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CONSTITUTION BENCH OF THE SUPREME COURT: CONSUMER FORA HAS NO POWER TO EXTEND TIME TO FILE A REPLY UNDER THE CONSUMER PROTECTION ACT

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The Constitution Bench of the Supreme Court in *New India Assurance Company Limited v Hilli Multipurpose Cold Storage Private Limited (Civil Appeal No 10941-10942 of 2013)* has conclusively settled conflicting decisions under the Consumer Protection Act 1986 (Act) pertaining to the limitation period for filing a reply to a complaint under the Act. The Supreme Court has held that the time prescribed for filing a reply to the complaint under Section 13(2)(a) of the Act is mandatory and not merely directory. Supreme Court has further held that such time to file a reply commences from the date of receipt of the notice accompanied with the complaint by the opposite party. The Supreme Court passed this order in light of the main object of the Act, which is the speedy redressal of consumer disputes.

RELEVANT PROVISION OF THE ACT:

While passing this order, the Supreme Court has relied upon Section 13 of the Act read with Regulation 10 of the Consumer Protection Regulations 2005 (Regulations).

Section 13(2) of the Act requires service of the complaint on the opposite party in order to enable him lay down his version of the case within a period of 30 (thirty) days or such extended period not exceeding 15 (fifteen) days as granted by the District Forum, failing which the District Forum shall proceed *ex-parte* on the basis of documents made available by the complainant. It appears that no further discretion of granting time beyond 45 (forty-five) days is intended under the Act. Section 13(3) of the Act also clarifies that once the proceedings comply with this procedure, the same cannot be questioned in any Court on the ground that principles of natural justice have not been complied with.

Moreover, Section 13(3-A) of the Act provides that every complaint shall be heard as expeditiously as possible and endeavor shall be made to decide the complaint within 3 (three) months of receipt of notice by the opposite party or within 5 (five) months, if the complaint requires testing and analysis of commodities.

Regulation 10 provides that a notice is to be accompanied with a copy of the complaint and ordinarily such notice shall be issued for a period of (30) thirty days or even lesser depending on the circumstances of the case.

BACKGROUND OF THE REFERENCE:

- 1) The Constitution Bench had the following two issues to decide: The first issue was with regard to the powers of the District Forum to extend time for filing of the reply

under the Act. This issue was referred by a two judge bench in *M/s Bhasin Infotech and Infrastructure Pvt Ltd v Grand Venezia Buyers Association (Reg) (Civil Appeal Nos 1083-1084 of 2016)* in view of the fact that there were conflicting decisions of certain three judge benches of the Supreme Court on this issue.

- 2) The second issue pertained to the date of commencement of limitation period of 30 days in filing the reply and was referred by another two judge bench in the same appeal, i.e. *New India Assurance Company Limited Vs Hilli Multipurpose Cold Storage Private Limited*.

ISSUE NO 1:

Section 13(2) of the Act reflects the intention of the legislature to achieve the expeditious redressal of consumer disputes and to achieve this, the legislature grants a period of only 30 (thirty) days and a further period of 15 (fifteen) days (at the discretion of the District Forum) to file a reply to a complaint. No further time can be granted by the District Forum after the expiry of the overall time period of 45 (forty-five) days. This is further elucidated upon by Section 13(2)(ii) of the Act which allows the District Forum to settle the dispute *ex-parte* based on the complainant's evidence as well as Section 13(3) of the Act which bars the opposite party from challenging a proceeding on the ground that the principles of natural justice were not adhered to, once it is established that the procedure under Section 13(2) was duly followed.

In deciding whether these timelines are mandatory or directory, the Supreme Court analyzed the provisions under the Act and Regulations relating to filing of a complaint or appeals. The Supreme Court observed that these provisions expressly allow for filing of a complaint or appeal beyond the period specified, if sufficient cause to the satisfaction of the authority has been provided by the party. No *pari materia* provision is found in Section 13 of the Act, which makes it evident that the legislature intended to make Section 13(2) mandatory and not merely directory.

The Supreme Court while considering the timelines prescribed under the Act also considered and distinguished Order VIII Rule 1 of the Code of Civil Procedure 1908 (Code). Order VIII Rule 1 of the Code provides for filing of the written statement in ordinary civil suits within a period of 120 (one hundred and twenty) days from the date of service of summons, failing which, Order VIII Rule 10 of the Code provides that the court may pronounce judgment against the defendant or may make such an order as it deems fit including an extension of time beyond 120 (one hundred and twenty) days in an ordinary suit. Thus, discretion is left with the Court to grant time beyond the maximum 120 (one hundred and twenty) days. However, in suits of commercial nature, it is mandatory to file the written statement within a period of 120 (one hundred and twenty) days. Similarly, Section 13 of the Act, which provides for consequences of not filing the reply to the complaint within the specified time, must be read as mandatory and not directory.

ISSUE NO 2:

The next question that fell for consideration was whether the aforesaid 30 (thirty) - day period would commence from the date of receipt of the notice of the complaint or the date of receipt of the notice accompanied by the complaint by the opposite party. The Supreme Court held that on a conjoint reading of Section 13 of the Act and Regulation 10 it becomes evident that the notice is to be accompanied with the complaint and only if the opposite party receives a copy of complaint can he/ she file a reply (response) to the complaint. The Supreme Court also relied on similar provision available in the Code which requires a summons to be accompanied with a copy of the plaint. However, the Supreme Court clarified that the right to raise the objection of not having been served with a copy of the complaint is only available on the first date itself and not thereafter

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as the same would defeat the purpose of the Act viz. speedy redressal of consumer disputes.

CONCLUSION:

The Supreme Court has provided complete clarity on the time to file the reply to a consumer complaint. This judgment will assist litigants as it entitles them to demand service of a copy of the complaint at the first hearing. The Court has also provided clarity on computation for the purpose of calculating the period of limitation to file the reply.

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