

**SHRI APPA SWAMI
INFRASTRUCTURE V. RAJENDRA
NARAYANRAO MANKAR & ANR.**

1. SHRI APPA SWAMI INFRASTRUCTURE
THROUGH ITS PARTNER VIVEK SHRIDHAR CHAUDHARI
R/O 401, SHRIJI APARTMENTS, CIVIL LINES, NAGPUR
OFFICE AT SHRI SWAMI SANKUL, WHC ROAD,
DHARAMPETH,
NAGPUR-440010,
MAHARASHTRA

.....Appellant(s)

Versus

1. RAJENDRA NARAYANRAO MANKAR & ANR.
AND MRS JAYA RAHENDRA MANKAR, R./O
MALATIKUNJ, 115-A, CHATRAPATI NAGAR, BEHIND
CHATRAPATI HALL,
NAGPUR-440015,
MAHARASHTRA

.....Respondent(s)

Case No: FIRST APPEAL NO. 2362 OF 2019

Date of Judgement: 12 Jan 2023

Judges:

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

For the Appellant : Mr. Gajanan Tirthkar, Advocate
For the Respondent : NEMO

Facts:

Appeal filed against order of State Commission forfeiting appellant's right to file written statement in consumer complaint against them. State Commission order dated 20.03.2019 rejected appellant's application for extension of time to file written statement. Complaint to proceed without written statement of appellant.

Court's Opinions:

As per 2017 SC judgment in Reliance General Insurance case, written statement can be allowed after 45 days subject to costs. 2020 SC judgment in New India Assurance case taking stricter view was prospective. In interests of justice and principles of natural justice, granting one more opportunity to file written statement within 30 days subject to costs of Rs 50,000.

Arguments:

Appellant:

Appeal against order forfeiting right to file written statement and seeking opportunity to file the same.

Respondents:

None appeared.

Orders & Directions:

Impugned order modified. Appellant granted last opportunity to file written statement within 30 days on payment of Rs. 50,000 costs to respondents. State Commission directed to take written statement on record if conditions fulfilled, give complainants opportunity to file rejoinder and proceed with case. Parties directed to appear before State Commission on 03.03.2023.

Sections & Cases Referred/Cited:

Section 13(1)(a) of Consumer Protection Act, 1986

Reliance General Insurance Co. Ltd. & Anr. vs M/s Mampee Timbers & Hardware Pvt. Ltd. & Anr (SC 2017); New India

***Assurance Co. Ltd. vs Hilli Multipurpose Cold Storage Pvt. Ltd
(SC 2020)***

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Full Text of Judgment:

1. This appeal has been filed under section 19 of The Consumer Protection Act, 1986 in challenge to the Order dated 20.03.2019 of the State Commission in complaint no. 136 of 2018.

2. The appeal is listed for final hearing.

Learned counsel, Mr. Gajanan Tirthkar, appears for the appellant (the 'opposite party' before the State Commission). No one appears for the respondents (the 'complainants' before the State Commission).

The ideal normative period to dispose of an appeal, as provided for in section 52 of the Act 2019 (pari materia to section 19A of the Act 1986), is 90 days of its admission. Notice in the present appeal was ordered to be issued more than three years back on 23.12.2019.

We do not see any good reason to delay the hearing any further and deem it appropriate to decide the matter on its merits.

3. We have perused the record, including inter alia the State Commission's impugned Order dated 20.03.2019 and the memo of appeal.

4. The appeal impugns an interlocutory order of the State Commission vide which it has forfeited the right of the opposite party to file its written version. The said Order is reproduced below for reference: 20.03.2019

None present for the complainant. Adv. Suryawanshi is present for the opponent. The opponent has not filed written statement within a period of 45 days after receipt of notice. Notice was issued to the opponent on 28/02/2019. Adv. Raut appeared for the opponent and sought time for filing reply. Notice was served to opponent on 23.1.2019. The opponent failed to file

written statement within a period of 45 days. His application for extension of time is hereby rejected. Consumer complaint to proceed without written statement of opponent. However the opponent can participate in proceeding and make attack on law point. Adjourn for filing affidavit of evidence by the complainant on 18.4.2019.

5. At the relevant time i.e. on 20.03.2019 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.").

6. 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 opposite party to file its written version in a time-bound manner subject to suitable terms.

7. As such one opportunity is granted to the opposite party 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 20.03.2019 of the State Commission stands modified accordingly.

The opposite party 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 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 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 03.03.2023.

The complainants are not present or represented before this Commission today. As such, in the interest of justice, if, for whatever reason, the complainants do not appear before the State Commission on 03.03.2023, the State Commission shall issue notice to them and ensure its due service. In such contingency the steps for service of notice shall be taken by the opposite party.

8. 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.

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