

SUPREME COURT OF INDIA

E.I.C.M. Exports Ltd.

Vs.

South Indian Corpn. (Agencies) Ltd.

C.A.Nos.4290 of 2003

(Markandey Katju and V.S.Sirpurkar JJ.)

21.07.2009

ORDER

1. This Appeal has been filed against the impugned order of the National Consumer Disputes Redressal Commission, New Delhi (for short 'National Commission') dated 06th February, 2003 passed in Original Petition No. 285 of 1997.

2. The facts of the case are:

“The Appellant is an export house. It had booked certain goods through respondent No.1 for carriage through respondent No.2 to New York, U.S.A. According to the appellant, the goods were expected to reach in the second week or early third week of February, 1995. It is alleged that the goods were never delivered to the consignee in New York, although the goods had allegedly reached New York. According to the appellant, the goods were kept in the Custom's Bonded Ware House in New York which demanded US Dollars 5000 as demurrage.”

3. Since the shipment was delayed and consequently the foreign buyer refused to accept the consignment, the appellant filed a complaint before the National Commission seeking a direction to the respondents to pay a sum of Rs.39,81,351/- along with interest thereon @ 24% per annum from the date of filing of the petition till realization due to the negligence on the part of the respondents.

4. The National Commission, by its impugned order, has dismissed the complaint filed by the appellant as barred by limitation, applying Article III Clause 6 of the Indian Carriage of Goods by Sea Act, 1925 in which limitation of one year has been provided for filing a complaint.

5. Heard learned counsel for the parties.

6. Learned counsel for the appellant has contended that the National Commission has erred in dismissing the complaint as barred by limitation, applying the Indian Carriage of Goods

by Sea Act, 1925 in which limitation of one year has been provided. He further contended that this Act does not apply at all to the facts of the present case and instead Section 24-A of the *Consumer Protection Act, 1986* will apply.

7. Article III, clause 6 of the Schedule of the *Indian Carriage of Goods by Sea Act, 1925* provides:

“...In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have -3- been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

Provided that a suit may be brought after the expiry of the period of one year referred to in this sub-paragraph within a further period of not more than three months as allowed by the court.”

8. On a plain reading of the aforesaid provision, it is clear that the aforesaid provision will be applicable in the cases where a suit is filed. In the present case, the appellant did not file any suit but filed a complaint before the Consumer Forum.

9. The word "suit" has a technical meaning which denotes proceedings instituted under Section 9 of the *Civil Procedure Code, 1908*. All legal proceedings in the country are not suits. There are petitions/complaints/applications before various Tribunals or authorities but they are not suits as per Section 9 of the CPC.

“In our opinion, a complaint before Consumer Forum is not a suit, and hence, the *Indian Carriage of Goods by Sea Act, 1925* is not applicable to the facts of the present case and the *Consumer Protection Act, 1986* will only be applicable.”

10. Learned counsel for the respondent contended that assuming that the Consumer Protection Act will be applicable to the facts of the case, even then the complaint is barred by limitation.

11. Section 24-A of the Consumer Protection Act reads as under:

“Section 24-A - Limitation period - (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.”

12. Sub-section (2) of Section 24-A, quoted above, clearly mentions that a complaint can be entertained by the District forum, the State Commission or the National Commission, as the case may be, even after the prescribed period of two years if the complainant satisfies that he had sufficient cause for not filing the complaint within such period.

13. Accordingly, we accept this appeal, set aside the impugned order of the National Commission and remand the matter to the National Commission to decide the complaint afresh in accordance with law by applying Section 24-A of -5- the Consumer Protection Act, 1986 and not the Indian Carriage of Goods by Sea Act, 1925. If the National Commission comes to the conclusion that the complaint had been filed beyond the prescribed period of two years, the National Commission, after hearing both the parties, may condone the delay if it is satisfied that the delay was because of sufficient cause and if it does so it shall decide the case on merits.

14. We make it clear that this shall not be taken as an expression of opinion as if we are inclined to condone the delay. The National Commission shall be at liberty to decide this issue on its own merits in accordance with law without being influenced by any of the observations made in this order.

15. No order as to costs.