

Smt. Sumitra Devi vs Bajaj Allianz General Insurance Co.Ltd on 19 September, 2023

Cause Title/Judgement-Entry	STATE CONSUMER DISPUTES REDRESSAL
Reserved	
State Consumer Disputes Redressal Commission	
U.P. Lucknow.	
Appeal No.1374 of 2018	
Smt. Sumitra Devi w/o Late Dr. Gajendra Singh,	
R/o MDA Colony, Gajroula, Tehsil, Dhanoura,	
Mandi, District, Amroha U.P.	...Appellant.
Versus	
Bajaj Allianz General Insurance Co. Ltd.,	
through Branch Manager, Head Office, G.E.	
Plaza, Airport Road, Yarwada, Pune	
Pin 411006.	...Respondent.

Present: --

Hon'ble Sri Rajendra Singh, Presiding Member.

Hon'ble Sri Vikas Saxena, Member.

Sri Anil Kumar Mishra, Advocate for appellant.

Sri Vivek Kumar Saxena, Advocate for respondent.

Date: 27.9.2023 Per Sri RajendraSingh, Member- This appeal has been filed by the appellant against the judgment and order dated 16.3.2018 passed by the Ld. District Consumer Forum, Amroha in complaint case no.1 of 2012, Smt. Sumitra Devi vs. Bajaj Allianz General Insurance Co. Ltd.

This appeal is filed with delay. An application for condonation of delay has been filed by the appellant along-with affidavit.

We have heard the learned counsel for the parties. We have perused the pleadings and evidence available on record.

The appellant has stated that the deponent's counsel received the copy of the judgment on 16.3.2018. Thereafter, he consulted the counsel and thereafter, the counsel drafted the present appeal and it has been filed. So the delay is not intentional and it should be condoned.

The present appeal has been filed on 25.7.2018. The judgment was delivered on 16.3.2018. Therefore, the delay of about 3 months in filing the appeal.

The appellant has filed the case law of Manager, Indusind Bank Limited & anr. vs. Sanjay Ghosh, 2022 Live Law (SC) 550, in which Hon'ble Supreme Court has stated that the question of limitation is not to be examined with a view to decline the condonation but to do substantial justice.

The opposite party has filed the case law of Manoj Sharma vs. Ahatesham Ahemad & anr., 2020 NCJ 55 (NC), in which Hon'ble NCDRC has held that since there is no treatment record, mere filing medical certificate is in sufficient to condone delay of 66 days.

The Consumer Protection Act 1986 was enacted to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of Consumers Councils and other authorities for the settlement of consumers' disputes and for matters connected therewith (Preamble).

The Act Inter alia, seeks to promote and protect the rights of consumers such as -

right to be protected against marketing of goods which are hazardous to life and property;

right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

right to be assured, wherever possible, access to variety of goods at competitive prices;

right to be heard and to assured that customers' interests will receive due consideration at appropriate forums.

Right to seek redressal against unfair practices or unscrupulous exploitation of consumers; and

(6) Right to consumer education The objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and State levels.

The Act applies to all goods and services, except if otherwise provided by the Central Government by Notification. To provide speedy and simple redressal of consumer disputes, a quasi judicial machinery is set up at the District, State and Central levels. The three tier system of quasi judicial bodies will observe the principle of natural justice and are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi judicial bodies have also been provided.

Thus the Consumer Protection Act is to serve the interests of the consumers. Consumer education and redressal of consumers' grievances are the two aspects of the Act. It makes good the loss a consumer suffers and increases the feeling of responsibility of the manufacturer, trader, supplier or businessman.

The provisions of the Act have to be construed in favor of the consumer to achieve the purpose of enactment as it is social benefit oriented legislation. The primary duty of the Court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and not contrary to attempted objective of the enactment.

Extent of Consumer Protection:

While other legislations may be either punitive or preventive, the Consumer Protection Act compensates the consumer. The provisions of the Act are in addition to and not in derogation of the provisions of any law at the time being in force (Sec 3). In *Maine Container Services South Pvt. Ltd. v. Go Garments* 1998 (3) SCC 247 it has been held that the Contract Act applies to all litigants before the Commissioner under the Consumers Protection Act. Passengers traveling in train suffering injuries and loss of Jewelry as a result of assault by unruly crowd are eligible for filing of complaint before State Commission is maintainable notwithstanding the provisions of sections 100 and 103 of Railways Act, 1889. The Consumer Protection Act therefore gives the consumer an additional remedy besides those which may be available under other existing laws. Existence of an arbitration clause in the

agreement is no bar to the entertainment of complaint by the Redressal Agency as the remedy under the Act is in addition to the provisions of any other law. However, the Consumer Forums under the Act have not taken over the jurisdiction of civil Courts. If the dispute between the parties is pending in Civil Court no Consumer Forum will adjudicate the dispute. Similarly if evidence be laid by the parties to the dispute is voluminous or complicated the parties will be referred to the appropriate Civil Court.

Consumers Protection Act, thus enshrines the rights of a consumer to be informed about the quality, quantity, potency, price etc., of the goods to be protected against unfair trade practices, to seek inexpensive and expeditious redressal of grievances before the Consumer Forums. Consumer Protection Act is a benevolent piece of legislation to protect a large body of consumers from exploitation.

We have to see the provisions regarding filing of complaint and appeal. Section 24 (A) of the act says ["24-A. Limitation period- (1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period;

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay] From perusal of the aforesaid section, it transpires that the period of limitation is two years from the date on which the cause of action arose.

Regarding filing of appeal section 15 of the Consumer Protection Act says "15. Appeal -Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent. of that amount or twenty-five thousand rupees, whichever is less: "

We have also to see the following judicial pronouncement regarding delay.

The Hon'ble Supreme Court of India was pleased to hold in Civil Appeal No.2067 of 2002, State Bank of India vs. M/s B.S. Agricultural dated 20.3.2009 at paras 15 and 16 that:

"On its plain averments, the complaint is barred by time and ought to have been dismissed as such but curiously this aspect was not examined by any of the consumer fora although specific plea to this effect was taken by the Bank.

Since the complaint is barred by time and liable to be dismissed on that count, it would be unnecessary to examine the other grounds of challenge."

Considering the totality of the circumstances and view of the provisions contained under Section 24(A) of the C.P. Act and the ruling laid down by the Hon'ble Apex Court in State Bank of India vs. M/s B.S. Agricultural (I), we are of the considered view that the complaint is barred by limitation and is liable to be dismissed. Hence, it is dismissed at the admission stage as barred by limitation.

In Anshul Agarwal Vs. New Okhla Industrial Development Authority, IV (2011) CPJ 62 (SC), it was observed by the Hon'ble Apex Court that "it is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that special period of limitation has been prescribed in the Consumer Protection Act for filing appeals and revisions in consumer matter and the objection of expeditious adjudication of consumer disputes will get defeated if this court was to entertain highly belated petition against the orders of Consumer Fora."

We have also to peruse whether time is the sense of Consumer Protection Act. The Constitutional Bench of Hon'ble Supreme Court has given its judgment on 04.03.2020 which is quoted here) A Constitutional Bench (5 JJ) of the Hon'ble Supreme Court In the Case of New India Assurance Complainant Vs. Hilli Multipurpose Cold Storage Private Limited, Civil Appeal no,10941 -10942 of 2013 along with other many related Civil Appeals(judgment 04.03.2020) held ;

"The reference made to this Constitution Bench relates to the grant of time for filing response to a complaint under the provision of the Consumer Protection Act, 1986 (for short 'the Act').

The first question referred is as to whether Section13(2)(a) of the Consumer Protection Act, which provides for the respondent/opposite party filing its response to the complaint within 30 days or such extended period, not exceeding 15 days, should be read as mandatory of directory; whether the District Forum has power to extend the time for filing the response beyond the period of 15 days, in addition

to 30 days.

The second question which is referred is as to what would be the commencing point of limitation of 30 days stipulated under the aforesaid section.

The first question was referred by a two Judges bench of this Court vide an order dated 11.02.2016 passed in Civil Appeal No (s) 10831084 of 2016, M/s Bhasin Infotech and Infrastructure Pvt. Ltd. Vs. M/s Grand Venezia Buyers Association (Reg), the relevant portion of which is as under :

"there is an apparent conflict between the decision of this Court in 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] on the other in so far as the power of the courts to extend time for filing of Written Statement/reply to a complaint is concerned. The earlier mentioned line of decision take the view that the relevant provisions including those of Order 8 Rule 1 of the Civil Procedure Code 1908 are directory in nature and the Courts concerned have the power to extend time for filing the written statement. The second line of decisions which are also of coordinate Benches however takes a contrary view and hold that when it comes to power of the Consumer Fora to extend the time for filing a reply there is no such power. 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 That comprising three Judges a reference to 3 Judges may not suffice"

The Hon'ble Supreme Court in para 41 of the judgment has held:

"To conclude, we hold that our answer to the first question is that The District Forum has no power to extend the time for filing the response to the complainant beyond the period of 15 days in addition to 30 days as envisaged under section 13 of the Consumer Protection Act ; and the answer to the second question is that the commencing point of limitation of 30 days under Section 13 of the Consumer Protection Act would be from the date of receipt of the notice accompanied with the complainant by the opposite party and not mere receipt of the notice of the complainant."

The Hon'ble Supreme Court in para 40 of the judgment has held:

"..... we may, however, clarified that the objection of not having received a copy of the complaint along with the notice should be raised on the first date itself and not thereafter, otherwise permitted to be raised at any point later on defeat the very purpose of the Act, which is to provide simple and speedy Redressal of consumer disputes."

So, in view of the Hon'ble Supreme Court's judgment time has been given most importance in the matter of the Consumer Protection Act. The explanation given by the appellant is neither convincing nor satisfactory. Hence, the application for condonation of delay is liable to be rejected. Therefore the present appeal is liable to be dismissed as time barred.

ORDER The appeal is dismissed as time barred.

The stenographer is requested to upload this order on the Website of this Commission today itself.

Certified copy of this judgment be provided to the parties as per rules.

(Vikas Saxena)

(Rajendra Singh)

Member

Presiding Member

Judgment dated/typed signed by us and pronounced in the open court.

Consign to record.

(Vikas Saxena)

(Rajendra Singh)

Member

Presiding Member

Dated 27.9.2023

Jafri, PA I.

Court 2

[HON'BLE MR. Rajendra Singh] PRESIDING MEMBER
[HON'BLE MR. Vikas Saxena] JUDICIAL MEMBER