

A M/S ACME CLEANTECH SOLUTIONS PRIVATE LIMITED

v.

M/S UNITED INDIA INSURANCE COMPANY LIMITED
& ANR

B (Civil Appeal Nos. 4476-4477 of 2021)

DECEMBER 09, 2021

[DR. DHANANJAYA Y CHANDRACHUD, SURYA KANT
AND VIKRAM NATH, JJ.]

- C *Pleadings: Amendment of plaint/complaint – Whether the pleading in the nature of a plaint in a civil suit or a complaint before the consumer forum should be amended is a matter for the plaintiff or, as the case may be, the complainant to determine – The party which moves the forum is dominus litis and is entitled to decide whether or not to amend the pleading or to pursue the complaint,*
- D *as it stands – Consumer Protection Act 1986.*
- E *Consumer Protection Act 1986: s.13(1) – Insured-appellant filed complaint against insurer-respondent alleging that the insurer failed to settle the insurance claim of the insured arising out of storms which damaged the solar power plants of the insured – Insurer did not file written statement within the time stipulated by s.13(1) of the Act – Insurer filed IA seeking dismissal of claim – No reference was made in the IA to the repudiation of contract – On the same day, insurer issued a letter repudiating the claim of the insured – In the meantime, insured filed IA seeking final survey report – National Commission disposed of IAs and directed the insured to file amended*
- F *complaint and granted opportunity to the insurer to file a written statement – Challenge against – Held: It was for the insured to decide as to whether the complaint should be amended or whether it would pursue the option of proceeding with the pleadings as they stand – Insured could not have been directed to amend the complaint to challenge the repudiation of the contract of insurance – Insured stated that it did not wish to do so – In view thereof, it cannot be compelled to amend the complaint.*
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Disposing of the appeals, the Court

- H **HELD : 1. The complaint filed by the appellant, as it stands, requires the insurer to settle the claim and to make payment.**

The insurer repudiated the claim. There is merit in the contention for the appellant that the appellant cannot be compelled to amend the complaint. Whether the pleading in the nature of a plaint in a civil suit or a complaint before the consumer forum should be amended is a matter for the plaintiff or, as the case may be, the complainant to determine. The party which moves the forum is *dominus litis* and is entitled to decide whether or not to amend the pleading or to pursue the complaint, as it stands. It is the contention of the appellant that the relief which has been sought in the complaint is not only for the settlement of the complaint, but also, in addition for the payment of the amount due and hence, the complaint has not been rendered infructuous. According to the appellant, the belated repudiation of the claim beyond a reasonable period has no consequence. [Para 9][582-H; 583-A-C]

2. In the situation as it stands at present, the appellant could take recourse to either of three courses of action, namely: (i) pursue the complaint as it stands; or (ii) amend the complaint to challenge the letter of repudiation; or (iii) withdraw the existing complaint with liberty to institute a fresh complaint to challenge the letter of repudiation. [Para 11][583-F-G]

New India Assurance Company Limited v Hilli Multipurpose Cold Storage Private Limited (2020) 5 SCC 757 – followed.

Case Law Reference

(2020) 5 SCC 757

followed

Para 5

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.4476-4477 of 2021.

From the Judgment and Order dated 11.03.2021 of the National Consumer Disputes Redressal Commission, New Delhi in IA No.3463 of 2020 and IA No.1346 of 2021 in Consumer Case No.1934 of 2019.

Mohit D. Ram, Adv. for the Appellant.

Amit Kumar Singh, Mrs. K. Enatoli Sema, Ms. Chubalema Chang,
Advs. for the Respondents.

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- A The Judgment of the Court was delivered by
DR. DHANANJAYA Y CHANDRACHUD, J.
1. These appeals arise from an order of the National Consumer Disputes Redressal Commission¹ dated 11 March 2021 in IA 3463 of 2020 and IA 1346 of 2021.
- B 2. The appellant instituted a consumer complaint before the NCDRC on 28 September 2019, being Consumer Complaint No 1934 of 2019. Briefly stated, the grievance of the appellant was that the first respondent had failed to settle the insurance claim of the appellant arising out of the two alleged storms which damaged the solar power plants of the appellants. The relief which was claimed in the complaint is set out below, for convenience of reference:
- “(i) Direct the Respondents to immediately settle the Claim of the Complainant as per the Insurance Policy and make payment of:
- D A. insurance claim towards material damage to the tune of INR 13,91,78,987.75/- and
- B. insurance claim towards business interruption to the tune of INR 6,00,00,000/-
- E (ii) Direct the Respondents to pay interest @ 18% per annum for the period of delay from 13.06.2016 being the date when the Complainant intimated about the incident and claim, till the date of actual payment of the Claim of the Complainant; and
- F (iii) Direct the Respondents to pay compensation to the tune of INR 1,00,00,000/- on account of harassment, mental agony, fraud & deception, hardship and inconvenience caused to the Complainant due to acts of deficiency in services, negligence and unfair trade practices on part of the Respondents; and
- (iv) Direct the Respondents to pay INR 5,00,000/- towards litigation expenses.”
- G 3. On 17 October 2019, the NCDRC passed the following order:
“Heard.
Complaint is admitted subject to just exceptions.

H ¹ “NCDRC”

Issue notice of the complaint to the opposite party under Section 13(2) of the Consumer Protection Act, 1986 making it clear that if opposite party wishes to file its written statement, it may do so within 30 days from the date of service of the notice of the complaint, failing which right to file the written statement may be closed.”

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4. Notice of the complaint was served on the first respondent on 5 November 2019. The first respondent did not file its written statement within the period stipulated by Section 13(1) of the Consumer Protection Act 1986². On 6 March 2020, the first respondent filed IA 3463 of 2020 seeking the dismissal of the consumer complaint on the ground that it was premature. In paragraph 10 of the application, the averment was to the following effect:

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“10. It is stated that the non-cooperative attitude of the Complainant has caused hindrance to the insurer in examining the claim and therefore the progress of verifying and scrutinizing the documents including the survey report is under progress and therefore the instant Complaint is premature and deserves to be dismissed on this ground alone.”

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5. No reference was made in the IA to the repudiation of the claim. On the same day, 6 March 2020, the first respondent issued a letter repudiating the claim of the appellant. In the meantime, the appellant sought copies of the final survey report. In its response to IA 3463 of 2020, the appellant, *inter alia*, raised the plea that the right to file the written statement had been barred in view of the judgment of the Constitution Bench of this Court in **New India Assurance Company Limited v Hilli Multipurpose Cold Storage Private Limited**³.

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6. The appellant filed IA 1346 of 2021 on 11 February 2021 seeking production of the final survey report. Both IA 3463 of 2020 filed by the first respondent and IA 1346 of 2021 filed by the appellant were heard by the NCDRC and, by an order dated 11 March 2021, have been disposed of. The NCDRC has directed the appellant to file an amended complaint and has granted an opportunity to the first respondent to file a written statement. The appellant has accordingly challenged the order to the extent that it directs the appellant to file an amended complaint

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² “Act”

³ (2020) 5 SCC 757

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- A and allows the first respondent to file a written statement to the amended complaint on the ground that this is contrary to the provisions of Section 13(2) read with Section 22 of the Act.
 - 7. On behalf of the appellant, the submission which has been urged by Counsel is that the first respondent failed to file the written statement within the outer limit which is prescribed by Section 13(1) (as made applicable to the NCDRC by the provisions of Section 22). Consequently, it has been urged that the procedure which has been adopted by the NCDRC of requiring the appellant to amend the complaint and granting an opportunity to the first respondent to file a written statement to the amended complaint would deprive the appellant of a right which has accrued by the failure of the first respondent to lodge the written statement within the time stipulated by the statute. In this context, reliance has been placed on the judgment of the Constitution Bench in **Hilli Multipurpose Cold Storage Private Limited** (*supra*).
- B within the outer limit which is prescribed by Section 13(1) (as made applicable to the NCDRC by the provisions of Section 22). Consequently, it has been urged that the procedure which has been adopted by the NCDRC of requiring the appellant to amend the complaint and granting an opportunity to the first respondent to file a written statement to the amended complaint would deprive the appellant of a right which has accrued by the failure of the first respondent to lodge the written statement within the time stipulated by the statute. In this context, reliance has been placed on the judgment of the Constitution Bench in **Hilli Multipurpose Cold Storage Private Limited** (*supra*).
- C accrued by the failure of the first respondent to lodge the written statement within the time stipulated by the statute. In this context, reliance has been placed on the judgment of the Constitution Bench in **Hilli Multipurpose Cold Storage Private Limited** (*supra*).
- D On the other hand, the submission which has been urged on behalf of the first respondent is that the relief which was sought in the complaint was for the insurer to settle the claim by making the payment of the claim. It has been submitted that while it is true that there was no written statement by the insurer within the prescribed period as set out in Section 13(1), the insurer having repudiated the claim on 6 March 2020, the relief which was sought in the complaint worked itself out and it would, hence, be the submission of the insurer that the complaint has been rendered infructuous. In this backdrop, it was submitted that the NCDRC was justified in issuing a direction that the appellant should amend the complaint. Moreover, once the complaint is amended, a right would accrue to the insurer to file a written statement to the amended complaint.
- E 2020, the relief which was sought in the complaint worked itself out and it would, hence, be the submission of the insurer that the complaint has been rendered infructuous. In this backdrop, it was submitted that the NCDRC was justified in issuing a direction that the appellant should amend the complaint. Moreover, once the complaint is amended, a right would accrue to the insurer to file a written statement to the amended complaint.
- F 2020, the relief which was sought in the complaint worked itself out and it would, hence, be the submission of the insurer that the complaint has been rendered infructuous. In this backdrop, it was submitted that the NCDRC was justified in issuing a direction that the appellant should amend the complaint. Moreover, once the complaint is amended, a right would accrue to the insurer to file a written statement to the amended complaint.
- G While assessing the merits of the rival submissions, it is necessary to state, at the outset, that no written statement was filed by the insurer within the period prescribed in the statute. The judgment of the Constitution Bench in **Hilli Multipurpose Cold Storage Private Limited** (*supra*) has held the period provided in Section 13 of the Consumer protection Act, 1986 (thirty days with a further condonation of up to fifteen days) to be mandatory. However, the decision has been given prospective effect. The complaint filed by the appellant, as it stands, requires the insurer to settle the claim and to make payment. The insurer repudiated the claim on 6 March 2020. There is merit in the contention
- H While assessing the merits of the rival submissions, it is necessary to state, at the outset, that no written statement was filed by the insurer within the period prescribed in the statute. The judgment of the Constitution Bench in **Hilli Multipurpose Cold Storage Private Limited** (*supra*) has held the period provided in Section 13 of the Consumer protection Act, 1986 (thirty days with a further condonation of up to fifteen days) to be mandatory. However, the decision has been given prospective effect. The complaint filed by the appellant, as it stands, requires the insurer to settle the claim and to make payment. The insurer repudiated the claim on 6 March 2020. There is merit in the contention

of Counsel for the appellant that the appellant cannot be compelled to amend the complaint. Whether the pleading in the nature of a plaint in a civil suit or a complaint before the consumer forum should be amended is a matter for the plaintiff or, as the case may be, the complainant to determine. The party which moves the forum is *dominus litis* and is entitled to decide whether or not to amend the pleading or to pursue the complaint, as it stands. We may note at this stage that it is the contention of the appellant that the relief which has been sought in the complaint is not only for the settlement of the complaint, but also, in addition for the payment of the amount due and hence, the complaint has not been rendered infructuous. According to the appellant, the belated repudiation of the claim beyond a reasonable period has no consequence. On this aspect, we need not dilate any further since the issue has to be decided by the NCDRC in the pending proceedings.

10. Be that as it may, it is for the appellant to decide as to whether the complaint should be amended or whether it would pursue the option of proceeding with the pleadings as they stand. It is for the appellant to decide as to whether instead of pursuing the complaint, as it stands, it should either:

- (i) amend the complaint to challenge the repudiation of the insurance claim; or
- (ii) withdraw the existing complaint with liberty to file a fresh complaint challenging the repudiation of the claim.

11. To recapitulate, in the situation as it stands at present, the appellant could take recourse to either of three courses of action, namely:

- (i) pursue the complaint as it stands; or
- (ii) amend the complaint to challenge the letter of repudiation; or
- (iii) withdraw the existing complaint with liberty to institute a fresh complaint to challenge the letter of repudiation.

12. The error in the order of the NCDRC was to compel the appellant to amend the complaint, as a consequence of which, it granted permission to the first respondent to file a written statement to the amended complaint. The effect of this would be to deprive the appellant of the benefit of urging that written statement cannot be filed at this

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- A stage in view of the judgment of the Constitution Bench in **Hilli Multipurpose Cold Storage Private Limited** (*supra*). The deprivation of the right to set up such a plea is a matter of prejudice to the appellant which is a result of the impugned order of the NCDRC. We clarify that we have not expressed any opinion on whether the respondent can file a written statement since this does not form the subject matter of the present appeal. We hold that the appellant could not have been directed to amend the complaint to challenge the repudiation of the contract of insurance. The appellant has stated that it does not wish to do so. This is a decision which has to be taken by the appellant and it cannot be compelled to amend the complaint.
- C 13. For the above reasons, we are of the view that the NCDRC was in error in issuing a direction to the appellant to amend the complaint and in permitting the first respondent to file its written statement to the amended complaint, subject to the payment of costs. Essentially, the IA which was filed by the first respondent was on the basis that the complaint
- D was premature since the process of verifying the claim was still to be completed. Now, that the claim has been repudiated, according to the first respondent, the IA would not survive. We, however, clarify that we have not expressed any view on the effect or the consequence of the alleged act of repudiation by the insurer since the matter is still to be urged before the NCDRC. All the rights and contentions of the parties in that regard are kept open. Accordingly, the impugned order of the NCDRC dated 11 March 2021 to the extent that it decides IA 3463 of 2020 is set aside. We clarify that the appellant could be at liberty to follow either of the three courses of action, as indicated in the earlier part of this order, namely:
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 - (i) to pursue the complaint as it stands without any amendment; or
 - (ii) to seek an amendment to the complaint; or
- G (iii) to withdraw the complaint with liberty to file a fresh complaint to challenge the alleged act of repudiation.
- H 14. In the event that the appellant exercises option (ii) above, the first respondent would be at liberty to file a written statement to the amended complaint within the stipulated period. In the event that the appellant exercises option (iii), namely, to institute a fresh complaint, the

first respondent would be at liberty to file a written statement in A
accordance with law.

15. The appeals are accordingly disposed of.

16. Pending application, if any, stands disposed of.

Devika Gujral

Appeals disposed of.