

VIBHA BAKSHI GOKHALE & ANR.

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v.

M/S. GRUHASHILP CONSTRUCTIONS & ORS.

(Civil Appeal No. 4767 of 2019)

MAY 10, 2019

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**[DR. DHANANJAYA Y CHANDRACHUD AND  
HEMANT GUPTA, JJ.]**

*Consumer Protection Act, 1986: Deficiency of service – Dispute pertained to a residential flat which was allegedly booked by the appellant – Appellant filed complaint before National Commission in 2016 – On 16.11.2018, National Commission passed order granting last opportunity to file rejoinder and evidence – By impugned order, National commission dismissed the complaint observing that the complainant was granted last opportunity to file rejoinder and evidence which he failed to do may be for the reason that the complainant may not have any merit in his case – On appeal, held: The purpose for setting up the National Commission was to protect the rights of consumers to seek access to justice under the Consumer Protection Act – In the instant case, there was a conditional order dated 16.11.2018 requiring the appellants to file a rejoinder and evidence within a period of four weeks, failing which the complaint would be dismissed automatically – On 15.2.2019, the National Commission declined to grant any further time to the appellants and, proceeded to observe that there was a delay in filing a rejoinder and evidence and that it was perhaps because the appellants did not have any merit in the case – This inference was unwarranted – The ground for rejection of the complaint was technical and in disregard of the requirements of substantial justice – Orders of such nature detract from the true purpose for which the Commission was established – Such dismissals only add to the burden of litigation and defeat the purpose of ensuring justice in the consumer fora – Though the Act stipulates a period for disposing of a consumer complaint, it is also a sobering reflection that complaints cannot be disposed of due to non-availability of resources and infrastructure – In this background, it is harsh to*

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A *penalise a bona fide litigant for marginal delays that may occur in the judicial process – Impugned order of the National Commission dated 15.2.2019 and Consumer Complaint is restored to the file of the National Commission.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4767  
B of 2019.

From the Judgment and Order dated 15.02.2019 of the National Consumer Disputes Redressal Commission, New Delhi in CC/1432/2016.

Saurabh Jain, P. K. Goswami, S. P. Singh Rathore, Ashok K. Sharma, Uday Prakash Yadav, Ms. Anuradha Soni Verma, Shryansh  
C Aggarwal, Rajesh Goyal, H. Arjun and P. K. Jain, Advs. for the Appellants.

The following Order of the Court was passed:

### **O R D E R**

D 1. The appellants have filed a complaint before the National Consumer Disputes Redressal Commission<sup>1</sup>, complaining of a deficiency of service on the part of the respondents. The dispute pertains to a residential flat, which was allegedly booked by the appellants. On 15 February 2019, the NCDRC dismissed the complaint, in terms of the  
E following directions:

“Learned counsel for the complainant states that further time may be provided to him for filing the rejoinder and evidence in the matter. This consumer complaint is of 2016. The last order dated 16.11.2018, reads as under:

F “Complainant has not filed the rejoinder. Proxy counsel is present on behalf of the main counsel for the complainant. Last opportunity is granted to the complainant to file the rejoinder and evidence within a period of four weeks, failing which the complaint shall stand dismissed automatically.”

G In spite of the above order the complainant has not been able to file the rejoinder and affidavit of evidence. It seems that the complainant may not be having any merit in his case that is why there has been delay in filing rejoinder and evidence.

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H <sup>1</sup> “NCDRC”

As per the order dated 16.11.2018, the matter already stands dismissed and, therefore, no further opportunity can be provided for filing the rejoinder and evidence. Accordingly, the file be consigned to record room.” A

2. We find that the ground for rejection of the complaint is technical and in disregard of the requirements of substantial justice. The purpose which Parliament sought to achieve by setting up the NCDRC is to protect the rights of consumers to seek access to justice under the Consumer Protection Act 1986. In the present case, there was a conditional order dated 16 November 2018 requiring the appellants to file a rejoinder and evidence within a period of four weeks, failing which the complaint was to stand dismissed automatically. On 15 February 2019, the NCDRC declined to grant any further time to the appellants and, proceeded to observe that it is perhaps because the appellants do not have any merit in the case, that there was a delay in filing a rejoinder and evidence. This inference was unwarranted. B C

3. We are affirmatively of the view that orders of this nature detract from the true purpose for which the NCDRC has been established. The NCDRC should have borne this in mind instead of rejecting the complaint on a technicality. Such dismissals only add to the burden of litigation and defeat the purpose of ensuring justice in the consumer fora. D E

4. We have also been repeatedly observing that marginal delays are not being condoned by the NCDRC on the ground that the Consumer Protection Act 1986 stipulates a period within which a consumer complaint has to be disposed of. Though the Act stipulates a period for disposing of a consumer complaint, it is also a sobering reflection that complaints cannot be disposed of due to non-availability of resources and infrastructure. In this background, it is harsh to penalise a *bona fide* litigant for marginal delays that may occur in the judicial process. The consumer fora should bear this in mind so that the ends of justice are not defeated. F

5. In view of the fact that the complaint was dismissed on a mere technicality, we did not consider it necessary to issue notice to the respondent. We, however, set aside the impugned order of the NCDRC dated 15 February 2019 and restore Consumer Complaint No 1432 of 2016 to the file of the NCDRC. G

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A           6. Learned counsel appearing on behalf of the appellants has stated that the rejoinder and the affidavit of evidence are ready. These be taken on the record by the NCDRC.

7. The Appeal is accordingly disposed of.

Devika Gujral

Appeal disposed of.