

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 10941-10942 OF 2013

NEW INDIA ASSURANCE CO. LTD

Appellant(s)

VERSUS

HILLI MULTIPURPOSE COLD STORAGE PVT LTD

Respondent(s)

O R D E R

These matters arise out of a consumer dispute in Consumer Complaint No. 52 of 2013 on the file of the National Consumer Disputes Redressal Commission.

Section 9 of the Consumer Protection Act, 1986 (hereinafter being referred to as 'the Act') provides for the constitution of fora (hereinafter called 'ADJUDICATORY BODIES') at three levels, District, State and National, to settle consumer disputes¹.

¹ Consumer dispute is a defined expression under Section 2(e) of the Act
"consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint."

Section 21 of the Act confers the National Commission with both original and appellate jurisdictions.

In the instant batch of cases, we are concerned with the original jurisdiction of the National Commission. The National Commission has original jurisdiction to examine complaints arising under Act where the complaint pertains to goods and services the value and compensation, if any claimed, exceeds Rs. One crore.

Section 12 and 13 prescribe the procedure to be followed by a District Consumer Forum where it receives a 'complaint²'. The subject matter of a complaint could be regarding the supply of defective goods or deficiency in the service rendered. By virtue of the declaration contained under Section 22, the procedure prescribed under Section 12 and 13 is required to be followed even by the National Commission while adjudicating disputes in exercise of its original jurisdiction.

Admittedly, the complaint in all these appeals is regarding the deficiency in the service rendered by the appellants.

² Defined expression under Section 2(e)

Under Section 13(2) of the Act, any ADJUDICATORY BODY "on the admission of the complaint" where the complaint pertaining to deficiency in service is required to put the opposite party on notice by supplying a copy of the complaint and call upon the opposite party "to give his version of the case" within a period of 30 days or such extended period not exceeding 15 days as may be granted by the adjudicatory body.

Section 13(2) insofar as it is relevant for the present purpose is as follows:-

" The District Forum shall, or if the complaint relates to any services -

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum."

It can be seen that sub-clause 2(a) of Section 13 is not explicit regarding the commencing point of the period of 30 days.

On the other hand, clause (b) of sub-Section (2) of Section 13 stipulates that where the opposite party

denies or disputes any allegations in the complaint or fails to take any action to represent his case subsequent to receipt of the copy of the complaint within the time given by the adjudicatory body, the adjudicatory body is mandated to proceed with the examination of the dispute. The relevant portion of clause (b) of sub-Section (2) reads as follows:-

"(b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause(a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute -

On a conjoint reading of clause (a) and (b) of sub-Section (2) of Section 13, it appears to us that the period of limitation of 30 days stipulated by the statute within which time the opposite party to a consumer dispute is to state his version of the case does not depend upon any statutorily determined point from which the period of limitation starts running. The period of limitation can vary with each case depending upon the decision of the ADJUDICATORY BODY to indicate the point on which the period of limitation starts running.

In the case on hand, the National Forum called upon the appellant herein to state his version of the case within 30 days from the receipt of the notice of the admission of the complaint.

The complaint was admitted on 8.3.2013. The National Forum directed issuance of notice which is made returnable on 22nd August, 2013. However, the National Forum directed the appellant to file his written statement within 30 days of the receipt of the notice. Admittedly, the notice was received by the appellant on 19.3.2013. The appellant could not file his written statement within the period of 30 days from the date of receipt of the notice. The written statement was filed by the appellant with a delay condonation petition on 23rd July, 2013. The National Commission declined to condone the delay in view of the law declared by this Court in J.J. Merchant & Ors. Vs. Srinath Chaturvedi 2002(6) SCC 635 and forfeited the appellant's right to file a written statement. After unsuccessfully exhausting an opportunity to seek a review of such order, the appellant approached this Court by the instant appeal.

When the matter is taken up, the learned counsel for the appellant stated that these matters are listed before us subsequent to the order of this Court dated 4.12.2015 by a larger Bench (three Judges). The said order dealt with the question whether the period of limitation prescribed under Section 13 of the Act is mandatory or declaratory. The larger Bench on an examination of earlier decisions of this Court opined:-

"In the case of Dr. J.J. Merchant (supra), which is on the same subject, this Court observed as under:

"13. The National Commission or the State Commission is empowered to follow the said procedure. From the aforesaid section it is apparent that on receipt of the complaint, the opposite party is required to be given notice directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum or the Commission. For having speedy trial, this legislative mandate of not giving more than 45 days in submitting the written statement or the version of the case is required to be adhered to. If this is not adhered to, the legislative mandate of disposing of the cases within three or five months would be defeated.

14. For this purpose, even Parliament has amended Order 8 Rule 1 of the Code of Civil Procedure,

which reads thus:

"1. Written statement. - The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

15. Under this Rule also, there is a legislative mandate that written statement of defence is to be filed within 30 days. However, if there is a failure to file such written statement within the stipulated time, the court can at the most extend further period of 60 days and no more. Under the Act, the legislative intent is not to give 90 days of time but only maximum 45 days for filing the version of the opposite party. Therefore, the aforesaid mandate is required to be strictly adhered to."

We are, therefore, of the view that the judgment delivered in the case of Dr. J.J. Merchant (supra) holds the field and therefore, we reiterate the view that the District Forum can grant a further period of 15 days to the opposite party for filing his version or reply and not beyond that."

The larger Bench made a further declaration that the law declared by this Court in J.J. Merchant's case (supra) "should prevail".

"In view of the aforesaid legal position, we are of the view that the law laid down by a three-Judge Bench of this Court in J.J. Merchant should prevail. The reference is answered accordingly."

J.J. Merchant's case (supra) was also decided by a Bench of three Judges. On an examination of the scheme of the Act and the language of Section 13, this Court in J.J. Merchant's case (supra) held that "the opposite party has to submit his version within 30 days from the date of receipt of the complaint by him and the Commission can give at the most further 15 days for some unavoidable reasons to file its version."

The requirement of filing the written statement within 30 days from the date of the receipt of the notice issued by the ADJUDICATORY BODY is not to be found expressly in Section 13. While clause (a) of sub-Section (2) of Section 13 simply stipulates a period of 30 days for filing the written statement by the opposite party, it does not indicate the date from which the period of 30

days is required to be reckoned. Whereas clause (b) of sub-Section (2) of Section 13 declares that the ADJUDICATORY BODY shall proceed to settle the dispute arising from the complaint received by it on the basis of the complaint and the written statement.

"Section 13(2)(b)(i) - on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or

In a given case, even if the opposite party fails to file a written statement within the time given by the ADJUDICATORY BODY, such body is still obliged to settle the dispute on the basis of the available material and in accordance with law.

"Section 13(2)(b)(ii) - ex parte on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum;"

By necessary implication, it prima facie appears to us the ADJUDICATORY BODY need not necessarily stipulate that the period of 30 days limitation should commence

from the date of receipt of the notice. If the period of 30 days is to be mandatorily reckoned from the date of the receipt of the notice by the opposite party, the Parliament would have made it explicit.

On the other hand, the language employed in clause (b) of sub-Section (2) appears to indicate that the Commission can stipulate different dates in different cases.

Be that as it may, it is brought to our notice that subsequent to the order by a larger Bench of this Court dated 4.12.2015 mentioned above, another Division Bench by an order dated 11.2.2016, referred the question whether ADJUDICATORY BODIES under the Act do have the discretion to extend the period of limitation beyond the statutory prescription in Section 13 of the Act, to a Constitution Bench. A copy of the reference order is placed before us. From the order, it appears that the Division Bench which referred the matter to Constitution bench was under the impression that there is a conflict of opinion between different Benches each comprising of three Judges and, therefore, there was a need to refer the matter to 5-Judge Bench.

The relevant portion of the Reference order reads as follows:-

"Since the question that falls for determination here often arises before the Consumer Fora and Commissions all over the country it will be more appropriate if the conflict is resolved by an authoritative judgment. Further since the conflict is between Benches comprising three Judges we deem it fit to refer these appeals to a five-Judge Bench to resolve the conflict once and for all. While we do so we are mindful of the fact that in the ordinary course a two-Judge Bench ought to make a reference to a three-Judge Bench in the first place but in the facts and circumstances of the case and keeping in view the fact that the conflict is between coordinate Benches comprising three Judges a reference to three Judges may not suffice."

We are obliged to place on record that there is a factual error in the statement extracted above. The basic assumption that there is a conflict of opinion between different Benches each consisting of three Judges

is erroneous. The reference order dated 11.2.2016 mentions five Judgments, namely, Topline Shoes Limited Vs. Corporation Bank [(2002) 6 SCC 33], Kailash Vs. Nankhu [(2005) 4 SCC 480], Salem Advocate Bar Association Vs. Union of India [(2005) 6 SCC 344] on the one hand and J.J. Merchant & Ors. Vs. Shrinath Chaturvedi [(2002) 6 SCC 635 and NIA Vs. Hilli Multipurpose Cold Storage [2014 AIOL 4615].

Of the above 5 cases, JJ Merchant and NIA and Topline Shoes Limited cases specifically deal with the question of interpretation of Section 13 of the Act. The judgments in both JJ Merchant and NIA are of benches consisting of three-Judges. Topline Shoes Limited is a judgment of 2-Judges of this Court.

Kailash case is a case arising under Representation of People's Act and incidentally, provisions of the Order VIII Rule 1 CPC was examined in the said case. It is not a case dealing with the Act. Though JJ Merchant's case was referred to in the said decision but the ratio of Kailash case has nothing to do with the Act or any one of its provisions. Salem Advocates Bar Association Case dealt exclusively with interpretation of various

provisions of the CPC including Order VIII Rule 1, a provision similar to Section 13 of the Consumer Protection Act.

We are also of the opinion that the declaration made by this Court in JJ Merchant's case that the period of 30 days is to be reckoned from the date of the receipt of the notice of the admission of the complaint by the ADJUDICATORY BODY has no basis in the text of the Act.

It must also be kept in mind, due to the pressure of work on these ADJUDICATORY BODIES, they give as a matter of the practice, a returnable date (of the notice of admission of the complaint) far beyond the 30 days reckoned from the date of receipt of the notice of admission of complaint by the opposite party. Therefore, the insistence upon the filing of the statement within 30 days from the receipt of such notice may not serve any useful purpose when there is no prospect of the matter being taken up by the ADJUDICATORY BODY immediately on filing of the written statement.

In the above-mentioned background, we are of the view that a Constitution bench is not really required to

examine any question as was stated in the order of reference dated 11.2.2016, particularly, in view of the factual error which we have already indicated earlier which crept in the reference order. However, the question: what is the commencing point of the limitation of 30 days stipulated in Section 13 of the Act is required to be decided authoritatively. The declaration made in JJ Merchant's case that the said period is to be reckoned from the date of the receipt of the notice by the opposite party or a complaint under the Act requires in our humble opinion, a more critical analysis.

We, therefore, deem it appropriate to direct the Registry to place this Order and all connected papers before the Hon'ble the Chief Justice of India for appropriate further directions in the matters.

.....J.
(J. CHELAMESWAR)

.....J.
(ABHAY MANOHAR SAPRE)

NEW DELHI
January 18, 2017.

ITEM NO.101

COURT NO.3

RE-REVISED
SECTION XVIIS U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Appellant(s)

VERSUS

HILLI MULTIPURPOSE COLD STORAGE PVT LTD

Respondent(s)

(with appln. (s) for stay and office report)

WITH

C.A. No. 10943-10944/2013

(With Office Report for Direction)

C.A. No. 1774/2014

(With Office Report)

SLP(C) No. 2833/2014

(With Interim Relief and Office Report)

SLP(C) No. 11257-11258/2014

(With Office Report)

Date : 18/01/2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR

HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Appellant(s)

CA 10941-42/13

Mr. Vishnu Mehra, Adv.

CA 10943-44/13

Ms. Manjeet Chawla, Adv.

CA 1774/14

SLP(C) 11257-58/14

Mr. Sanjoy Kumar Ghosh, Adv.

Ms. Rupali S. Ghosh, Adv.

Mr. Snehasish Mukherjee, Adv.

SLP(C) 2833/14

Mr. K. R. Sasiprabhu, Adv. (NP)

For Respondent(s)

Mr. Uday Gupta, Adv.

Mr. Ashok Kumar Juneja, Adv.

Mr. Hiren Dasan, Adv.

Mr. Chand Qureshi, Adv.

Mr. Kariri Venkata Reddy, Adv.

Mrs Sarla Chandra,Adv.

Mr. Umesh Kumar Khaitan,Adv.

Mr. Kuldip Singh,Adv.

Mr. Nitin S. Tambwekar, Adv.

Mr. Uday B. Wavikar, Adv.

Mr. Seshatalpa Sai Bandaru,Adv.

Mr. Kaushik Poddar, Adv.

Mr. T. V. George,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Civil Appeal No(s). 10941-10942/2013

Registry is directed to place this Order and all connected papers before the Hon'ble the Chief Justice of India for appropriate further directions in the matters in terms of the signed order.

SLP(C) No(s). 2833/2014

None appears for the petitioner(s).

The special leave petition is dismissed for non-prosecution.

SLP(C) No(s). 11257-11258/2014

List the matters on 22nd February, 2017.

In the meanwhile, there shall be stay of further proceedings in Consumer Complaint No. 188 of 2012 pending before the National Consumer Disputes Redressal Commission, New Delhi.

SLP(C) Diary No. 14 of 2017 be listed along with these matters.

Civil Appeal No(s). 10943-10944/2013

Civil Appeal No(s). 1774/2014

List these matters along with SLP(C) No(s).
11257-11258/2014.

(DEEPAK MANSUKHANI)

AR-cum-PS

(RAJINDER KAUR)

Court Master

(Signed order is placed on the file)

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SLP(C) No(s). 11257-11258/2014

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SECTION XVII

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