

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 2290 OF 2019

(Against the Order dated 05/11/2019 in Complaint No. 618/2019 of the State Commission Rajasthan)

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)

BEFORE:

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)

Dated : 13 Jan 2023

ORDER

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:

5th 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 Nalawala 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.

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DINESH SINGH
PRESIDING MEMBER