

FIRST APPEAL NO. 1263 OF 2018

1. RATNA GHOSH & ANR.
D/O. LATE SUSHIL KUMAR GHOSH, 17, NABINPALLY, RO. MOREPUKUR, RISHRA
HOOGHLY
WEST BENGAL

2. SMT. JALLY DUTTA
W/O. MR. KALIPADA DUTTA, SHAMASHREE PALLY, NAIHATI
NORTH 24 PGS
WEST BENGAL

Versus

.....Appellant(s)

1. DR. P.K. AGARWAL & 6 ORS.
PARK MEDICARE CENTRE (P) LTD, 30/A/148, DR. T.T. LAHA STREET, (BANGUR PARK) RISHRA
HOOGHLY 712248
WEST BENGAL
2. DR. S.N. BASAK
PARK MEDICARE CENTRE (P) LTD, 30/A/148, DR. T.T. LAHA STREET, (BANGUR PARK) RISHRA
HOOGHLY 712248
WEST BENGAL
3. DR. SABYASACHI BOSE
KUMOD APARTMENT FLAT C-3, 220 D.J. ROAD, BHADRAKALI,
HOOGHLY
WEST BENGAL 712232
4. PARK MEDICARE CENTRE (P) LTD
30/A/148, DR. T.T. LAHA STREET, (BANGUR PARK) RISHRA
HOOGHLY 712248
WEST BENGAL
5. PARAMOUNT NURSING HOME
MANIKTOLA, SERAMPORE.
HOOGHLY
WEST BENGAL
6. DR. AVIK DEY
MISSION OF MERCY HOSPITAL, 125/1, PARK STREET
KOLKATA 17
WEST BENGAL
7. MISSION OF MERCY HOSPITAL
125/1, PARK STREET
KOLKATA
WEST BENGAL 17

.....Respondent(s)

HON'BLE DR. S.M. KANTIKAR,PRESIDING MEMBER
HON'BLE MR. BINOY KUMAR,MEMBER

For the Appellant :	Appeared at the time of arguments
	For the Appellants : Mr. Kunal Saha, Authorised Rep.
For the Respondent :	Appeared at the time of arguments
	For the Respondent no. 1 – 4 : Mr. Harsh Kumar, Advocate

ORDER

Pronounced on: 24th December, 2021

ORDER

PER DR. S. M. KANTIKAR, PRESIDING MEMBER

1. The instant Appeal has been filed by the Appellant / Complainant against the Orders passed by the State Commission, West Bengal.

2. Heard the arguments on both sides and perused the material on record. On behalf of the Appellant the Authorised Representative (AR) Dr. Kunal Saha argued that the State Commission stayed on technical ground the instant Appeal is pending before this commission.

3. The AR further submitted that in the cases of alleged medical negligence there is no bar for the aggrieved seeking simultaneous legal remedy under Civil and Criminal Law. He brought our attention the decision of the Hon'ble Supreme Court in *Guru Granth Saheb Sthan Meerghat versus Ved Prakash and others*, (2013) 7 Supreme Court Cases 622, wherein the Hon'ble Supreme Court observed in Para 11 as:

In *State of Rajasthan vs. Kalyan Sundaram Cement Industries Limited* this Court made the following statement in Para 3 : (SCC pp 87-88)

“3. It is settled law that pendency of the criminal matters would not be an impediment to proceed with the civil suits. The criminal court would deal with the offence punishable under the Act. On the other hand, the courts rarely stay the criminal cases and only when the compelling circumstances require the exercise of their power. We have never come across stay of any civil suits by the courts so far. The High Court of Rajasthan is only an exception to pass such orders. The High Court proceeded on a wrong premise that the accused would be expected to disclose their defense in the criminal case by asking them to proceed with the trial of the suit. It is not a correct principle of law. Even otherwise, it no longer subsists since many of them have filed their defenses in the civil suit. On principle of law, we hold that the approach adopted by the High Court is not correct. But since the defense has already been filed nothing survives in this matter.”

4. Learned Counsel for the Respondents vehemently argued that the Complainant filed the instant Appeal is barred by limitation, it was filed after the delay of 1975 days. The Complainant has not shown sufficient cause for such huge delay, therefore the delay shall not be condoned.

5. We gave our thoughtful consideration to the arguments, perused the various orders passed during proceedings before the State Commission. The sequence of proceedings are as below:

(i) Dr. P. K. Agarwal, (OP-1) moved a Miscellaneous Application M.A. No. 245 of 2012 before the State Commission seeking stay of the proceedings before it on the ground that a criminal proceeding on the same charges was also initiated by the Complainant in CR No. 528 of 2011, same was still pending.

(ii) On 13.02.2013 the State Commission allowed the M.A. No. 245 of 2012 and stayed all proceedings before it till disposal of criminal proceedings bearing CR No. 528 of 2011.

(iii) Thereafter before the State Commission the Complainant filed an IA No. 365 of 2017 on 20.11.2017 for vacation of stay granted vide Order 13.02.2013, it was dismissed on 08.02.2018.

We have perused the Application for Condonation of Delay in filing the IA No. 365 of 2017. The relevant para is reproduced as below:

“3. That the Impugned Order in MA No. 245 of 2017 dated 13.02.2013 the Petitioner was under the impression that the Criminal proceedings will conclude very soon and therefore she decided to wait for the decision in the criminal proceedings. However, even after 5 years there is no conclusion in the criminal proceedings and the Civil proceedings also remained stayed. Therefore the applicant decide to file IA No. 365/2017. However the said IA No. 365/2017 was also dismissed on 08.02.2018.

4. That the Petitioner is a women and have difficulties in arranging for money and other things needed for filing revision petition before this Hon’ble Commission and it has resulted in some delay in filing the present Revision Petition. The Petitioner was not advised to challenge the Order of the State Commission dated 13.02.2013 immediately after passing of the aforesaid order.”

7. In the case of alleged medical negligence, the simultaneous criminal proceeding is no bar to the initiation, continuation and adjudication in the Complaints filed under the Consumer Protection Act, 1986 (for short ‘the Act,1986’); more so, when the standard of proof in proceedings under the Act, and Criminal proceedings is entirely different. We would like to put reliance on the decisions of the Hon’ble Supreme Court in *Guru Granth Sahab Meergat Vanaras Vs. Ved Prakash & Ors.* (2013) 7 SCC 622, wherein the question of simultaneous prosecution of the criminal proceedings with civil suit, came up for consideration. Relying on the observations of the Constitution Bench of the Supreme Court in *M.S. Sheriff Vs. State of Madras* AIR 1954 SCC 397, the Court held that no hard and fast rule could be laid down in this regard. Nonetheless the possibility of conflicting decisions in the civil and criminal courts is not a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, which is not even the case of the Opposite Party here.

8. This is the case of alleged medical negligence and in our considered view fair opportunity to be given to both the sides for holistic adjudication. The aggrieved Consumer has right to seek legal remedy initiate proceedings before Civil and Criminal Courts including Consumer Courts and Professional Regulatory Bodies(PRB). We are convinced with the reasons stated by the Complainant in the

9. As a matter of fact, having regard to the object and intent of the Act, summary trial of Consumer Complaint has to be given precedence over other cases, be it civil or criminal in nature. The question of double jeopardy, self-incrimination or the binding effect of the findings in summary proceedings under the Act, does not arise on facts, at hand. It is pertinent that, neither the rigors of the Evidence Act 1872, nor of the Criminal Procedure Code, 1908 are attracted in the proceedings under the Act, which provides for an alternative system of consumer justice by summary trial.

10. We are, therefore, of the view that the trial in criminal cases against the Opposite Party, is no ground for stay of proceedings before the Consumer Fora. Without touching to the merits of this case, the orders of the State Commission dated 13.02.2013 in MA No. 245 of 2012 and Order dated 08.02.2018 in IA No. 365 of 2017 are set aside. The instant Appeal is allowed.

11. The Parties are directed to appear before the State Commission on 03.02.2022 for further proceedings. Considering that the Complaint was filed in 2010, we are now in 2022, we request the State Commission to decide this matter expeditiously preferably within six months from today.

12. The Registry is directed to send the copy of this Order through email and Speed Post to the State Commission and the learned Counsel for the respective Parties within three days.

DR. S.M. KANTIKAR
PRESIDING MEMBER
.....
BINOY KUMAR
MEMBER