

M/s. SS GROUP PVT. LTD.

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v.

AADITIYA J. GARG & ANR.

(Civil Appeal Nos. 4085 of 2020)

DECEMBER 17, 2020

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[VINEET SARAN AND S. RAVINDRA BHAT, JJ.]

Consumer Protection Act, 1986: s.38 – Deficiency in service – Respondents booked flats with the appellant-builder – Flats were not delivered on time – Consumer complaint filed before National Commission claiming refund of money – Notices issued in June 2020 and received by the appellant on 13 July 2020 – Written statement/reply filed by appellant on 31 August 2020 which was beyond the period of 45 days – National Commission declined to take the written statement on record on the ground that Consumer Court has no power to extend the time for filing the response to the complaint beyond 45 days – Held: It is true that written statement cannot be allowed to be filed beyond the period of 45 days as per s.38 of the Act – However, in the wake of Covid 19 pandemic, on 23 March 2020, Supreme Court in Re: Cognizance for Extension of Limitation, had passed an order granting extension of period of limitation in all proceedings irrespective of limitation prescribed under the general law or special laws whether condonable or not w.e.f. 15 March 2020 till further orders – It is admitted fact that the period of limitation of 30 days to file the written statement had expired on 12 August 2020 and the extended period of 15 days expired on 27 August 2020 – This period expired when order dated 23 March 2020 was continuing – In view thereof, the limitation for filing written statement in the present proceedings before National Commission would be deemed to have been extended as order dated 23 March 2020 made extended period of limitation applicable to all petitions/applications/suits/appeals and all other proceedings – As such delay of four days in filing written statement in the pending proceedings before the National Commission is allowed.

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- A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4085 of 2020.

From the Judgment and Order dated 07.09.2020 of the National Consumer Disputes Redressal Commission, New Delhi in I.A. No. 5276 of 2020 in C.C. No. 488 of 2020.

- B With

Civil Appeal Nos. 4086, 4087, 4088, 4089, 4090, 4091, 4092, 4093 of 2020.

Sanjay K. Shandilya, Apoorva Agarwal, Abhishek, Mushtaq Ahmad, Advs. for the Appellant.

- C Naveen Kumar, Adv. for the Respondents.

The following Order of the Court was passed:

ORDER

Leave granted.

- D This batch of civil appeals has been filed by the appellant/builder challenging the order dated 07.09.2020 passed by the the National Consumer Disputes Redressal Commission, New Delhi (“the National Commission”, for short).

E The respondents herein had booked the flats with the appellant and since the flats were allegedly not delivered on time, the respondents filed Consumer Complaints before the National Commission claiming refund of money.

F The notices in each of the complaint petitions were issued by the National Commission in June 2020 and were received by the appellant on 13.07.2020 in each of complaint cases.

- G It is submitted that as per Section 38(2)(a) of the Consumer Protection Act, 2019, 30 days time is provided for filing written statement, which could be extended for a further period of 15 days. In the present matter, the period of 30 days expired on 12.08.2020 and extended period of 15 days expired on 27.08.2020.

- H Admittedly, the written statement/reply was filed by the appellant before the National Commission on 31.08.2020, which filing was beyond the period of 45 days. The National Commission thus declined to take the written statement on record in view of the Constitution Bench decision of this Court in *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*, (2020) 5 SCC 757, wherein it has been held that the Consumer Court has no power to extend the time for filing the

response to the complaint beyond 45 days. Said decision of the National Commission is presently under challenge in these appeals. A

We have heard Mr. Sanjay K. Shandilya, learned counsel appearing for the appellant and Mr. Naveen Kumar, learned counsel appearing for the respondents on caveat.

Learned counsel for the respondents submits that the respondents do not wish to file counter affidavit and, therefore, these appeals be disposed of. B

With the assistance of the learned counsel for both the sides, we have carefully perused the record.

It is true that the decision of the Constitution Bench of this Court in *New India Assurance Co. Ltd. (supra)* clearly provides that no written statement is to be allowed to be filed beyond the period of 45 days as per Section 38 of the Consumer Protection Act, 2019. However, in this context, it is noteworthy to refer to the order dated 23.03.2020 passed by this Court in SMW(C) No.3 of 2020, titled as “In Re: Cognizance for Extension of Limitation”, which reads as under:

“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). E

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. F

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities. G

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- A This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.
Issue notice to all the Registrars General of the High Courts, returnable in four weeks."
- B (Emphasis supplied)
The above order is still operative and by subsequent orders, the scope has been enlarged so that the said order applies in other proceedings also.
- C In the present matter, it is an admitted fact that the period of limitation of 30 days to file the written statement had expired on 12.08.2020 and the extended period of 15 days expired on 27.08.2020. This period expired when the order dated 23.03.2020 passed by this Court in SMW(C) No.3 of 2020 was continuing.
- D In view of the aforesaid, in our opinion, the limitation for filing the written statement in the present proceedings before the National Commission would be deemed to have been extended as it is clear from the order dated 23.03.2020 that the extended period of limitation was applicable to all petitions/ applications/suits/appeals and all other proceedings. As such, the delay of four days in filing the written
- E statements in the pending proceedings before the National Commission deserves to be allowed, and is accordingly allowed.

In the circumstances, we allow these appeals, set-aside the order passed by the National Commission and direct that (i) the written statement filed by the appellant shall be taken on record; and, (ii) the

F matter shall thereafter be proceeded with expeditiously and in accordance with law.

With the aforesaid observations, the appeals are allowed with no order as to costs.

Devika Gujral

Appeals allowed