

INDIA / JUDGMENT

RICARDO CONSTRUCTIONS PVT. LTD. versus RAVI KUCKIAN & OTHERS

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[2024] 9 S.C.R. 638 : 2024 INSC 715

Ricardo Constructions Pvt. Ltd. v. Ravi Kuckian & Others

(Civil Appeal No. 9958 of 2024)

06 September 2024

[J.K. Maheshwari and Rajesh Bindal,* JJ.]

Issue for Consideration

Matter pertains to foreclosing of the right of the opposite party- appellant to file written statement.

Headnotes†

Consumer Protection Act, 2019 – Procedure on admission of complaint – Foreclosing of the right to file written statement – Effect – On facts, in a complaint, National Commission foreclosed the right of the appellant to file written statement and complainants given six weeks to file affidavit of evidence and the matter directed to be listed after five months – Challenge to:

Held: Not a case where along with the notice, copy of the complaint was accompanied – Thus, it may be too harsh to foreclose anyone's right to file written statement merely on conjectures and surmises – Case of the appellant was that the copy of the complaint was not served upon him – Commission had put onus on the appellant to have not made any attempt to get the copy of the complaint – However, the Commission merely recorded in its previous order that the notice was accepted by the counsel for the appellant in Court and was granted time to file the vakalatnama and written statement, however, it did not record that copy of the complaint was supplied by the counsel for the complainants to the counsel for the appellant – Any such observation by the Commission in its order would have clinched the issue – Impugned order passed by the Commission insofar it foreclosed the right of the appellant to file written statement set aside – Appellant permitted to file written statement on or before 14.10.2024 – Complainants allowed to file replication, if any, by 06.11.2024 and affidavit of evidence on or before 09.12.2024 – Matter to remain fixed on 09.01.2025 – Appellant to file written statement subject to payment of costs of ₹1,00,000/- each to complainants – Consumer Protection Act, 1986. [Paras 10, 11]

* Author

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Case Law Cited

New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Private Limited [2020] 5 SCR 429 : (2020) 5 SCC 757 : 2020 INSC 274 – referred to.

List of Acts

Consumer Protection Act, 2019; Consumer Protection Act, 1986.

List of Keywords

Foreclosing of the right to file written statement; Affidavit of evidence; Copy of the complaint not served; Grant of time to file vakalatnama and written statement; Conjectures and surmises; Costs.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9958 of 2024

From the Judgment and Order dated 19.07.2024 of the National Consumer Disputes Redressal Commission, New Delhi in Consumer Complaint No. 5 of 2024

Appearances for Parties

Dhruv Mehta, Sr. Adv., Pranjit Bhattacharya, Vaibhav Niti, Ms. Sonam Mhatre, Ms. Raj Sarit Khare, Advs. for the Appellant.

Aditya Parolia, Piyush Singh, Akshay Srivastava, Alankrit Bhatnagar, Suryansh Vashisth, Anshul Gupta, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Order

Rajesh Bindal, J.

1. The present appeal has been filed against the order¹ dated 19.07.2024 passed by the National Consumer Disputes Redressal Commission,² New Delhi in a complaint filed by respondent Nos.1 to 31 whereby the right of the appellant to file written statement was foreclosed. The

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Consumer Complaint No.5 of 2024

For short, ‘The Commission’

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complainants were given six weeks time to file affidavit of evidence and the matter was directed to be listed on 09.01.2025.

2.

Learned counsel for the appellant submitted that time as provided in law, was not granted to file the written statement. Hence, the impugned order of the Commission may be set aside and the appellant may be given an opportunity to file written statement.

3. The order passed by the Commission on 06.02.2024 suggests that the counsel, who had appeared on behalf of the appellant was granted time to file vakalatnama. Notice was directed to be issued to the Opposite Party No.2 in the complaint and 30 days' time was granted to the appellant to file its written statement, whereafter the complainants could file rejoinder and the matter was fixed on 19.07.2024 for the next hearing. As the appellant could not file the written statement within the time granted by the Commission, the right to file the same was foreclosed.
4. The argument raised by the learned counsel for the appellant is that copy of the complaint was not supplied to the counsel of the appellant, hence, written statement could not be filed within the time granted. He further submits that the counsel had put in appearance merely, seeing the matter in the cause list on 06.02.2024, and had sought time to file the written statement. The copy of the complaint was not handed over to him. The service of notice on the appellant was not done by the process of the court. In the absence of a copy of the complaint, it was not possible for the appellant to file its written statement. Reliance has been placed on the Constitution Bench judgment of this Court in New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Private Limited³ to support the arguments raised by the appellant.

5.

It was further urged that there is no cause on the part of the appellant to delay the proceedings. Counsel for the appellant accepted notice in the complaint on the very first date of hearing i.e. 06.02.2024, otherwise notice on that day was issued to the opposite party No. 2 and matter was listed for further orders/directions on 19.07.2024. Even after foreclosing the right of the appellant to file the written statement on 19.07.2024 and granting six weeks' time to the complainants to

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file affidavit of evidence, the next date of hearing was fixed more than five months thereafter. In such circumstances if opportunity is granted to the appellant to file its written statement, he shall file the same without delay and the complainants thereafter would have sufficient time to file rejoinder and also affidavit of evidence, much before the next date of hearing on 09.01.2025 as fixed by the Commission.

6. On the other hand, learned counsel for the respondent Nos.1 to 31/complainants before the Commission, submitted that in view of the judgment of the Constitution Bench of this Court in New India Assurance Company Limited's case (supra), a maximum period of 45 days' can be granted to opposite party to file the written statement and the Commission had rightly foreclosed the right of the appellant to file the written statement as from the date of acceptance of notice, more than 45 days had expired. The written statement had not yet been filed. It was the duty of the appellant to have asked for a copy of the complaint from the counsel for the complainant, in case it was not received or supplied. The appellant merely wants to delay the proceedings.

7. We have heard learned counsels for the parties and perused the relevant referred record.

8.

It is evident from the impugned order that in the complaint filed by the respondent Nos.1 to 31, notice was issued on 06.02.2024 to the Opposite Parties. As the counsel representing the appellant happened to be present before the Commission, and with a view to resolve the dispute between the parties expeditiously, he accepted the notice on the same day even though he did not have the vakalatnama executed by the appellant in his favour. Otherwise, the notice was issued to Opposite Party No. 2 and matter was fixed for 19.07.2024, the first date of hearing fixed by the Commission after issuance of such notice. As the copy of the complaint was not served upon the appellant or its counsel, the written statement could not be filed in time and accordingly, prayer was made on 19.07.2024 seeking further time for the purpose. However, the same was declined by the Commission while observing that it was an attempt on the part of the appellant to delay the proceedings.

8.1 However, considering the fact that the counsel for the appellant who happened to be present before the Commission on the very first date when the complaint was listed, accepted the notice, it does not show that there was any effort on the part of the

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appellant to delay the process. The next date of hearing fixed by the Commission was on 19.07.2024 after issuance of notice to Opposite Party No.2. On that day, while foreclosing the right of the appellant to file the written statement, six weeks' time was granted to the complainants to file affidavit in evidence and matter was posted for 09.01.2025. Under these circumstances, if some reasonable time is granted to the appellant to file the written statement and complainant to file replication thereof, the pleadings would be complete before the next date of hearing fixed and even affidavit of evidence can be filed by the complainants before that date.

9. The Constitution Bench of this Court in New India Assurance Company Limited's case (supra) considered one of the questions as to what would be the commencing point of limitation of 30 days under Section 13 of the Consumer Protection Act, 1986 and opined that the commencing point of limitation of 30 days would be from the date of receipt of the notice accompanied with the complaint by the opposite party and not on mere receipt of the notice of the complaint. For ready reference questions framed thereunder and answer to those questions, are reproduced herein below :

“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?

Question No.2 : What would be the commencing point of limitation of 30 days under Section 13 of the Consumer Protection Act, 1986?

xxx

xxx

xxx

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

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notice accompanied with the complaint by the opposite party, and not mere receipt of the notice of the complaint.”

9.1

If we examine the provisions of the Consumer Protection Act, 2019, the same are in the line with the Consumer Protection Act, 1986.

10. Argument raised by the learned counsel for the appellant is that the copy of the complaint was not served upon him. The Commission had put onus on the appellant to have not made any attempt to get the copy of the complaint. However, the fact remains that the Commission has merely recorded in its order dated 06.02.2024 that the notice was accepted by the counsel for the appellant in Court and he was granted time to file the vakalatnama and written statement. The order does not record that copy of the complaint has been supplied by the counsel for the complainants to the counsel for the opposite party No.1/the appellant herein. Any such observation by the Commission in its order would have clinched the issue. It is not a case where along with the notice, copy of the complaint was accompanied. Therefore, it may be too harsh to foreclose anyone's right to file written statement merely on conjectures and surmises.
11. For the reasons mentioned above, the present appeal is allowed. The impugned order passed by the Commission insofar it foreclosed the right of the appellant to file written statement is hereby set aside. The appellant is permitted to file written statement on or before 14.10.2024. The respondent Nos.1 to 31/complainants shall be at liberty to file replication, if any, by 06.11.2024 and the affidavit of evidence on or before 09.12.2024. The matter shall remain fixed on 09.01.2025 for the purpose already mentioned. The appellant is permitted to file written statement subject to payment of costs of ₹1,00,000/- each to respondent Nos.1 to 31/complainants. The payment of costs shall be a condition precedent for acceptance of written statement on record. The costs, as above, shall be transferred in the respective bank accounts of the respondents. In case the details thereof are not available with the appellant, the same can be taken in coordination with the counsels representing them.

Result of the Case: Appeal allowed.

†Headnotes prepared by: Nidhi Jain

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