

M/S. TIRUPATI DEVELOPERS V. INDRAKALA HEMANT KUMAR SHINDE & 2 ORS.

1. M/S. TIRUPATI DEVELOPERS

THROUGH ITS PARTNER MANILAL H GALA, 1/A, SHIV-
SHAKTI LAGHU UDYOG MUMBIA -NASIK HIGHWAY

SHAHPUR
THANE

.....Appellant(s)

Versus

1. INDRAKALA HEMANT KUMAR SHINDE & 2 ORS.
A202, OM AKSHAY CO-OP HOUSING SOCIETY
KHAREGAON KALWA

2. MR. HEMANT KUMAR RAVAJI SHINDE
A202, OM AKSHAY CO-OP HOUSING SOCIETY
KHAREGAON KALWA

3. TACHYON REALTY PVT LTD
THROUGH ITS DIRECOTR, MR SACHIN PRADEEP
KOTHARI , 2 SWAPNAKAR TOWER DR BHABA NAGAR
MUMBAI NAKA
NASHIK 422011

.....Respondent(s)

Case No: FIRST APPEAL NO. 2290 OF 2019

Date of Judgement: 13 Jan 2023

Judges:

HON'BLE MR. DINESH SINGH, PRESIDING MEMBER

For the Appellant : Mr. Vedant Goel, Advocate

For the Respondent : For the Respondents No. 1 and No. 2: Ms. Kalpana Singh, Proxy Advocate for Ms. Poonam Makhijani, Advocate

For the Respondent No. 3 : NEMO (notice not issued)

Facts:

Complainants filed a consumer complaint (no. 618 of 2019) against the appellant and others before the State Commission. The appellant failed to file written version within 45 days time limit under Section 13(1)(a) of Consumer Protection Act, 1986. The State Commission rejected the application for condoning delay and filing written version, and forfeited the right to file the same vide order dated 05/11/2019. The present appeal has been filed challenging the said order.

Arguments by Appellant:

No arguments of the appellant are recorded in the order. The appeal per se is against the forfeiture order.

Arguments by Respondents:

Respondents had opposed the condonation application before State Commission contending there is no provision to condone delay in filing written version.

Court's Observations and Decision:

As per 2017 SC judgement in Reliance General Insurance case, written version could be permitted beyond 45 days subject to suitable terms. However, later 2020 SC judgement in New India Assurance case took a stricter view but was made prospective. Keeping in view principles of natural justice and facts and circumstances, granting one opportunity to file written version within 30 days subject to cost of Rs. 50,000. State Commission directed to take written version on record if filed within 30 days alongwith cost, and give opportunity to complainant to file rejoinder. If written version not filed

within 30 days or cost not paid, the same shall not be taken on record.

Relevant Provisions and Cases:

Section 19 of Consumer Protection Act, 2019 – Appeal against order of State/District Commission Section 13(1)(a) of Consumer Protection Act, 1986 – Procedure on admission of complaint and time limit for filing written version

Case Laws:

Reliance General Insurance Co. Ltd vs M/s Mampee Timbers & Hardware Pvt. Ltd [Permits delayed written version subject to terms]

New India Assurance Co. Ltd. vs Hilli Multipurpose Cold Storage Pvt. Ltd [Stricter view, but made prospective]

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Full Text of Judgment:

1. This appeal has been filed under section 19 of The Consumer Protection Act, 2019 in challenge to the Order dated 05.11.2019 of the State Commission in complaint no. 618 of 2019.

2. We have heard the learned counsel for the appellant and for the respondent (the ‘complainants’). We have also perused the record, including inter alia the State Commission’s impugned Order dated 05.11.2019 and the memo of appeal.

3. The appeal has been filed against an interlocutory order of the State Commission vide which it has forfeited the right of the appellant herein, i.e. the opposite party No. 2 before the State Commission, to file its written version. The said Order is reproduced below for reference:

5 th November 2019

Adv. Preshita Ohol is present for the complainants. Adv. Gaurang Nalwala is present for the opponent no. 2 with authority letter.

Adv. Gaurang Malawala has moved an application for taking written version on record by condoning delay of 21 days in filing written version. Advocate for the complainants strongly opposed the application and contended that there is no provision to condone the delay. It is very clear that there is no provision to condone the delay in filing written version. On the contrary, provision is very clear that written version should be filed on record within 30 days from receipt of notice. At the most, it can be extended for further 15 days if request application is granted. Here those 45 days are already over and then after 21 days, this application for condonation of delay is moved. As there is no provision for condonation of such delay and advocate for the complainants has strongly opposed for taking the written version on record, said application cannot be allowed. Hence, the application for condonation of delay in filing written version is rejected. Matter is proceeded without written version of the opponent no. 2. Adjourn on 07/01/2020.

4. At the relevant time i.e. on 05.11.2019 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").

5. 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. 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 to file its written version in a time-bound manner subject to suitable terms.

6. 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. 50,000/- to be paid to the complainants within the same period of 30 days from today.

The impugned Order dated 05.11.2019 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. 50,000/- is paid to the complainants within the same period of 30 days from today. It would 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 written version of the opposite party no. 2 shall not be taken on record for consideration, and the State Commission shall so proceed further with the adjudication of the case.

The parties shall appear before the State Commission on 22.02.2023.

The respondent no. 3 herein – opposite party no. 1 before the State Commission is not present or represented before this Commission today. As such, in the interest of justice, if, for whatever reason, the opposite party no. 1 does not appear

before the State Commission on 22.02.2023, the State Commission shall issue notice to him and ensure its due service. In such contingency the steps for service of notice shall be taken by the opposite party no. 2.

7. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel immediately. The Registry 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.

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