

# SUPREME COURT OF INDIA

Md. Suleman Ansari (Dms)

Vs.

Shankar Bhandari

C.A.No.1273 of 2005

(C.K.Thakker and Ruma Pal JJ.)

14.02.2005

## JUDGMENT

**C.K.Thakker, J.**

1. Leave granted.

2. On 12th October, 1994 the respondent who was a minor at that time suffered a fracture of his hand. The respondent was taken to the appellant by his father since the appellant held himself out to be a qualified medical practitioner. The appellant bandaged the respondent's hand and prescribed some medicines. The respondent was in the acute discomfort. He was taken back to the appellant who re-bandaged his hand. Ultimately, the respondent was taken to other doctors. However, by this time it was stated that damage to the respondent's hand was permanent. On the basis of this allegation a complaint was lodged by the respondent before the District Forum under the Consumer Protection Act. The District Forum was of the view that the issue ought to be decided by the Civil Court and accordingly rejected the complaint. Being aggrieved, the respondent filed an appeal before the State Commission. The State Commission allowed the appeal and directed the appellant to pay a sum of Rs. 1, 50, 000/- by way of compensation, Rs. 20, 000/- on account of treatment and Rs. 5, 000/- as costs of litigation. The National Commission rejected the revision petition filed by the appellant by holding that there was sufficient evidence to show that the fracture had been plastered by an unskilled person and that it was sufficient to establish that the appellant was not authorised to give treatment and that too without X-ray.

3. Before us the appellant has submitted that the State Commission erred in passing the order on the complaint. According to the appellant, both the State Commission and the National Commission erroneously proceeded on the basis that the application of the respondent was not barred by limitation. It was said that the cause of action of the respondent had arisen on 12th October, 1994 whereas the complaint was filed in 1998. The period of limitation provided under Section 24A of the *Consumer Protection Act, 1986* was two years for approaching the Commission. Although there was a power granted to the Fora under the Act to condone the delay there was no application for such condonation filed before them. It is

further submitted that the State Commission had proceeded on the erroneous assumption that the issue of limitation had not been raised by the appellant. In fact the issue had been squarely raised in response to the complaint by the appellant. Finally it is submitted that was the obligation of the Fora to reject an application filed beyond the period of limitation.

4. The learned Counsel appearing on behalf of the respondent has submitted that although there was no application filed for condonation of delay nevertheless, this Court should under Article 142 of the Constitution overlook the lacuna. It is further stated that in any event the period of limitation could not be said to have run in view of the fact that it was a continuing cause of action. In addition, it is submitted that the evidence on record clearly established that the appellant was wholly unqualified to be practicing medicine at all.

5. Even if it were assumed that the cause of action was a continuing one nevertheless, in our view, the evidence linking the permanent damage to the respondent's hand with the appellant appears to be somewhat tenuous particularly in view of the fact that the respondent had been taken to other doctors and had not complained for a period of four years since last seen by the appellant. There, however, appears to be some justification in the respondent's submission that the appellant was not in fact entitled to practise at all. Without finally deciding this issue having regard to the facts of this Court we dispose of the matter by directing the appellant to pay a sum of Rs. 80, 000/- to the respondent in full and final settlement of the respondent's claim against the appellant. Such payment shall be made within a period of six weeks from date. In default of making such payment to the respondent within the time aforesaid, the appeal will stand dismissed with costs.