

Diamond Exports & Anr. Vs. United India Insurance Company Ltd. & Ors.

Civil Appeal No. 7546 of 2021

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Full judgment text

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Dr Dhananjaya Y Chandrachud, J

1 This appeal arises from a judgment dated 25 February 2020 of the National Consumer Disputes Redressal Commission¹.

2 While entertaining IA Nos 15390 of 2019, 15391 of 2019 and 18307 of 2019 in Consumer Complaint No 2645 of 2018, the NCDRC has condoned the delay of 100 days in filing a written statement. The order of the NCDRC was a few days before the judgment of a Constitution Bench dated 4 March 2020, in *New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Private Limited* ² which held that the limitation period under Section 13(2)3 of the Consumer Protection Act 1986 could not be extended beyond the statutorily prescribed period of forty-five days.

3 The appellants filed a consumer complaint before the NCDRC on 3 December 2018 based on two insurance policies. The claim is on the ground of an alleged fire that took place at the factory of the appellant. On 6 December 2018, the NCDRC passed the following order:

"Heard. Complaint is admitted, subject to just exceptions.

Issue notice to Opposite Parties under Section 13(2) of the Consumer Protection Act, 1986 making it clear that if the Opposite Parties wish to contest the allegations in the Complaint, they may file the Written Statements within 30 days of the receipt of notice in the Complaint, failing which their right to file Written Statement may be closed."

4 The respondent received the summons on 20 May 2019 together with the order of the NCDRC and a complete set of papers consisting of the consumer complaint and documents. The respondent filed its written statement on 23 September 2019 together with IA No 15390 of 2019 for condonation of a delay of 100 days. The appellant filed IA No 15391 of 2019 for the dismissal of the complaint.

5 On 26 September 2019, the NCDRC permitted the appellants to file their reply to the respondent's application for condoning the delay. The appellants contested the respondent's application for condonation of delay. The NCDRC, by its order dated 25 February 2020, condoned the delay subject to the respondent paying costs of Rs 50,000.

6 Mr Salil Paul, learned counsel appearing on behalf of the appellant, has submitted that given the judgment of the Constitution Bench in *New India Assurance Company Limited* (supra), a delay in excess of the period which is stipulated in Section 13(1)(a) read with Section 13(2)(a) of the Consumer Protection Act 1986, i.e. thirty days extendable by fifteen days, could not have been condoned. The provisions of Section 13 are made applicable to proceedings before the NCDRC by Section 22.

7 On the other hand, it has been urged on behalf of the respondent that (i) the decision in *New India Assurance Company Limited* (supra) has been given prospective effect; (ii) before the decision in *New India Assurance Company Limited* (supra) and during the pendency of the reference to the Constitution Bench, a two-judge bench of this Court in *Reliance General Insurance Company Limited v. Mampee Timbers and Hardwares Private Limited*⁴ held the field in pursuance of which the consumer fora were permitted to accept written statements filed beyond the stipulated time of 45 days in an appropriate case on suitable terms; and (iii) in the present case, the NCDRC has exercised its discretion while condoning the delay, prior to the decision of the Constitution Bench; (iv) hence, the order would not merit interference in appeal. More so because the NCDRC noted that the delay was occasioned due to the respondent filing a criminal case alleging fraud and forgery against the second surveyor.

8 The judgment of the Constitution Bench in *New India Assurance Company Limited (supra)* has held that the outer limit of time for filing a written statement in Section 13 of the Consumer Protection Act 1986 is binding. The conclusion in the decision of the Constitution Bench is extracted below:

"62. 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 complaint beyond the period of 15 days in addition to 30 days as is 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 complaint by the opposite party, and not mere receipt of the notice of the complaint.

63. This judgment to operate prospectively. The referred questions are answered accordingly."

Significantly, in paragraph 63, it has been clarified by the Constitution Bench that the judgment would operate prospectively.

9 Prior to the judgment of the Constitution Bench in *New India Assurance Company Limited (supra)*, there was a judgment of a three-judge Bench of this Court in *Dr J J Merchant v. Shrinath Chaturvedi*⁵ which held that to ensure a speedy trial, the legislative mandate of not granting more than forty-five days to submit the written statement requires adherence, failing which the purpose of the statute would not be fulfilled. Several conflicting decisions of this Court⁶ led to a reference to the Constitution Bench. Eventually, as noted above, the Constitution Bench in *New India Assurance Company Limited (supra)* held that the District Forum has no power to condone a delay beyond a discretionary period of fifteen days, in addition to thirty days as envisaged in Section 13 of the Consumer Protection Act 1986. However, given the conflicting decisions which previously held the field, the judgment has been made prospective.

10 The issue in the present appeal pertains to a situation where prior to the decision of the Constitution Bench, the NCDRC had condoned a delay for a period beyond the prescribed statutory outer limit. In the present case, the NCDRC had exercised its discretion on 25 February 2020 to condone the delay prior to the decision of the Constitution Bench on 4 March 2020. In *Reliance General Insurance Company Limited (supra)*, a two-judge Bench of this Court had, on 10 February 2017, issued directions to the consumer fora as regards applications for condonation during the pendency of the reference to the Constitution Bench. The Court observed thus:

"5. We consider it appropriate to direct that pending decision of the larger Bench, it will be open to the Fora concerned to accept the written statement filed beyond the stipulated time of 45 days in an appropriate case, on suitable terms, including the payment of costs, and to proceed with the matter."

Similarly, during the pendency of the reference to the Constitution Bench, on 11 February 2016, a two-judge Bench of this Court in *Bhasin Infotech and Infrastructure Private Limited v. Grand Venezia Buyers Association*⁷ had permitted parties to file written statements beyond the prescribed limitation period, subject to payment of appropriate costs:

"4. Stay of the proceedings before the National Commission would in our opinion not only result in procrastination but also cause prejudice to the complainant. The proper course in our opinion is to permit the appellant Company to file its response, which was delayed by just about one day. We accordingly permit the appellant to file its reply before the National Commission within two weeks from today subject to payment of Rs 50,000 as costs to be paid to the opposite party. The Commission can upon deposit of costs proceed with the trial of the complainant on merits after receiving the reply filed by the respondent.

The pendency of present proceedings shall not be an impediment for the Commission to do so. This however is subject to the condition that the respondent complainant is ready and willing to take the proceedings forward on the conditions aforementioned. In case the respondent complainants have any objection to the continuance of the proceedings before the Commission they shall be free to seek stay of such proceedings pending disposal of these appeals in which event the proceedings shall remain stayed till disposal of the present appeals."

11 Subsequently, there was another judgment of a two-judge Bench of this Court in *Daddy's Builders Private Limited v. Manisha Bhargava*⁸. The decision was rendered on 11 February 2021 after the judgment of the Constitution Bench in *New India Assurance Company Limited (supra)*. That was a case where the NCDRC in a judgment dated 4 September 2020, had confirmed the order of the Karnataka State Consumer Disputes Redressal Commission dated 26 September 2018 rejecting an application seeking condonation of

delay in filing the written statement. The decision of the two-judge Bench in Reliance General Insurance Company Limited (supra) was cited before the Court. Referring to the said decision, this Court observed that in the order dated 10 February 2017 pronounced in Reliance General Insurance Company Limited (supra), it was specifically stated that it would be open to the fora concerned to accept written statements filed beyond the stipulated period of 45 days in an appropriate case on suitable terms including the payment of costs. Referring to the above order, this Court in Daddy's Builders (supra) observed that ultimately it was left to the concerned fora to accept written statements beyond the stipulated period of 45 days in an appropriate case. The Court held that the NCDRC had found no reason to condone the delay on its merits:

"6. Now so far as the reliance placed upon the order passed by this Court dated 10-2-2017 in Reliance General Insurance Co. Ltd. [Reliance General Insurance Co. Ltd.v. Mampee Timbers & Hardwares (P) Ltd., (2021) 3 SCC 673] is concerned, the same has been dealt with in detail by the National Commission by the impugned order [Daddy's Builders (P) Ltd. v. Manisha Bhargava, 2020 SCC OnLine NCDRC 697] while deciding the first appeal.

As rightly observed by the National Commission, there was no mandate that in all the cases where the written statement was submitted beyond the stipulated period of 45 days, the delay must be condoned and the written statement must be taken on record. In order dated 10-2-2017 [Reliance General Insurance Co. Ltd. v. Mampee Timbers & Hardwares (P) Ltd., (2021) 3 SCC 673] , it is specifically mentioned that it will be open to the Fora concerned to accept the written statement filed beyond the stipulated period of 45 days in an appropriate case, on suitable terms, including the payment of costs and to proceed with the matter. Therefore, ultimately, it was left to the Fora concerned to accept the written statement beyond the stipulated period of 45 days in an appropriate case."

The Court also referred to the decision of the Constitution Bench in the following terms:

"7. As observed by the National Commission that despite sufficient time granted the written statement was not filed within the prescribed period of limitation. Therefore, the National Commission has considered the aspect of condonation of delay on merits also. In any case, in view of the earlier decision of this Court in J.J. Merchant [J.J. Merchant v. Shrinath Chaturvedi, (2002) 6 SCC 635] and the subsequent authoritative decision of the Constitution Bench of this Court in New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd. [New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., (2020) 5 SCC 757 : (2020) 3 SCC (Civ) 338] , Consumer Fora have no jurisdiction and/or power to accept the written statement beyond the period of 45 days, we see no reason to interfere with the impugned order [Daddy's Builders (P) Ltd. v. Manisha Bhargava, 2020 SCC OnLine NCDRC 697] passed by the learned National Commission."

12 A few months after the decision in Daddy's Builders (supra), on 8 July 2021, a two-judge Bench of this Court in Dr A Suresh Kumar v. Amit Agarwal⁹ considered a factual situation where the NCDRC summarily dismissed an application for condonation of delay filed before the decision of the Constitution Bench in New India Assurance Company Limited (supra). The Court in Dr A Suresh Kumar (supra) held that since the decision of the Constitution Bench was to operate with prospective effect, applications for condonation of delay filed before 4 March 2020 ought to be considered on merits:

"2. In our view, since the application for condonation of delay was filed prior to the judgment of the Constitution Bench, which was delivered on 4-3-2020 [New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., (2020) 5 SCC 757 : (2020) 3 SCC (Civ) 338] , the said application for condonation of delay ought to have been considered on merits and should not have been dismissed on the basis of the Constitution Bench judgment in New India Assurance Co. Ltd. [New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., (2020) 5 SCC 757 : (2020) 3 SCC (Civ) 338] because the said judgment was to operate prospectively and the written statement as well as the application for condonation of delay had been filed much prior to the said judgment. Accordingly, the impugned order [Amit Agrawal v. A. Suresh Kumar, 2020 SCC OnLine NCDRC 927] of Ncdrc deserves to be, and is, hereby set aside."

The decision in Dr A Suresh Kumar (supra) did not notice the observation of a prior bench of co-equal strength in Daddy's Builders (supra).

13 The divergence between the positions in Dr A Suresh Kumar (supra) and Daddy's Builders (supra) in interpreting the prospective effect of the decision of the Constitution Bench in New India Assurance Company Limited (supra) was recently noticed on 6 December 2021 by a two-judge Bench of this Court in Bhasin Infotech and Infrastructure Private Ltd. v. Neema Agarwal and Others

10. The Court was considering a consumer complaint and an application for condonation of delay which were filed before 4 March 2020 but decided after the decision of the Constitution Bench. The Court noted the conflicting positions in the following terms:

"9. Two contrary views have emerged as regards what would be meant by the phrase..... "This judgment to operate prospectively" mandated in the Constitution Bench judgment. In the case of Daddy's Builders Private Limited (supra), the application for condonation of delay had been rejected by the State Commission prior to the Constitution Bench opinion on the aspect of power and jurisdiction of the consumer fora to condone delay beyond the stipulated 45 days in filing written submission/reply. The appeal against that decision was rejected by the NCDRC on 4th September, 2020, following the Constitution Bench decision.

On prospective operation of the Constitution Bench Judgment, opinion of the Coordinate Bench in the case of Daddy's Builders Private Limited (supra) was that the prospective operation of the judgment would apply only in cases where delay stood condoned on a date prior to 4th March, 2020. In expressing this view, the Coordinate Bench noted that one of the members of the Bench was also a party to the said Constitution Bench decision.

The position, as regards composition of the Bench is similar in the case of Dr. A. Suresh Kumar (supra) and in that judgment, a more liberal approach has been adopted. The prospectivity of the Constitution Bench decision has been held to cover cases where an application for condonation of delay was filed prior to the judgment of the Constitution Bench, but whose outcome was yet to be determined at the time the Constitution Bench judgment was delivered."

The two-judge Bench in Bhasin Infotech-2021 (supra) followed the line of precedent in Dr A Suresh Kumar (supra) and noted that the prospective effect of the Constitution Bench would preserve the benefit of the position laid down in Reliance General Insurance Company (supra) concerning applications for condonation that had been pending or decided as of 4 March 2020:

"10. In our view, the prospective operation of the Judgment in the case of New India Assurance Company Limited (supra) ought to cover both sets of the cases in which delay in filing written reply stood condoned after accepting the application for condonation of delay in filing written statement/reply as well as the cases where the decision on condonation of delay in filing written replies were pending on 4th March, 2020. Once an application is filed for condonation of delay, there may be cases where such applications are decided upon on dates earlier than applications already filed but yet to be determined.

We do not have any laid down administrative mechanism to decide in what manner applications of this nature would be decided and the consumer fora or the Courts apply their own discretion on the basis of various relevant factors involved in individual cases, to prioritise their hearing. In our opinion, it would be artificial distinction to distinguish between applications for condonation of delay already decided before 4th March, 2020 and the applications for condonation of delay pending on that date. So far as persons with pending applications for condonation of delay in filing written replies are concerned, their right to have their applications for condonation of delay in filing written replies to be considered, would stand crystallised on 4th March, 2020.

Such right has also been recognised in the case of Reliance General Insurance Company Limited (supra). Such right could be extinguished only by specific legal provisions. In the event the Constitution Bench judgment had altogether negated the right to have delay in filing written statement condoned beyond the period of 45 days, the right of such applicants could stand extinguished. But as the judgment of the Constitution Bench is to operate prospectively, in our understanding of the said judgment, those with pending applications for condonation of delay would retain their right to have their applications considered. But we refrain from expressing any definitive opinion on this point as the two Benches of equal strength have taken differing views on the manner in which the prospective application of the Constitution Bench judgment would be affected. In our opinion, this issue ought to be decided by a larger Bench."

However, in view of the conflicting position in Daddy's Builders (supra), the two-judge Bench in Bhasin Infotech-2021 (supra) sought the reference of the matter to a larger bench.

14 To recapitulate, in Daddy's Builders (supra), this Court refused to interfere in a decision of the NCDRC which had affirmed the judgment of the SCDRC rejecting the application for condonation. The application for condonation had not been entertained on merits. However, there are observations in Daddy's Builders (supra), based on the decision of the Constitution Bench, which state that a delay beyond the outer limit

prescribed by Section 13 could not have been condoned. While this is the position which emerges from the decision of the Constitution Bench, the decision has been made prospective.

In *Daddy's Builders* (supra) the application for condonation had been filed before the decision of the Constitution Bench and had been rejected on merits. Strictly speaking, the observations in *Daddy's Builders* (supra) were not necessary for its decision since, even on merits, no case for condonation had been found by the NCDRC in that case. As noted above, this Court in *Daddy's Builders* (supra) after noticing the decision in *Reliance General Insurance Company* (supra) held that it left the discretion to be exercised by the fora during the pendency of the reference to the Constitution Bench and in that case, the NCDRC found no reason to condone the delay.

The subsequent observation of this Court in *Daddy's Builders* (supra) which implies that the principle laid down by the Constitution Bench will even apply to applications for condonation filed prior to the decision of the Constitution Bench were unnecessary (once it had been held that even on merits there was no case for condonation). Moreover, those observations are with respect not consistent with the legal position that the Constitution Bench gave prospective effect to its decision.

15 The discretion for condonation of delay under Section 13 of the Consumer Protection Act 1986 is specifically circumscribed by the statute. Similar statutory provisions exist in the Arbitration and Conciliation Act 2015 and the Insolvency and Bankruptcy Code 2016 though in a different statutory context - facilitating the sanctity of the arbitral process in the former and the legislative intent of ensuring timely disposal and corporate rehabilitation in the latter. The Consumer protection Act 1986 and its successor are social welfare legislations designed to protect the interests of consumers. The Constitution Bench had thus noted:

"28. It is true that "justice hurried is justice buried". But in the same breath it is also said that "justice delayed is justice denied". The legislature has chosen the latter, and for a good reason. It goes with the objective sought to be achieved by the Consumer Protection Act, which is to provide speedy justice to the consumer. It is not that sufficient time to file a response to the complaint has been denied to the opposite party. It is just that discretion of extension of time beyond 15 days (after the 30 days' period) has been curtailed and consequences for the same have been provided under Section 13(2)(b)(ii) of the Consumer Protection Act. It may be that in some cases the opposite party could face hardship because of such provision, yet for achieving the object of the Act, which is speedy and simple redressal of consumer disputes, hardship which may be caused to a party has to be ignored."

This was owing to the social welfare intention of the consumer protection legislation, which essentially seeks to protect the rights of consumers who avail of myriad goods and services. The welfare of litigating consumers has been the guiding principle for interpreting several procedural and substantive questions arising out of the Consumer Protection Act 1986. Recently, a two-judge Bench considered the effect of the Consumer Protection Act 2019 which amended the pecuniary jurisdiction of consumer fora, on pending proceedings. In arriving at its decision, the Court noted:

"82. It would be difficult to attribute to Parliament, whose purpose in enacting the Act of 2019 was to protect and support consumers with an intent that would lead to financial hardship, uncertainty and expense in the conduct of consumer litigation...."

A similar principle is inherent in the decision of the Constitution Bench in *New India Assurance Company Ltd.* (supra). However, given the conflicting decisions concerning the nature of such discretion, the Constitution Bench considered it appropriate to give prospective effect to the decision. It did not make a distinction between applications for condonation which had been decided and those which were pending on the date of the decision. Thus, the decision in *Daddy's Builders* (supra) would not affect applications that were pending or decided before 4 March 2020. Such applications for condonation would be entitled to the benefit of the position in *Reliance General Insurance Company Limited* (supra) which directed consumer fora to render a decision on merits. We have expounded on the above principles in order to adopt a bright-line standard which obviates uncertainty on the legal position before the consumer fora and obviates further litigation.

16 In the present case, before the decision of the Constitution Bench, the delay was condoned by the NCDRC by furnishing reasons for the exercise of such discretion. Having regard to the prospective effect of the judgment of the Constitution Bench in *New India Assurance Company Limited* (supra) and the orders of this Court in *Reliance General Insurance Company Limited* (supra) and *Bhasin Infotech-2018* (supra), which

had recognized an element of discretion pending the reference, we are of the considered view that no case for interference is made in the order of the NCDRC allowing the application for condonation of delay on merits.

17 Learned counsel for the appellant states that the payment of costs of Rs 50,000 could not be effected because of the lockdown, but a demand draft is ready. The amount shall be transmitted into the account stipulated by the NCDRC within two weeks.

18 Liberty is granted to the appellants to file their replication within a period of four weeks.

19 The appeal is accordingly disposed of.

20 Pending applications, if any, stand disposed of.

1 "NCDRC"

2 (2020) 5 SCC 757 ["New India Assurance Company Limited"]

3 "13 (2) The District Forum shall, if the complaint 54[admitted] by it under Section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, 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;

(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,-

(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

(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;

(c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits."

4 (2021) 3 SCC 673 ["Reliance General Insurance Company Limited"]

5 (2002) 6 SCC 635 ["Dr. J J Merchant"]

6 Topline Shoes Ltd. v. Corporation Bank, (2002) 6 SCC 33; Kailash v. Nanhku, (2005) 4 SCC 480; Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344; J.J. Merchant v. Shrinath Chaturvedi, (2002) 6 SCC 635; New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., (2015) 16 SCC 20.

7 (2018) 17 SCC 255 ["Bhasin Infotech-2018"]

8 (2021) 3 SCC 669 ["Daddy's Builders"]

9 (2021) 7 SCC 466 ["Dr. A Suresh Kumar"]

10 2021 SCCOnLine SC 1186 ["Bhasin Infotech-2021"]

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