

M/S. ARYAN LIFESTYLES PVT. LTD. V. SAMEER NAYYAR & 2 ORS.

1. M/S. ARYAN LIFESTYLES PVT. LTD.
THROUGH ITS MANAGING DIRECTOR, HAVING ITS
REGD. OFFICE AT : 17-B, ASAF ALI ROAD,
NEW DELHI-110002

.....Appellant(s)

Versus

1. SAMEER NAYYAR & 2 ORS.
S/O. SH. SOHAN NAYYAR, R/O. B-347, NEW FRIENDS
COLONY,
NEW DELHI
2. SH. SAURABH NAYYER,
S/O. SH. SOHAM NAYYAR, R/O. B-347, NEW FRIENDS
COLONY, NEW DELHI-
3. M/S. NRIGHTWAYS HOUSING & LAND DEVELOPMENT
HAVING ITS REGD. OFFICE AT: 9, KASTURBA GANDHI
MARG, NEW DELHI-110001

.....Respondent(s)

Case No: FIRST APPEAL NO. 987 OF 2019

Date of Judgement: 03 Jan 2023

Judges:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER
HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE, MEMBER

For the Appellant : Mr. Shubhankar Sengupta, Advocate

For the Respondent : For the Respondents No.1 & 2 : NEMO (served)

For the Respondent No. 3 : NEMO (served)

Facts:

Appeal against order dated 29/01/2019 of Delhi State Commission in Complaint No. 2070/2017. Originally filed as revision petition against orders dated 18/01/2018 (admission) and 29/01/2019 (striking off defence). On statement by appellant's counsel, challenge to order dated 18/01/2018 dropped and appeal confined to only order dated 29/01/2019. Order dated 29/01/2019 struck off right of appellant (opposite party no. 2) to file written statement in complaint

Court's Opinions:

At the time, written statement could be taken on record beyond 45 days under Consumer Protection Act, 1986 subject to costs/terms as per 2017 Supreme Court judgment in Reliance General Insurance case. However, in 2019 a stricter view was taken by Supreme Court in New India Assurance case holding defence cannot be taken beyond 45 days; but this judgment was held to be prospective in operation. Hence, facts have to be seen in light of 2017 Reliance General Insurance case judgment which allowed delayed defence subject to costs/terms. Without expressing any view on merits and in interest of principles of natural justice, opportunity can be provided to file written statement subject to costs. Impugned order striking off defence modified; appellant granted last opportunity to file written statement within 30 days on payment of cost of Rs 25,000 to complainants

Arguments:

Appellant:

Reliance General Insurance case governed issue of filing defence beyond 45 days with costs/terms. Hence striking off appellant's right to file defence erroneous

Respondents:

None appeared

Sections:

Appeal under Section 19 of Consumer Protection Act, 1986. Original petition filed under Section 21(b) of Consumer Protection Act, 1986 against interlocutory orders

Cases Referred/Cited:

New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd. (2013). Reliance General Insurance Co. Ltd v. Mampee Timbers & Hardware Pvt. Ltd. (2017)

Laws Referred:

The Consumer Protection Act, 1986

Conclusion:

Appeal allowed. Impugned order striking off defence modified. Appellant granted last opportunity to file written statement within 30 days on payment of Rs 25,000 costs to complainants. If written statement not filed or costs not paid within 30 days, right to file written statement shall cease

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Court

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Full Text of Judgment:

1. The appeal is listed for final hearing. No one appears for the respondents despite service. We do not see any good reason to delay the hearing any further and deem it appropriate to decide the matter on its merits. We have heard the learned counsel for the appellant and have perused the record.
2. The case was filed as a revision petition under section 21(b) of The Consumer Protection Act, 1986 against interlocutory Orders dated 18.01.2018 and dated 29.01.2019 of the State Commission in complaint no. 2070 of 2017. In the hearing before a co-ordinate bench of this Commission on 20.05.2019 the matter was ordered to be treated as an appeal

under section 19 of the Act 1986. On the statement made by the learned counsel for the appellant the challenge to the Order dated 18.01.2018 was dropped and the appeal was confined to the Order dated 29.01.2019 alone. This Commission's Order of 20.05.2019 is reproduced below for reference:

20.05.2019

ORDER

In the present Revision Petition, which has been filed by the Petitioner, Office Report has been put up that the Revision Petition is not maintainable and only an Appeal lies. The objection taken by the office appears to be genuine. The office is directed to register it as an Appeal. In the present Appeal, the Appellant has challenged two orders dated 18.1.2018 and 29.1.2019 passed by the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as "the State Commission"), whereby in the first order, the Complaint has been admitted and notice has been issued whereas in the second order, the right to file the Written Version has been closed, as the same was not filed within the maximum statutory period of 45 days of the service of the notice. Mr. Shubhankar Sengupta, learned Counsel for the Appellant stated that the present Appeal be confined to the order dated 29.1.2019, as the Appellant shall raise the issue regarding admissibility of the Complaint before the State Commission itself. The statement is recorded and the present Appeal is confined to the order dated 29.1.2019 passed by the State Commission. The submission is that the judgement of the Hon'ble Supreme Court in Civil Appeal No.10941-10942 of 2013 – New India Assurance Co. Ltd. vs. Hilli Multipurpose Cold Storage Pvt. Ltd. – decided on 4.12.2015, does not relate to the provisions of the Consumer Protection Act, 1986 and it relates to some other statutory provisions. According to the learned Counsel for the Appellant, the observations made by the Hon'ble Supreme Court in Civil Appeal No.2990/2017 (D.No.2365/2017) – Reliance General Insurance Co. Ltd. & Anr. vs. M/s Mampee Timbers &

Hardware Pvt. Ltd. & Anr. –decided on 10.2.2017, shall apply in the present case.

Be that as it may, I am of the considered view that the matter requires consideration. Issue notice returnable for 4th September 2019. Dasti also permitted.

Appellant shall remit directly to Respondent No.1 a sum of ₹10,000/- towards travel and allied expenses within two weeks.

Further proceedings before the State Commission in CC/2070/2017 shall remain stayed till the next date of hearing.

4. Learned counsel for the appellant does not dispute the afore-said position, he also informs that the above Order has not been put to review or challenge.

5. Vide the impugned Order of 29.01.2019 the right of the opposite party no. 2 before the State Commission i.e. the appellant herein to file its written version was forfeited. The said Order is reproduced below for reference:

29.01.2019

Written statement is filed by OP-1 alongwith the application for condonation of delay as per which there is a delay of 05 days in filing the written statement.

However, complainant states that there is a delay of about 15 days in filing the same.

OP-1 states that due to bonafide mistake wrong calculation is made and admits that there is a delay of 15 days.

After some arguments, delay application is not opposed excepts for costs.

With the consent of counsel for complainant, delay in filing the written statement stands condoned subject to payment of costs of Rs. 5,000/- to the complainant.

Let costs be paid on the next date.

OP-2 has not filed written statement.

Copy of complaint was supplied to OP-2 on 26.07.2018.

Period of 30 days as well as extended period of 15 days has already lapsed long back. Written statement is not ready even

today. In view of the judgment of the Hon'ble Supreme Court in Civil Appeal No.10941-10942 of 2013 titled New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd. dated 04.12.2015, the right of OP-2 to file written statement stands closed.

Let complainant file rejoinder to the written statement of OP-1 and evidence by way of affidavit within 08 weeks, supplying advance copy to OP-1.

Relist on 27.08.2019.

6. At the relevant time i.e. on 29.01.2019 when the State Commission passed its Order written version beyond the statutory period of 30 days and the extended period of 15 days thence i.e. beyond total 45 days stipulated under Section 13(1)(a) of The Consumer Protection Act, 1986 (the old Act, then in force) could be permitted to be filed subject to "suitable terms, including the payment of costs" in accordance with the judgment dated 10.02.2017 of Hon'ble Supreme Court in Reliance General Insurance Co. Ltd. & Anr. vs. M/s Mampee Timbers & Hardware Pvt. Ltd. & Anr. Later on Hon'ble Supreme Court judgment in New India Assurance Co. Ltd. vs. Hilli Multipurpose Cold Storage Pvt. Ltd., taking a stricter view on the subject, was delivered on 04.03.2020 but the same was made prospective in operation by the Hon'ble Court ("This Judgment to operate prospectively.").

7. Thus we have to consider the instant matter in the light of Hon'ble Supreme Court's judgment given in Reliance General Insurance Co. Ltd. & Anr. vs. M/s Mampee Timbers & Hardware Pvt. Ltd. & Anr. whereby written version could be permitted to be filed subject to suitable terms.

8. Without expressing any opinion about the merits of the case, but considering the nature of the dispute and the overall facts and circumstances in their totality, and also keeping in perspective the first principles of natural justice, we find it just and appropriate that one opportunity may be provided to the appellant i.e. the opposite party no. 2 before the State Commission to file its written version in a time-bound manner subject to suitable terms.

9. As such one opportunity is granted to the opposite party no. 2 to file its written version before the State Commission within 30 days from today, without fail, subject to cost of Rs. 25,000/- to be paid to the complainants within the same period of 30 days from today. The impugned Order dated 29.01.2019 of the State Commission stands modified accordingly. The opposite party no. 2 is sternly advised to conduct its defence properly before the State Commission. The State Commission is requested to take the written version of the opposite party no. 2 on record, if filed within 30 days from today and if the cost of Rs. 25,000/- is paid to the complainants within the same period of 30 days from today, and to then give opportunity to the complainants to file their rejoinder thereto, and to proceed further with the adjudication of the case in the normal wont as per the law. It goes without saying that if the written version is not filed within the stipulated period of 30 days from today or if the cost imposed is not paid within the stipulated period of 30 days from today, the right to file the written version shall obliterate and the same shall not be taken on record for consideration, and the State Commission shall so proceed further with the adjudication of the case. Needless to add, the parties shall appear before the State Commission on the date fixed by the State Commission.

10. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel within 03 days. It is also requested to forthwith communicate this Order to the State Commission by the fastest mode available. The stenographer is requested to upload this Order on the website of this Commission immediately.

11. 'Dasti', in addition, to facilitate timely compliance.