

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 73-74 OF 2021

**Bhasin Infotech And
Infrastructure Private Limited**

.....Appellant(s)

Versus

Neema Agarwal & Ors.

.... Respondent(s)

ORDER

These Civil appeals arise out of a decision of the National Consumer Dispute Redressal Commission (NCDRC) delivered on 19th November, 2020 dismissing an interim application of the appellants for filing written submission or reply to a consumer complaint. The complaint was made on 15th March, 2018 by the respondents alleging deficiency in service on the part of the appellants over cancellation of allotment of certain commercial units in a shopping mall. Notice was issued by the NCDRC to the application of the respondents under Section 12 (1)(c) of the Consumer Protection Act, 1986 (which statute prevailed at the material point of time). On 18th April, 2019, when the matter was listed before the Commission, the appellants (respondents before

the Commission) sought a week's time to reply. On 23rd December 2019, the appellants filed reply to the application made under Section 12(1)(c) of the 1986 Act. That application, in substance, was to make the complaint in representative capacity. This application was allowed. The Commission had directed the appellants to file reply to the amended complaint within 30 days. The matter was adjourned till 21st May, 2020. The written submission was filed by the appellant to the consumer complaint along with an application for condonation of delay of 18 days in filing the written submission. There is some dispute over the actual number of days of delay, but that factor is not of much significance so far as the present appeal is concerned. Admitted position is that such delay was beyond the period of 45 days, which is the prescribed period within which a reply has to be filed in terms of Section 13(2)(a) read with Section 18 of the 1986 Act. There were certain other interlocutory orders passed in the matter, but these are not of much relevance for adjudication of the issues raised in the present Appeals.

2. By an order passed on 19th November, 2020, the Commission rejected the appellant's application for condonation of delay, following a Constitution Bench decision of this Court

delivered in a reference, titled **New India Assurance Company Limited vs. Hilli Multipurpose Cold Storage Pvt. Ltd.** [(2020) 5 SCC 757]. In that Judgment decided on 4th March, 2020 and authored by one of us (Vineet Saran, J), two questions were formulated by the Constitution Bench. These were:-

- “(i) Whether the District Forum has power to extend the time for filing of response to the complaint beyond the period of 15 days, in addition to 30 days, as envisaged Under Section 13(2)(a) of the Consumer Protection Act?
- (ii) What would be the commencing point of limitation of 30 days Under Section 13 of the Consumer Protection Act, 1986?”

The Constitution Bench answered these questions in the said judgment in following terms:-

“41.To conclude, we hold that our **answer to the first question** is that the District Forum has no power to extend the time for filing the response to the complaint beyond the period of 15 days in addition to 30 days as is envisaged Under Section 13 of the Consumer Protection Act; and the **answer to the second question** is that the commencing point of limitation of 30 days Under Section 13 of the Consumer Protection Act would be from the date of receipt of the notice accompanied with the complaint by the opposite party, and not mere receipt of the notice of the complaint.

This Judgment to operate prospectively.

The referred questions are answered accordingly.”

3. We would repeat here that the timeframe for filing written submission or reply is the same in respect of original complaints

in all the three fora constituted under the 1986 Act, as per Section 18 thereof. In these appeals, we are concerned with the first question formulated by the Constitution Bench. This question was referred to by a two Judge Bench of this Court on 11th February, 2016 in a Civil Appeal of the same appellants only. Subsequent to the reference order dated 11th February, 2016, the question of jurisdiction of the consumer fora for extending time to file reply to complaint beyond stipulated period of 45 days came up for hearing before a Coordinate Bench in the case of **Reliance General Insurance Company Limited and Another vs. Mampee Timbers and Hardwares Private Limited and Another** [(2021) 3 SCC 673]. This order was passed on 10th February, 2017. At that point of time, the issue was pending for decision before the Constitution Bench. The Coordinate Bench in the said order of 10th February, 2017, observed and directed:-

“5. We consider it appropriate to direct that pending decision of the larger Bench, it will be open to the Fora concerned to accept the written statement filed beyond the stipulated time of 45 days in an appropriate case, on suitable terms, including the payment of costs, and to proceed with the matter.”

4. Another Bench of equal strength had examined the same point in the case of **Daddy’s Builders Private Limited and Others vs. Manisha Bhargava and Others** [(2021) 3 SCC 669].

In that case, the State Commission, by an Order dated 26th September, 2018 had rejected an application filed by the applicants therein, i.e. **Daddy's Builders Private Limited** (supra) seeking condonation of delay in filing reply to the consumer complaint beyond the period of 45 days. The appeal against the order of rejection before the National Commission was also dismissed on 4th September, 2020. The petitioners came with further appeal before this Court. The appellants in that case pegged their argument on the observation made in the last paragraph of the Constitution Bench judgment that the said judgment would be applicable prospectively. The appellants in that proceeding wanted to construe prospective operation of the judgment to mean that the view of the Constitution Bench against condonation of delay in filing reply beyond 45 days was not to be made applicable to the complaints filed before the respective fora before 4th March, 2020. The order of the Coordinate Bench in the case of **Reliance General Insurance Company Limited** (supra) was also referred to in support of the contention of the appellants.

5. The Coordinate Bench in the case of **Daddy's Builders Private Limited** (supra) did not accept the argument of the appellants that the ratio of the Constitution Bench would not

apply to complaints filed before the date of the Constitution Bench judgment i.e. 4th March, 2020. It has been observed in the case of

Daddy's Builders Private Limited (supra):-

“4. Having heard learned Counsel appearing on behalf of the Petitioners and so far as the question whether the date on which the State Commission passed the order, then on that date, whether the State Commission has the power to condone the delay beyond 45 days for filing the written statement Under Section 13 of the Act is concerned, as such, the said issue whether the State Commission has the power to condone the delay beyond 45 days is now not res integra in view of the Constitution Bench decision of this Court in the case of *New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Pvt. Ltd.* reported in (2020) 5 SCC 757. However, it is submitted by the learned counsel appearing on behalf of the petitioners that as in paragraph 63 it is observed that the said judgment shall be applicable prospectively and therefore the said decision shall not be applicable to the complaint which was filed prior to the said judgment and/or the said decision shall not be applicable to the application for condonation of delay filed before the said decision.

5. However, the aforesaid cannot be accepted. It is required to be noted that as per the decision of this Court in *J.J. Merchant v. Shrinath Chaturvedi*, reported in (2002) 6 SCC 635, which was a three Judge Bench decision, consumer fora has no power to extend the time for filing a reply/written statement beyond the period prescribed under the Act. However, thereafter, despite the above three Judge Bench decision, a contrary view was taken by a two Judge Bench and therefore the matter was referred to the five Judge Bench and the Constitution Bench has reiterated the view taken in *J.J. Merchant* (supra) and has again reiterated that the consumer fora has no power and/or jurisdiction to accept the written statement beyond the statutory period prescribed under the Act i.e. 45 days in all. However, it was found that in view of the order passed by this Court in *Reliance General Insurance Co. Ltd.* reported in (2021) 3 SCC 673 dated 10.02.2017, pending the decision of the larger Bench, in some of the cases, the State Commission might have condoned the delay in filing the written statement filed beyond the

stipulated time of 45 days and all those orders condoning the delay and accepting the written statements shall not be affected, this Court observed in paragraph 63 that the decision of the Constitution Bench shall be applicable prospectively. We say so because one of us was a party to the said decision of the Constitution Bench.

6. Now so far as the reliance placed upon the order passed by this Court dated 10.02.2017 in Reliance General Insurance Co. Ltd. (supra) is concerned, the same has been dealt with in detail by the National Commission by the impugned order while deciding the first appeal. As rightly observed by the National Commission, there was no mandate that in all the cases, where the written statement was submitted beyond the stipulated period of 45 days, the delay must be condoned and the written statement must be taken on record. In order dated 10.02.2017, it is specifically mentioned that it will be open to the Fora concerned to accept the written statement filed beyond the stipulated period of 45 days in an appropriate case, on suitable terms, including the payment of costs and to proceed with the matter. Therefore, ultimately, it was left to the Fora concerned to accept the written statement beyond the stipulated period of 45 days in an appropriate case.

7. As observed by the National Commission that despite sufficient time granted the written statement was not filed within the prescribed period of limitation. Therefore, the National Commission has considered the aspect of condonation of delay on merits also. In any case, in view of the earlier decision of this Court in J.J. Merchant (supra) and the subsequent authoritative decision of the Constitution Bench of this Court in New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Pvt. Ltd. (supra), consumer fora has no jurisdiction and/or power to accept the written statement beyond the period of 45 days, we see no reason to interfere with the impugned order passed by the learned National Commission.”

6. In a subsequent appeal, carrying the title **Dr. A. Suresh Kumar & Ors vs. Amit Agarwal** (In Civil Appeal No. 988 of 2021 decided on 8th July, 2021), the appellants had filed their reply with

delay of seven days, beyond 45 days. The Commission, however, had rejected the application for condonation of delay in filing written statement in view of the Constitution Bench judgment. In this judgment, a Bench having strength equal to ours, and to which one of us (Vineet Saran, J) was a party, examined what prospective operation of the Constitution Bench Judgment would imply. It was, inter-alia, observed in this decision:

“In our view, since the application for condonation of delay was filed prior to the judgment of the Constitution Bench, which was delivered on 04.03.2020, the said application for condonation of delay ought to have been considered on merits and should not have been dismissed on the basis of the Constitution Bench judgment in the case of New India Assurance Co. Limited (supra) because the said judgment was to operate prospectively and the written statement as well as the application for condonation of delay had been filed much prior to the said judgment.”

7. The said appeal was disposed of with the following observation and direction:-

“Having heard learned counsel for the parties and after going through the record and for the reasons given in the application for condonation of delay filed before the NCDRC and also considering the fact that the delay was only for 7 days for which valid explanation has been given and with the consent of learned counsel for the parties, we condone the delay of 7 days in filing the reply by the appellants before NCDRC, but on payment of cost of Rs.25,000/- (Rupees twenty five thousand only). The said cost shall be paid by the appellants to the respondent within 15 days from today. In case, the said payment is not made, written statement already filed by the appellants on 25.11.2019 shall not be accepted. However, if the payment is made, the written

statement shall be accepted by the NCDRC and every effort shall be made by the NCDRC to decide the complaint filed by the respondent as expeditiously as possible, preferably within six months.”

8. Two contrary views have emerged as regards what would be meant by the phrase..... “This judgment to operate prospectively” mandated in the Constitution Bench judgment. In the case of **Daddy’s Builders Private Limited** (supra), the application for condonation of delay had been rejected by the State Commission prior to the Constitution Bench opinion on the aspect of power and jurisdiction of the consumer fora to condone delay beyond the stipulated 45 days in filing written submission/reply. The appeal against that decision was rejected by the NCDRC on 4th September, 2020, following the Constitution Bench decision. On prospective operation of the Constitution Bench Judgment, opinion of the Coordinate Bench in the case of **Daddy’s Builders Private Limited** (supra) was that the prospective operation of the judgment would apply only in cases where delay stood condoned on a date prior to 4th March, 2020. In expressing this view, the Coordinate Bench noted that one of the members of the Bench was also a party to the said Constitution Bench decision. The position, as regards composition of the Bench is similar in the case of **Dr. A. Suresh Kumar** (supra) and in that judgment, a

more liberal approach has been adopted. The prospectivity of the Constitution Bench decision has been held to cover cases where an application for condonation of delay was filed prior to the judgment of the Constitution Bench, but whose outcome was yet to be determined at the time the Constitution Bench judgment was delivered.

9. In our view, the prospective operation of the Judgment in the case of **New India Assurance Company Limited** (supra) ought to cover both sets of the cases in which delay in filing written reply stood condoned after accepting the application for condonation of delay in filing written statement/reply as well as the cases where the decision on condonation of delay in filing written replies were pending on 4th March, 2020. Once an application is filed for condonation of delay, there may be cases where such applications are decided upon on dates earlier than applications already filed but yet to be determined. We do not have any laid down administrative mechanism to decide in what manner applications of this nature would be decided and the consumer fora or the Courts apply their own discretion on the basis of various relevant factors involved in individual cases, to prioritise their hearing. In our opinion, it would be artificial distinction to distinguish

between applications for condonation of delay already decided before 4th March, 2020 and the applications for condonation of delay pending on that date. So far as persons with pending applications for condonation of delay in filing written replies are concerned, their right to have their applications for condonation of delay in filing written replies to be considered, would stand crystallised on 4th March, 2020. Such right has also been recognised in the case of **Reliance General Insurance Company Limited** (supra). Such right could be extinguished only by specific legal provisions. In the event the Constitution Bench judgment had altogether negated the right to have delay in filing written statement condoned beyond the period of 45 days, the right of such applicants could stand extinguished. But as the judgment of the Constitution Bench is to operate prospectively, in our understanding of the said judgment, those with pending applications for condonation of delay would retain their right to have their applications considered. But we refrain from expressing any definitive opinion on this point as the two Benches of equal strength have taken differing views on the manner in which the prospective application of the Constitution Bench judgment would

be affected. In our opinion, this issue ought to be decided by a larger Bench.

10. Accordingly, we direct the registry to place this order along with the cause papers before Hon'ble the Chief Justice of India for appropriate direction.

.....**J.**
(VINEET SARAN)

.....**J.**
(ANIRUDDHA BOSE)

NEW DELHI;
DECEMBER 06, 2021.