants (opposite party before the District Consumer Forum) did not file any such suit, despite the liberty granted. In these circumstances, the instant suit was filed by the plaintiff on 9.5.2002. The provisions of Section 14 of the Limitation Act, 1963 read as under;

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) 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.

9. As apparent, Section 14 of the Limitation Act, 1963, provides that in computing the period of limitation for any suit, the time during which the plaintiff has been prosecuting another civil proceedings against the defendants shall be excluded where the proceedings relate to the same matter in issue and are prosecuted in good faith in a court which, on account of defect of jurisdiction or for any other cause of like nature, is unable to entertain it. A perusal of the order passed by the District Consumer Forum dated 15.3.2002 itself makes it apparent that it declined to entertain the complaint on the ground of fraud and perjury against a member of the Bar. Therefore, only on account of lack of jurisdiction to entertain and decide the issue of fraud and perjury, which required leading of evidence, that the complaint was not entertained. And this is a ground specifically provided in Section 14 to exclude the time spent in computing the period of limitation. Therefore, there is no escape from conclusion that provisions of Section 14 of the Limitation Act will be applicable in the instant case, and the time spent by the plaintiff before the District Consumer Forum from the date of institution of the complaint, i.e., 30.8.2000 till its decision, i.e., 15.3.2002, has to be excluded in computing the period of limitation for filing the suit. The suit was filed on 9.5.2002 against the rejection of plaint by the defendants on 31.8.1998. Therefore, it is held the suit has been filed within the period of limitation and is maintainable.

10. Further, the lower Appellate Court has wrongly held, as the plaintiff was not given liberty to file the civil suit, the only remedy before it

was to file an appeal before the State Consumer Disputes Redressal Commission against the order of the District Consumer Forum dated 15.3.2002. It is contrary to the settled law that provisions of the Consumer Protection Act, 1985, and the rights given thereunder to the consumers, are not in derogation of any other right available to them under other laws. Therefore, when the plaintiff initially approached the consumer forum with its grievance and the same was not decided on merits, there was no bar upon it to institute the suit in question. Merely because liberty was only granted to the defendants/opposite party to institute the suit on the issue of establishing perjury alleged against a member of the Bar, is no ground to hold that the plaintiff was not entitled to institute the civil suit. As aforesaid, the plaintiff cannot be prevented from exercising its right to institute the suit in question against the defendants because at one point of time it filed a complaint on the issue against the defendants before the Consumer Forum, which was not entertained, nor decided on merits. The finding to that effect recorded by the lower Appellate Court is contrary to law, as aforesaid, and becomes unsustainable.

11. The other ground on which findings of the trial Court were reversed by the lower Appellate Court, that there was no specific pleading with regard to the three specific items - the moulds, building and 15% depreciation made by the defendants in the plaint, and, therefore, the suit for recovery of the amount of Rs.1,53,275/- was not maintainable. On account of lack of specific pleadings, the defendants could not be given the opportunity to meet and rebut the plaintiff's case. The reasoning is perverse since it is not in dispute that the claim raised by the plaintiff was declined based on the surveyor's report Ex.R-6, wherein the details of rejection of the claim raised were given. There is no evidence which could establish that the

said surveyor's report containing specific grounds of not honouring full claim, was ever conveyed by the defendants to the plaintiff. In such a situation, even if particulars of the three specific items which would in total amount to Rs.1,53,275/- have not been pleaded specifically, cannot be taken as a ground to non-suit the plaintiff. Besides, the surveyor's report is a document in possession of the defendants, and it was for the first time placed on record in its evidence as Ex.R-6, giving the details of the three head under which full claim was raised by the plaintiff was not honoured. Therefore, it cannot be held that the defendants were not given opportunity to meet and rebut the case in that respect. It was their document only, in their possession and knowledge. No prejudice can, therefore, be said to have been caused to them by the perceived lack of specific pleadings. Besides, it has been pointed out by the plaintiff that there are specific averments in the plaint to the effect that against a claim of Rs.7,82,988/-, only an amount of Rs.4,50,828/-was paid by the defendants by way of cheque bearing No. 566600 dated 31.8.1998. The cheque was accepted by the plaintiff under protest. No details of any kind were provided alongwith the cheque. In this situation, there is no basis for the lower Appellate Court to non-suit the plaintiff on account of alleged lack of specific pleadings.

12. In view of the aforesaid, the appeal is accepted; the judgment and decree of the lower Appellate Court is set aside and the judgment and decree passed by the trial Court is hereby restored.

(TRIBHUVAN DAHIYA)
JUDGE

30.9.2022

Ashwani

Speaking/Reasoned : Yes/No
Reportable : Yes/No