

New India Assurance Company Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd.

Civil Appeal No. 1094110942 of 2013

2020-03-04 | Arun Mishra · Indira Banerjee · Vineet Saran · M. R. Shah · S. Ravindra Bhat

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Full judgment text

New India Assurance Company Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd.

[Civil Appeal No. 1094110942 of 2013]

[Civil Appeal No. 8343 of 2014]

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[Civil Appeal No. 198586 of 2020, arising out of Special Leave Petition (C) No. 36314-36315 of 2017]

Vineet Saran, J.

1. Leave granted.

2. The reference made to this Constitution Bench relates to the grant of time for filing response to a complaint under the provisions of the Consumer Protection Act, 1986 (for short 'the Act'). The first question referred is as to whether Section 13(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 or directory; i.e., 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.

3. The first question was referred by a two judge 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. versus M/s Grand Venezia Buyers Association (Reg), the relevant portion of which is as under:

"There is an apparent conflict between the decisions 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 decisions 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 fivejudge 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 twojudge Bench ought to make a reference to a threejudge 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 comprising three Judges a reference to three Judges may not suffice."

4. The other question has been referred by another Division Bench of this Court by an Order dated 18.01.2017 passed in this very appeal being Civil Appeal No(s).1094110942 of 2013, NIA Vs. Hilli Multipurpose Cold Storage Pvt. Ltd, the relevant portion of the judgment is as under:

"what is the commencing point of the limitation of 30 days stipulated in Section 13 of the Act is required to be decided authoritatively. The declaration made in JJ Merchant's case that the said period is to be reckoned from the date of the receipt of the notice by the opposite party or complaint under the Act requires in our

humble opinion, a more critical analysis."

5. We have heard the learned Counsel for the parties at length and have carefully gone through the records.

6. In the Statement of Objects and Reasons of the Consumer Protection Act, in paragraph 4, it has been specifically provided that the Consumer Protection Act is "To provide speedy and simple redressal to consumer disputes, a quasijudicial machinery is sought to be set up at the district, State and Central levels". The Preamble of the Consumer Protection Act also mentions that the Act is "to provide for better protection of the interests of the consumers". The nomenclature of this Act also goes to show that it is for the benefit or protection of the consumer. From the above, it is evident that the Consumer Protection Act has been enacted to provide for expeditious disposal of consumer disputes and that, it is for the protection and benefit of the consumer.

7. Before we proceed to analyse and determine the questions referred, we may, for ready reference, reproduce the relevant provisions of the Consumer Protection Act and its Regulations.

"Section 13.

Procedure on admission of complaint.-

(1) The District Forum shall, on admission of a complaint, if it relates to any goods,

(a) refer a copy of the admitted complaint, within twentyone days from the date of its admission to the opposite party mentioned in the complaint 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).....

(c).....

(d).....

(e).....

(f).....

(g).....

(2) The District Forum shall, if the complaints admitted by it under section 12 relates to goods in respect of which the procedure specified in subsection (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 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.

(3) No proceedings complying with the procedure laid down in subsections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

1[(3A) Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months, if it requires analysis

or testing of commodities:

Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum: Provided further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act. Provided also that in the event of a complaint being disposed of after the period so specified, the District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.]

2[(3B) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.]

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness, and (vi) any other matter which may be prescribed.

5.....

6.....

7.....

Section 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 filing 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 twentyfive thousand rupees, whichever is less."

Section19. Appeals.-

Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by subclause (i) of clause (a) of section 17 may prefer an appeal against such order to the National 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 National 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 filing 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 State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent. of the amount or rupees thirtyfive thousand, whichever is less.

Section24A. 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 subsection (1), a complaint may be entertained after the period specified in subsection (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."

Relevant Provisions of the Consumer Protection Regulations, 2005 are reproduced below:

"Reg.10. Issue of notice.

(1) Whenever the Consumer Forum directs the issuance of a notice in respect of a complaint, appeal or revision petition, as the case may be, to the opposite party(ies)/respondent(s), ordinarily such notice shall be issued for a period of 30 days and depending upon the circumstances of each case even for less than 30 days.

(2) When there is a question of raising presumption of service, 30 days notice shall be required.

(3) Whenever notices are sought to be effected by a courier service, it shall be ascertained that the courier is of repute.

(4) Whenever appointing the courier for the purpose of effecting service, security deposit may also be taken.

(5) Along with the notice, copies of the complaint, memorandum of grounds of appeal, petitions as the case may be and other documents filed shall be served upon the opposite party(ies)/respondent(s).

(6) After the opposite party or respondent has put in appearance, no application or document shall be received by the Registrar unless it bears an endorsement that a copy thereof has been served upon the other side."

Reg.14. Limitation.

(1) Subject to the provisions of sections 15, 19 and 24A, the period of limitation in the following matters shall be as follows:

(i) Revision Petition shall be filed within 90 days from the date of the order or the date of receipt of the order as the case may be;

(ii) Application for setting aside the ex parte order under section 22A or dismissal of the complaint in default shall be maintainable if filed within thirty days from the date of the order or date of receipt of the order, as the case may be;

(iii) An application for review under subsection (2) of section 22 shall be filed to the National Commission within 30 days from the date of the order or receipt of the order, as the case may be;

(iv) The period of limitation for filing any application for which no period of limitation has been specified in the Act, the rules of these regulations shall be thirty days from the date of the cause of action or the date of knowledge.

(2) Subject to the provisions of the Act, the Consumer Forum may condone the delay in filing an application or a petition referred to in subregulation (1) if valid and sufficient reasons to its satisfaction are given.

Reg.26. Miscellaneous.

(1) In all proceedings before the Consumer Forum, endeavour shall be made by the parties and their counsel to avoid the use of provisions of Code of Civil Procedure, 1908 (5 of 1908): Provided that the provisions of the Code of Civil Procedure, 1908 may be applied which have been referred to in the Act or in the rules made thereunder.

(2).....

(3).....

(4).....

(5).....

(6)....."

Question No. 1:

Whether the District Forum has power to extend the time for filing of response to the complaint beyond the period of 15 days, in addition to 30 days, as envisaged under Section 13(2)(a) of the Consumer Protection Act?

8. A bare reading of Section 13(2)(a) of the Act makes it clear that the copy of the complaint which is to be sent to the opposite party, is to be with the direction to give his version of (or response to) the case (or complaint) within a period of 30 days. It further provides that such period of 30 days can be extended by the District Forum, but not beyond 15 days.

9. SubSection 2(b)(i) of Section 13 of the Act provides for a complaint to be decided on the basis of the response by the opposite party and the evidence of the complainant and the opposite party, where allegations contained in the complaint are denied or disputed by the opposite party. SubSection 2(b)(ii) of Section 13 of the Act provides that where no response is filed by the opposite party, the complaint may be decided ex parte on the basis of evidence brought forth by the complainant.

10. SubSection 2(c) of Section 13 of the Consumer Protection Act further provides that 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. The aforesaid provision [subSection 2(c)] was inserted by Act 62 of 2002, w.e.f. 15.03.2003. Similarly, Section (3A) of Section 13 of the Consumer Protection Act, which was also inserted by Act 62 of 2002, provides for deciding every complaint as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the receipt of notice by the opposite party, and within five months, if the complaint requires analysis or testing of commodities. It also provides that no adjournment shall ordinarily be granted by the District Forum, and if the same is to be granted, costs may be imposed, and further that reasons be recorded if the complaint is disposed of after the time so provided.

11. From the above, it is clear that as mentioned in the Statement of Objects and Reasons of the Consumer Protection Act, the District Forum is to provide speedy disposal of consumer disputes. The same has been further reiterated by the legislature by insertion of Section 13(2)(c) and 13(3A) by Act 62 of 2002.

12. Section 13 of the Consumer Protection Act clearly contemplates where time can be extended by the District Forum, and where it is not to be extended. Like, under subSection (3A) of Section 13, despite the best efforts of the District Forum, in situations where the complaint cannot be decided within the period specified therein, the same can be decided beyond the specified period for reasons to be recorded in writing by the District Forum at the time of disposing of the complaint. Meaning thereby that the same would not be mandatory, but only directory. The phrase "endeavour shall be made", makes the intention of the legislature evident that the District Forum is to make every effort to decide the case expeditiously within time, but the same can also be decided beyond the said period, but for reasons to be recorded.

13. On the contrary, subSection (2)(a) of Section 13 of the Consumer Protection Act provides for the opposite party to give his response 'within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum'. The intention of the legislature seems to be very clear that the opposite party would get the time of 30 days, and in addition another 15 days at the discretion of the Forum to file its response. No further discretion of granting time beyond 45 days is intended under the Act.

The question of natural justice is dealt with by the legislature in subSection (3) of Section 13 of the Consumer Protection Act, which clearly provides that "No proceedings complying with the procedure laid down in the subSection (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with." The legislature was conscious that the complaint would result in being decided ex parte, or without the response of the opposite party, if not filed within such time as provided under the Consumer Protection Act, and in such a case, the opposite party will not be allowed to take the plea that he was not given sufficient time or that principles of natural justice were not complied with. Any other interpretation would defeat the very purpose of subSection (3) of Section 13 of the Consumer Protection Act.

14. The maximum period of 45 days, as provided under the Consumer Protection Act, would not mean that the complainant has a right to always avail such maximum period of 45 days to file its response. Regulation 10 of the Consumer Protection Regulations, 2005 clearly provides that ordinarily such notice to the opposite party to file its response shall be issued for a period of 30 days, but the same can be even less than 30 days, depending upon the circumstances of each case.

15. Now, reverting back to the provisions of the Consumer Protection Act to consider as to whether the provision of subSection 2(a) of Section 13 granting a maximum period of 15 days in addition to 30 days has to be read as mandatory or not, we may also consider the other provisions of the Consumer Protection Act where the legislature intended to allow extension of period of limitation. Section 15 of the Consumer Protection Act provides for filing of an appeal from the order of the District Forum to the State Commission within a period of 30 days.

However, it leaves a discretion with the State Commission to entertain an appeal filed after the expiry of the said period of 30 days, if it is satisfied that there was sufficient cause for not filing it within the stipulated period. Similarly, discretion for filing an appeal before the National Commission beyond the period of 30 days has also been provided under Section 19 of the Consumer Protection Act. Section 24A provides for the limitation period of 2 years for filing the complaint. However, subSection (2) of Section 24A gives a discretion to entertain a complaint even after the period of 2 years, if there is a satisfactory cause for not filing the complaint within such period, which has to be recorded in writing.

16. Regulation 14 of the Consumer Protection Regulations, 2005 also deals with limitation. In addition, the same provides for limitation while dealing with appeals (under Section 15 and 19) and complaint (under Section 24A). SubRegulation (2) of Regulation 14 provides for condonation of delay for sufficient reasons to be recorded.

17. The legislature in its wisdom has provided for filing of complaint or appeals beyond the period specified under the relevant provisions of the Act and Regulations, if there is sufficient cause given by the party, which has to be to the satisfaction of the concerned authority. No such discretion has been provided for under Section 13(2)(a) of the Consumer Protection Act for filing a response to the complaint beyond the extended period of 45 days (30 days plus 15 days). Had the legislature not wanted to make such provision mandatory but only directory, the provision for further extension of the period for filing the response beyond 45 days would have been provided, as has been provided for in the cases of filing of complaint and appeals.

To carve out an exception in a specific provision of the statute is not within the jurisdiction of the Courts, and if it is so done, it would amount to legislating or inserting a provision into the statute, which is not permissible. By specifically enacting a provision under subSection (3) of Section 13, with a specific clarification that violation of the principles of natural justice shall not be called in question where the procedure prescribed under subSections (1) and (2) of Section 13 of the Consumer Protection Act has been followed or complied with, the intention of the legislature is clear that mere denial of further extension of time for filing the response (by the opposite party) would not amount to denial or violation of the principles of natural justice. This provision of Section 13(3) reinforces the time limit specified in Section 13(2)(a) of the Act.

18. This Court in the case of *Lachmi Narain vs Union of India* (1976) 2 SCC 953 has held that "if the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the interest that the provision is to be mandatory". Further, hardship cannot be a ground for changing the mandatory nature of the statute, as has been held by this Court in *Bhikraj Jaipurai vs Union of India* AIR 1962 SC 113=(1962) 2 SCR 880 and *Fairgrowth Investments Ltd. Vs Custodian* (2004) 11 SCC 472. Hardship cannot thus be a ground to interpret the provision so as to enlarge the time, where the statute provides for a specific time, which, in our opinion, has to be complied in letter and spirit. This Court, in the case of *Rohitash Kumar vs Om Prakash Sharma* (2013) 11 SCC 451 has, in paragraph 23, held as under:

"23. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigor. It is a well settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice."

While concluding, it was observed "that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein, is unequivocal." Further, it has been held by this Court in the case of *Popat Bahiru Govardhane vs Special Land Acquisition Officer* (2013) 10 SCC 765 that the law of limitation may harshly affect a particular party

but it has to be applied with all its vigour when the statute so prescribes and that the Court has no power to extend the period of limitation on equitable grounds, even if the statutory provision may cause hardship or inconvenience to a particular party.

19. The contention of the learned Counsel for the respondent is that by not leaving a discretion with the District Forum for extending the period of limitation for filing the response before it by the opposite party, grave injustice would be caused as there could be circumstances beyond the control of the opposite party because of which the opposite party may not be able to file the response within the period of 30 days or the extended period of 15 days. In our view, if the law so provides, the same has to be strictly complied, so as to achieve the object of the statute. It is well settled that law prevails over equity, as equity can only supplement the law, and not supplant it.

This Court, in the case of *Laxminarayan R. Bhattad vs State of Maharashtra* (2003) 5 SCC 413, has observed that "when there is a conflict between law and equity the former shall prevail." In *P.M. Latha vs State of Kerala* (2003) 3 SCC 541, this Court held that "Equity and law are twin brothers and law should be applied and interpreted equitably, but equity cannot override written or settled law." In *Nasiruddin vs Sita Ram Agarwal* (2003) 2 SCC 577, this Court observed that "in a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom."

In *E. Palanisamy vs Palanisamy* (2003) 1 SCC 123, it was held that "Equitable considerations have no place where the statute contained express provisions." Further, in *India House vs Kishan N. Lalwani* (2003) 9 SCC 393, this Court held that "The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from by equitable considerations." It is thus settled law that where the provision of the Act is clear and unambiguous, it has no scope for any interpretation on equitable ground.

20. 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.

21. It has been further contended that the language of Section 13(2) of the Consumer Protection Act is *pari materia* to Order VIII Rule 1 of the Code of Civil Procedure, 1908 (for short 'the Code') and if time can be extended for filing of written submission in a suit under the aforesaid provision of the Code, the same would apply to the filing of response to complaint under the Consumer Protection Act as well, and hence the provision of Section 13(2)(a) of the Consumer Protection Act would be directory and not mandatory.

In this regard, what is noteworthy is that Regulation 26 of the Consumer Protection Regulation, 2005, clearly mandates that endeavour is to be made to avoid the use of the provisions of the Code except for such provisions, which have been referred to in the Consumer Protection Act and the Regulations framed thereunder, which is provided for in respect of specific matters enumerated in Section 13(4) of the Consumer Protection Act. It is pertinent to note that nonfiling of written statement under Order VIII Rule 1 of the Code is not followed by any consequence of such nonfiling within the time so provided in the Code.

Now, while considering the relevant provisions of the Code, it is noteworthy that Order VIII Rule 1 read with Order VIII Rule 10 prescribes that the maximum period of 120 days provided under Order VIII Rule 1 is actually not meant to be mandatory, but only directory. Order VIII Rule 10 mandates that where written statement is not filed within the time provided under Order VIII Rule 1 "the court shall pronounce the judgment against him, or make such order in relation to the suit as it thinks fit".

A harmonious construction of these provisions is clearly indicative of the fact that the discretion is left with the Court to grant time beyond the maximum period of 120 days, which may be in exceptional cases. On the other hand, subSection (2)(b)(ii) of Section 13 of the Consumer Protection Act clearly provides for the consequence of the complaint to be proceeded *ex parte* against the opposite party, if the opposite party omits or fails to represent his case within the time given. It may further be noted that in Order VIII Rule 10 of the Code, for suits filed under the Commercial Courts Act, 2015, a proviso has been inserted for

'commercial disputes of a specified value' (vide Act 4 of 2016 w.r.e.f. 23.10.2015), which reads as under: "Provided further that no Court shall make an Order to extend the time provided under Rule 1 of this Order for filing the written statement" From the above, it is clear that for commercial suits, time for filing written statement provided under Order VIII Rule 1 is meant to be mandatory, but not so for ordinary civil suits.

Similarly, in our considered view, for cases under the Consumer Protection Act also, the time provided under Section 13(2)(a) of the Act has to be read as mandatory, and not directory. Once consequences are provided for not filing the response to the complaint within the time specified, and it is further provided that proceedings complying with the procedure laid down under sub Section (1) and (2) of Section 13 of the Consumer Protection Act shall not be called in question in any Court on the ground that the principles of natural justice have not been complied with, the intention of the legislature is absolutely clear that the provision of subSection 2(a) of Section 13 of the Act in specifying the time limit for filing the response to the complaint is mandatory, and not directory.

22. After noticing that there were delays in deciding the complaints by the District Forum, the legislature inserted subSection (3A) of Section 13 of the Consumer Protection Act providing for a time limit for deciding the complaints. From this it is amply clear that the intention of the legislature was, and has always been, for expeditious disposal of the complaints. By providing for extension of time for disposal of the cases filed, for reasons to be recorded, the legislature has provided for a discretion to the Forum that wherever necessary, the extension of the time can be provided for, and where such further extension is not to be granted [as in the case of Section 13(2)(a)], the legislature has consciously not provided for the same, so as to achieve the object of the Act.

23. In SCG Contracts (India) Private Limited vs K.S. Chamankar Infrastructure Private Limited (2019) 12 SCC 210, this Court, was dealing with a case relating to the filing of written statement under the Code, in respect of a case under the Commercial Courts Act, 2015. After noticing the amendments brought in Order V Rule 1, Order VIII Rule 1 and Order VIII Rule 10 of the Code with regard to 'commercial disputes of specified value' under the Commercial Courts Act, 2015 by way of insertion of the Provisos in the aforesaid provisions, this Court held that "the clear, definite and mandatory provisions of Order V read with Order VIII Rule 1 and 10 cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what is stated therein".

It was, thus, held that there was no scope for enlarging the time for filing of written statement beyond the period of 120 days in commercial suits, as the provision with regard to such suits would be mandatory, and not directory. The said judgment has been affirmed by a Bench of three Judges in *Desh Raj vs Balkishan* decided on 20.01.2020 in Civil Appeal No.433 of 2020.

24. In *Fairgrowth Investments Ltd. Vs Custodian* (2004) 11 SCC 472, this Court was dealing with the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, and the question was whether the Special Court has power to condone the delay in filing the petition under Section 4(2) of the said Act. While holding, that the said provision would be mandatory, it was held in paragraph 13 as under: "13. It is not for the courts to determine whether the period of 30 days is too short to take into account the various misfortunes that may be faced by notified persons who wish to file objections under Section 4(2) of the Act nor can the section be held to be directory because of such alleged inadequacy of time."

Then, after considering the decisions of this Court in *Topline Shoes Ltd. vs. Corporation Bank* (2002) 6 SCC 33 and *Dr. J. J. Merchant vs. Shrinath Chaturvedi* (2002) 6 SCC 635, this Court held that "the period for filing an objection in Section 4(2) in the Act is a mandatory provision given the language of the Section and having regard to the objects sought to be served by the Act." 25. Certain other cases, which have been referred to by the learned Counsel for the parties, have, in our considered opinion, no direct bearing on the facts and issue involved in the present case relating to the Consumer Protection Act, and thus, the same are not being dealt with and considered here.

26. We may now deal with the decisions rendered by this Court, which have been referred to in the Reference Order.

27. Division Bench of this Court has referred this Question, after observing that there is an apparent conflict between the decisions of this Court in *Topline Shoes* (supra); *Kailash Vs. Nanhku* (2005) 4 SCC 480 and *Salem Advocate Bar Association vs. Union of India* (2005) 6 SCC 344 on the one hand; and *Dr. J. J. Merchant* (supra) and *NIA vs. Hilli Multipurpose Cold Storage* (2015) 16 SCC 22, on the other hand.

28. In *Topline Shoes (supra)*, a Division Bench of this Court, while dealing with the provisions of Section 13(2)(a) of the Consumer Protection Act, has held that the said provision would be directory and not mandatory. While holding so, the Bench relied on the principles of natural justice, and also that no consequence of nonfiling of the response to the complaint within 45 days is provided for in the Consumer Protection Act. In paragraph 8 of the said judgment, this Court held: "It is for the Forum or the Commission to consider all facts and circumstances along with the provisions of the Act providing timeframe to file reply, as a guideline and then to exercise its discretion as best as it may serve the ends of justice and achieve the object of speedy disposal of such cases keeping in mind the principles of natural justice as well".

It is true that in Clause 4 of the Statement of Objects and Reasons of the Consumer Protection Act, the legislature provided that "quasi-judicial bodies will observe the principles of natural justice", however, the same is to be observed generally, and not where the same is specifically excluded. In the said judgment, subSection (3) of Section 13 has neither been referred, nor taken note of. The same mandates that no proceedings complying with the procedure laid down in subSections (1) and (2) of Section 13 shall be called in question in any Court on the ground that the principles of natural justice have not been complied with. From this it is evident that while considering the provisions of Section 13(2)(a) of the Consumer Protection Act, the law mandates that the principles of natural justice cannot be said to be violated by adopting the said procedure and that the time of 30 days plus 15 days provided for filing the response to the complaint would be sufficient and final.

In case of *Topline Shoes (supra)*, this Court was also of the view that in the Consumer Protection Act, "no consequence is provided in case the time granted to file reply exceeds the total period of 45 days". While observing so, the Bench did not take into account the provisions of Section 13(2)(b)(ii) of the Consumer Protection Act, which provides that where the opposite party fails to file response to the complaint within the specified time provided in Clause (a), "the District Forum shall proceed to settle the consumer dispute on the basis of evidence brought to its notice by the complainant."

After the said judgment, by Amendment Act 62 of 2002 (w.e.f. 15.03.2003), the legislature has provided that the District Forum shall proceed to settle the consumer dispute "ex parte on the basis of the evidence". The word "ex parte" has been added by the Amending Act. As we have observed herein above, the consequence of not filing the response to the complaint within the stipulated time is thus clearly provided for in the aforesaid subSection, which has not been noticed by the Bench while deciding the aforesaid case.

29. In the case of *Kailash vs. Nanhku (supra)*, this Court was dealing with an election trial under the Representation of People Act, 1951, and while considering the provision under Order VIII Rule 1 of the Code, it held the same to be directory, and not mandatory. While holding so, the Court was of the view that "the consequences flowing from nonextension of time are not specifically provided" in the Code. The decision in the said case has no bearing on the question under consideration, as the present reference before us is under the Consumer Protection Act, where, as we have already observed, consequences are specifically provided for.

In passing, in paragraph 35 of the said judgment, the Bench referred to the case of *Topline Shoes (supra)*, where the provision of Section 13 of the Consumer Protection Act was considered to be directory, and not mandatory. In our view, the same would not have the effect of affirming the decision of *Topline Shoes (supra)* since the Court, in the aforesaid case, was dealing with the provisions of the Code and not the specific provisions of Consumer Protection Act. We are thus of the opinion that *Kailash vs Nanhku (supra)* has not overruled the decision in *Dr. J. J. Merchant (supra)* with regard to the provision of the Consumer Protection Act. 30. Again, in the case of *Salem Advocates Bar Association (supra)*, this Court was dealing with a case under Order VIII Rule 1 of the Code and in paragraph 20, it has been held as under:

"20. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred.

The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice." Thereafter, the Court proceeded to refer to the provisions of Order VIII Rule 1, along with Order VIII Rule 10 of the Code. On a harmonious construction of the said provision, it held

that the provisions of Order VIII Rule 1 of the Code would be directory, and not mandatory. Relevant paragraph 21 of the said judgment is below:

"21. In construing this provision, support can also be had from Order 8 Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the court, the court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to the suit as it thinks fit.

In the context of the provision, despite use of the word "shall", the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if the written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 Order 8, the court in its discretion would have the power to allow the defendant to file written statement even after expiry of the period of 90 days provided in Order 8 Rule 1.

There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory". As such in our view, the said judgment would hold the field with regard to Order VIII Rule 1 of the Code and would not be applicable to cases dealing with the provisions of Section 13(2) of the Consumer Protection Act, or such other enactment wherein a provision akin to Section 13(2) is there and the consequences are also provided.

31. The case of Dr. J. J. Merchant (supra) is one relating to the provisions of the Consumer Protection Act, and has been decided by a Bench of three Judges of this Court (which is after the decision in the case of Topline Shoes (supra) was rendered). In this case it has been held that the time limit prescribed for filing the response to the complaint under the Consumer Protection Act, as provided under Section 13(2)(a), is to be strictly adhered to, i.e. the same is mandatory, and not directory. In paragraph 13 of the said judgment, it has been held that:

"For having speedy trial, this legislative mandate of not giving more than 45 days in submitting the written statement or the version of the case is required to be adhered to. If this is not adhered to, the legislative mandate of disposing of the cases within three or five months would be defeated. In the said case of Dr. J. J. Merchant (supra), while holding that the time limit prescribed would be mandatory and thus be required to be strictly adhered to, this Court also considered the Statement of Objects and Reasons of the Consumer Protection (Amendment) Bill, 2002 (which was subsequently enacted as Act 62 of 2002 and has come in force w.e.f. 15.03.2003).

The salient features of the same was "to provide simple, inexpensive and speedy justice to the consumers" and that "the disposal of cases is to be faster" and after noticing that "several bottlenecks and shortcomings have also come to light in the implementation of various provisions of the Act" and with a view to achieve quicker disposal of consumer complaints, certain amendments were made in the Act, which included "(iii) prescribing the period within which complaints are to be admitted, notices are to be issued to opposite party and complaints are to be decided". With this object in mind, in subSection (2)(b)(ii) of Section 13, the opening sentence "on the basis of evidence" has been substituted by "ex parte on the basis of evidence".

By this amendment, consequences of not filing the response to the complaint within the specified limit of 45 days was to be that the District Forum shall proceed to settle the consumer dispute ex parte on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take action to represent his case within time. For achieving the objective of quick disposal of complaints, the Court noticed that subSection (3A) of Section 13 was inserted, providing that the complaint should be heard as expeditiously as possible and that endeavour should be made to normally decide the complaint within 3 months, and within 5 months where analysis or testing of commodities was required.

The Provisos to the said subSection required that no adjournment should be ordinarily granted and if granted, it should be for sufficient cause to be recorded in writing and on imposition of cost, and if the complaint could not be decided within the specified period, reasons for the same were to be recorded at the time of disposing of the complaint. It was after observing so, and considering aforesaid amendments, this

Court held that the time limit of 30 plus 15 days in filing the response to the complaint, be mandatory and strictly adhered to.

32. The decision of another Bench of three Judges in NIA vs Hilli Multipurpose Coldstorage (supra), which has been considered in the referring order was passed by a bench of two Judges in the same case, after noticing a conflict of views in the cases of Dr. J. J. Merchant (supra) and Kailash vs Nanhku (supra). After considering the provisions of the Code and Consumer Protection Act, the reference was answered "that the law laid down by a three Judge Bench of this Court in Dr. J. J. Merchant (supra) should prevail". In coming to this conclusion, the following was observed in paragraphs 25 and 26 of the said judgment:

"25. We are, therefore, of the view that the judgment delivered in J.J. Merchant holds the field and therefore, we reiterate the view that the District Forum can grant a further period of 15 days to the opposite party for filing his version or reply and not beyond that.

26. There is one more reason to follow the law laid down in J.J. Merchant. J.J. Merchant was decided in 2002, whereas Kailash was decided in 2005. As per law laid down by this Court, while dealing Kailash, this Court ought to have respected the view expressed in J.J. Merchant as the judgment delivered in J.J. Merchant was earlier in point of time. The aforesaid legal position cannot be ignored by us and therefore, we are of the opinion that the view expressed in J.J. Merchant should be followed."

33. Although, after the above decision, no further reference was required to be made, but still we have proceeded to answer the question referred to this Constitution Bench and are of the considered opinion that the view expressed by this Court in the case of Dr. J. J. Merchant (supra) is the correct view.

Question No. 2:

What would be the commencing point of limitation of 30 days under Section 13 of the Consumer Protection Act, 1986?

34. The question for determination is whether the limitation under Section 13 of the Consumer Protection Act for filing the response by the opposite party to the complaint would commence from the date of receipt of the notice of the complaint by the opposite party, or the receipt of notice accompanied by a copy of the complaint.

35. In paragraph 12 of the judgment dated 04.12.2015, of three Judge Bench of this Court, in this very case of NIA vs. Hilli Multipurpose Cold Storage (supra), while referring to the commencing point of limitation of 30 days under Section 13(2) of the Consumer Protection Act, it has been held that "The whole issue centres round the period within which the opponent has to give his version to the District Forum in pursuance of a complaint, which is admitted under Section 12 of the Act. Upon receipt of a complaint by the District Forum, if the complaint is admitted under Section 12 of the Act, a copy of the complaint is to be served upon the opposite party and as per the provisions of Section 13 of the Act, the opposite party has to give his version of the case within a period of 30 days from the date of receipt of the copy of the complaint."

36. However, another two judge Bench of this Court, by an Order dated 18.01.2017 passed in this very Appeal being Civil Appeal No(s).1094110942 of 2013, NIA Vs. Hilli Multipurpose Cold Storage, has expressed the view that the declaration made in Dr. J. J. Merchant's case to the effect that the said period is to be reckoned from the date of receipt of notice by the opposite party or complaint under the Act, requires a more critical analysis. The bench thus opined that "what is the commencing point of the limitation of 30 days stipulated in Section 13 of the Act is required to be decided authoritatively". It is thus that this question has been placed before us for an authoritative decision.

37. For deciding this question, we may first analyse the relevant provisions of the Consumer Protection Act and the Regulations framed thereunder. SubSections (2)(a) and (2)(b) of Section 13 of the Consumer Protection Act specify that it is the copy of the complaint which is to be given to the opposite party directing him to give his version of the case within a period of 30 days or such extended period, not exceeding 15 days. As such, from the aforesaid provision itself, it is clear that it is the copy of the admitted complaint which is to be served, after which the period to file the response would commence.

Further, Regulation 10 of the Consumer Protection Regulations, 2005 also specifies the procedure of issuing notice, which should be accompanied by copy of the complaint. Regulation 10(5) clearly mentions that "along with the notice, copies of the complaint, memorandum of grounds of appeal, petitions as the case may be and other documents filed shall be served upon the opposite party(ies)/respondent(s)". The same

would also make it clear that it is on service of a copy of the complaint that the period of limitation for filing the response by the opposite party shall commence.

38. Even in the Code of Civil Procedure, Order VIII Rule 1 prescribes that the written statement shall be filed by the defendant within 30 days from the receipt of the "summons". "Summons" has been defined in Order V Rule 1 of the Code and Rule 2 provides that "Every summon shall be accompanied by a copy of the plaint." While considering the aforesaid provisions, a two judge Bench of this Court in the case of Nahar Enterprises vs Hyderabad Allwyn Ltd. (2007) 9 SCC 466 has, in paragraph 8, 9 and 10, held as under:

(8) The learned counsel appears to be correct. When a summons is sent calling upon a defendant to appear in the court and file his written statement, it is obligatory on the part of the court to send a copy of the plaint and other documents appended thereto, in terms of Order 5 Rule 2 CPC.

(9) Order 5 Rule 2 CPC reads as under: "2. Copy of plaint annexed to summons. - Every summon shall be accompanied by a copy of the plaint."

(10) The learned Judge did not address itself the question as to how a defendant, in absence of a copy of the plaint and other documents, would be able to file his written statement."

39. Even in Arbitration and Conciliation Act, 1996, subSection (5) of Section 31 provides that "after the arbitral award is made, a signed copy shall be delivered to each party". An application for setting aside the arbitral award is to be made under Section 34 of the said Act. The delivery of the award sets in motion the limitation for challenging the award under Section 34 of the said Act. While interpreting the nature and scope of Section 31(5) of the said Act, a three Judge Bench of this Court in Union of India vs Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239, has, in paragraph 6, held as under:

(6) Form and contents of the arbitral award are provided by Section 31 of the Act. The arbitral award drawn up in the manner prescribed by Section 31 of the Act has to be signed and dated. According to subsection (5), "after the arbitral award is made, a signed copy shall be delivered to each party". The term "party" is defined by clause (h) of Section 2 of the Act as meaning "a party to an arbitration agreement".

The definition is to be read as given unless the context otherwise requires. Under subsection (3) of Section 34 the limitation of 3 months commences from the date on which "the party making that application" had received the arbitral award. " From the above, what we notice is that wherever limitation is provided, either for filing response/written statement or filing an appeal, it is the copy of the plaint or the order/award which is to be served on the party concerned after which alone would commence the period of limitation.

40. Now reverting to the provisions of the Consumer Protection Act, a conjoint reading of Clauses (a) and (b) of subSection (2) of Section 13 would make the position absolutely clear that the commencing point of limitation of 30 days, under the aforesaid provisions, would be from the date of receipt of notice accompanied by a copy of the complaint, and not merely receipt of the notice, as the response has to be given, within the stipulated time, to the averments made in the complaint and unless a copy of the complaint is served on the opposite party, he would not be in a position to furnish its reply.

Thus, mere service of notice, without service of the copy of the complaint, would not suffice and cannot be the commencing point of 30 days under the aforesaid Section of the Act. We may, however, clarify 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 if permitted to be raised at any point later would defeat the very purpose of the Act, which is to provide simple and speedy redressal of consumer disputes.

41. 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. This Judgment to operate prospectively. The referred questions are answered accordingly.

1 Ins. by Act 62 of 2002, sec. 9 (w.e.f. 1532003).

2 Ins. by Act 62 of 2002, Sec. 9 (w.e.f. 1532003).

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