IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-22712-2024
Date of decision: 09.09.2024

HITENDER DAWAR

......Petitioner

VERSUS

THE CHIEF MANAGER, ALLAHABAD BANK, KOLKATA AND ANOTHER

.......Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: - Mr. S.K. Tripathi, Advocate for the petitioner.

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VINOD S. BHARDWAJ, J. (Oral)

The petitioner has approached this Court challenging the impugned order dated 11.07.2024 passed by the National Disputes Redressal Commission, New Delhi (Annexure P-10)

2. The grievance espoused by the petitioner is that he had approached the respondent No.2-Bank to avail a housing loan that was sanctioned and disbursed against loan account bearing No. 50062987514. The original documents pertaining to the property had been deposited by the petitioner with the respondent-Bank. The entire loan amount was deposited by the petitioner with the respondent No.2-Bank in March, 2015, however, the original documents were not returned by the respondent-Bank and they also did not issue the 'No Objection Certificate' on one pretext or the other. The petitioner repeatedly approached the respondents and submitted the

representations as well as the legal notice, however, as no satisfactory response was given thereto, the petitioner approached the District Consumer Disputes Redressal Commission, Gurugram for his legitimate claim as well as for seeking release of his valuable original documents that were alleged to be wrongly withheld by the respondent-Bank.

3. Written statement was filed by the respondent-Bank before the District Consumer Disputes Redressal Commission, Gurugram where various objections were taken with respect to maintainability of the complaint before the DCDRC, Gurugram. A specific stand was taken by the respondent that the original title deeds of the property were returned to the petitioner at the time of closure of the loan account. It was further averred that had the petitioner not received the original documents, he would have contacted the Bank after closure of the loan account in March, 2015 itself and would not have waited for more than 02 years in approaching the Consumer Courts. An objection was also taken that the claim before the Consumer Disputes Redressal Commission was barred by limitation since a period of more than 02 years had elapsed since the date of the incident and institution of the proceedings.

4. On consideration of the respective contentions, the Consumer Disputes Redressal Commission, Gurugram dismissed the complaint filed by the petitioner on the ground that the claim was barred by limitation. The operative part of the order dated 27.08.2024 passed by the District Consumer Disputes Redressal Commission, Gurugram is extracted as under:-

"5. After perusal of the facts on file, the evidence adduced by both the parties and hearing the oral arguments of both the parties, it emerges that the complainant obtained the loan from OPs and pledged/mortgaged the property documents and the complainant had repaid the entire amount in the month of March, 2015. Therefore, the cause of action has arisen in March, 2015 when the loan account was closed and the original documents were allegedly handed over to the complainant simultaneously at the time of closure of the loan amount but the present complaint has been filed on 25.10.2017 i.e. much after the expiry of period of limitation of two years. Section 24-A of the Act reads as under: -

(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period.

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.

*6. The Hon'ble Supreme Court of India in **Haryana Urban Development Authority Versus B. K. Sood, Civil Appeal No.6572 of 2005** decided on 26.10.2005 has held below:-*

"Section 24-A of the Consumer Protection Act, 1986 (referred to as the Act hereafter) expressly cast a duty on the Commission admitting a complaint, to dismiss a complaint unless the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that the complainant had sufficient cause for not filing the complaint within the period of two years from the date on which the cause of action had arisen." It was further held that ***"the Section debars any Fora set up undor Act, admitting a complaint unless the complaint is filed within two years from the date on which the cause of action had arisen."***

7. *Hon'ble Supreme Court of Ind'a* ***in Kandimalla Raghavaiah & Co. Versus National Insurance Company and another*** *Civil Appeal No.4962 of 2002, decided on 10.07.2009 has held that:*

"it would be seen from the aforesaid provision that it is peremptory in nature and requires Consumer Forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action."

8. The Consumer Forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. The expression, 'shall not admit a complaint' occurring in Section 24-A is sort of a legislative command to the Consumer Forum to examine on its own whether the complaint has been filed within limitation period prescribed there under. As a matter of law, the Consumer Forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the *reasons recorded in writing. In other words, it is the duty of the Consumer Forum to take notice of Section 24A and give effect to it. If the complaint is barred by time and yet, the Consumer Forum decides the complaint on merits, the Forum would commit illegality and, therefore, the aggrieved party would be entitled to have such order set aside"*

9. Reliance can also be placed reliance on ***Union of India & Anr. Versus British India Corporation Ltd. & Ors*** *and* ***Dr. V. N. Shrikhande Versus Mrs. Anita Sena Fernades*** *Civil Appeal No.8983 of 2010.*

10. Therefore, considering the circumstances of the case, in our opinion the complaint is hopelessly barred by limitation. Accordingly, the complaint of the complainant is hereby dismissed being time barred with no order as to cost. However, the complainant may obtain the No Objection Certificate from the opposite parties-bank. File be consigned to the record room, after due compliance."

5. Aggrieved thereof, an appeal was filed by the petitioner before the State Consumer Disputes Redressal Commission, Haryana after a delay of 1907 days (Approx. 05 years). The said appeal was also dismissed by the State Consumer Disputes Redressal Commission, Haryana on the ground of being time barred and the failure of the petitioner to offer any satisfactory explanation of 1907 days delay in filing of the said appeal. Dissatisfied with the same, a revision petition was also filed by the petitioner before the National Consumer Disputes Redressal Commission, New Delhi which upheld the orders passed by the Fora below and dismissed the revision petition. Hence, the present writ petition.

6. Counsel for the petitioner has vehemently argued that the petitioner had been diligently pursing his case and had been approaching the respondents for release of his original documents. He submits that the said documents are of no value to the respondent-Bank while they have immense intrinsic value to the petitioner and that denial of the said documents gravely prejudices the interest of the petitioner.

7. A specific query was put to the petitioner on the following issue:-

i) As to whether the limitation in institution of the original proceedings can be condoned by the Court and if so, under what provision of the Consumer Protection Act.

Counsel for the petitioner is not in a position to refer to any statutory provision or any precedent judgment.

ii) A further query was put to the Counsel for the petitioner as to whether any satisfactory explanation had been furnished by him for not approaching the State Consumer Disputes Redressal Commission, Haryana for a period of nearly 05 years (1907 days).

Counsel for the petitioner is also not in a position to respond to the said question or to put forth any satisfactory explanation giving reasons as to why the petitioner could not approach the Appellate Forums in a time bound manner and within the period so prescribed.

iii) Counsel for the petitioner was also called upon to refer to any illegality, impropriety or perversity in the findings recorded by the Fora below since the Court, while seating in a judicial review of the orders passed by the Consumer Fora does not supplants its own opinion for that of the fora below. He is unable to identify or communicate any illegality, impropriety or perversity in the orders that have been passed.

8. Learned Counsel appearing on behalf of the petitioner has failed to give any satisfactory response to the above said queries, I find that there is apparently no illegality, impropriety or perversity in the orders passed by the Consumer Fora. The High Court in exercise of its power of judicial review under Article 226 of the Constitution of India does not sit as a Court of appeal against the said orders. If the view adopted by the authorities below is tenable in law and is supported by the legal position through the precedent judgments, such orders are not to be set aside merely on the basis of dissatisfaction or a grievance of the petitioner. He has already availed alternative remedies and has failed to establish his case to the satisfaction of the Courts below.

9. Finding no merit, the present writ petition is accordingly dismissed in *limine.*

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 09, 2024
Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No