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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 01.03.2021

+ CM(M) 285/2019 & CM Nos.7907/2019, 42712/2019

MANISH KUMAR

..... Petitioner

Through: Ms.Sneha Kohli, Ms.Niharika
Ahluwalia, Advs.
(Mob. No.9650149321).

versus

**ALL INDIA INSTITUTE OF MEDICAL
SCIENCES & ORS**

..... Respondents

Through: Mr.Anuj Jain, Adv. for R-1.
(Mob.No.9212196159).
Mr.Kunal Chatterji, Mr.Saurav Gupta,
Mr. Pravar Veer Misra,Advs. for R-2.
Mr. Maibam N. Singh, Adv for R-3.
Mr. Shaurya Sahay, Adv for R-4.
Mr.S.N.Shukla and Mr.Shivendra
Singh, Advs. for R-7

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. The learned counsel for the petitioner submits that as the present petition is directed only against the respondent no.1 and no relief has been claimed against the respondent nos. 5 and 6 in the present petition, the adjudication of the present petition need not await the service of notice of the petition on the respondent nos. 5 and 6 and they be treated as deleted from the array of the parties as far as the present petition is concerned. It is ordered accordingly.

2. This petition has been filed challenging the order dated 25.01.2019 passed by the learned National Consumer Dispute Redressal Commission (hereinafter referred to as the 'learned Commission') in Consumer Complaint No.261/2018, ***Manish Kumar v. All India Institute of Medical Sciences & 6 Ors.***, allowing the respondent no. 1, which is the Opposite Party no.1 in the Consumer Complaint, to file its written version to the Complaint.

3. The learned counsel for the petitioner submits that notice of the complaint was issued to the respondents, including the respondent no.1 on 07.02.2018. The respondent no. 1 was duly served with the notice on 12.04.2018. The statutory period for filing of the reply to the complaint as provided in Section 13 of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act'), including the maximum condonable period of delay, had expired on 03.07.2018, when the complaint was listed before the learned Commission. In spite of the same, the learned Commission condoned the delay in filing of the reply by the respondent no. 1 and extended the time by a period of one week therefrom. The written version of the respondent no. 1 was, however, still not filed.

4. The complaint was then listed before the learned Commission on 31.08.2018, when recording the undertaking of the learned counsel for the respondent no. 1 that the written version would be filed during the course of the day, the learned Commission was pleased to again condone the delay, directing that a cost of Rs. 25,000/- be paid to the

complainant by way of a Demand Draft within a period of four weeks therefrom.

5. As neither the written version was filed nor the cost was paid, on an application of the petitioner, being IA 19048/2018, the learned Commission by its order dated 12.10.2018 was pleased to close the right of the respondent no. 1 to file its written version.

6. On 25.01.2019, however, by the Impugned Order, which is non-speaking in nature the learned Commission has been pleased to condone the further delay in filing of the written version; reviewed its order dated 12.10.2018; and allowed further opportunity to the respondent no. 1 to file its written version.

7. The learned counsel for the petitioner submits that the order of the Commission, apart from being legally unsustainable on the ground that the learned Commission has no power to condone the delay once the statutory period including the maximum permissible period by which the delay in filing written version can be condoned has expired, does not record any reason for condoning the delay. She submits that the Impugned Order has also been passed without supplying a copy of the application, if any, by the respondent no. 1 seeking condonation of delay/review of the order dated 12.10.2018 filed by the respondent no. 1. In support of her submissions, she has placed reliance on the judgment of Supreme Court in ***New India Assurance Company Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd.***, (2020) 5 SCC 757; and ***Daddy's Builders Pvt. Ltd. and Anr. v. Manisha Bhargava and Anr.***, 2021 SCC OnLine SC 82.

8. The learned counsel for the petitioner further submits that the respondent no. 1 could also not have taken the benefit of the pendency of the reference before the Constitution Bench of the Supreme Court in *New India Assurance Co. Ltd.* (supra), inasmuch as, the Supreme Court in *Reliance General Insurance Co. Ltd. and Ors. v. Mampee Timbers and Hardwares Pvt. Ltd. and Ors.*, 2017 SCC OnLine SC 2027 had placed reliance on the earlier order of *Bhasin Infotech and Infrastructure (P) Ltd. v. Grand Venezia Buyers Assn.*, (2018) 17 SCC 255, wherein it had been clarified that pending the reference, though the Commission may condone the delay in appropriate cases, such condonation shall be subject to the consent of the complainant. In the present case, apart from the fact that there was no sufficient cause made out by the respondent no. 1 for seeking condonation of delay, even otherwise, the petitioner/complainant not having accepted the order passed by the learned Commission condoning the delay, no benefit of the pendency of the reference before the Constitution Bench of the Supreme Court can be granted to the respondent no. 1.

9. Answering the objection of the learned counsel for the respondent of the petition being not maintainable in view of the availability of an alternate efficacious remedy in form of a review to the Commission itself or an appeal to the Supreme Court, the learned counsel for the petitioner submits that the power of the Constitutional Court cannot be curtailed.

10. On the other hand, the learned counsel for the respondent no. 1 has challenged the maintainability of the present petition on the ground of availability of alternate efficacious remedy in form of a Review Petition before the learned Commission under Section 22(2) of the Act as also in form of an appeal before the Supreme Court under Section 23 of the Act.

11. On merit, the learned counsel for the respondent no. 1 submits that by an order dated 31.08.2018, the learned Commission while granting time to the respondent no. 1 to file its written version, had adjourned the complaint to 25.01.2019. In the integrum, the petitioner had filed the application being IA 19048/2018 seeking closure of the right of the respondent no. 1 to file its written version. Without issuing any notice on the said application to the respondent no. 1 and in the absence of the counsel for the respondent no. 1, the learned Commission on 12.10.2018 went on to close the rights of the respondent no. 1 to file its written version. The respondent no. 1 came to know of the said order only on receiving a communication of the said order from the learned Commission pursuant to the directions of the learned Commission itself as contained in its order dated 12.10.2018. The respondent no. 1 thereafter paid the cost as was imposed by the learned Commission in its order dated 31.08.2018 to the petitioner; changed the counsel representing the respondent no. 1 before the learned Commission; and without any further delay prepared its written version to be filed before the learned Commission. He submits that on 25.01.2019, the respondent no. 1 handed across its

written version alongwith the application seeking condonation of delay in filing the same to the learned Presiding Member of the Commission, who in turn, having perused the same, was pleased to condone the delay in filing of the written version of the respondent no. 1 by the Impugned Order.

12. The learned counsel for the respondent no. 1 submits that the application that was handed across the bar to the learned Presiding Member to the learned Commission had explained in detail the reasons for seeking condonation of delay in filing of the written version by the respondent no. 1. The learned Commission having perused the same and exercised its discretion in condoning the delay, this Court could not interfere with the same in exercise of the powers under Article 227 of the Constitution of India. He submits that even otherwise the respondent no. 1 being a public institution deserves the delay to be condoned by the learned Commission and in equity the delay was rightly condoned by the learned Commission. In judging the equity, the fact that the respondent no. 1 has already released an *ex gratia* payment of Rs.10 lakhs to the petitioner even before the filing of the consumer complaint should also weigh with this Court.

13. I have considered the submissions made by the learned counsels for the parties.

14. It is not denied by the respondent no. 1 that the period prescribed under Section 13(2)(a) of the Act including the maximum period of the delay that can be condoned by the learned Commission in filing of the written version by the respondent no. 1 had already

expired on 03.07.2018 when the learned Commission, exercising its discretion, had granted a weeks' further time to the respondent no. 1 to file its written version. By the subsequent order dated 31.08.2018, the undertaking of the learned counsel for the respondent no. 1 was recorded to the effect that the written version of the respondent no. 1 shall be filed during the course of the day. The learned Commission directed that the respondent no. 1 should also pay cost of Rs.25,000/- for the delay caused in the adjudication of the complaint.

15. In spite of the above order, neither the written version was filed by the respondent no. 1 nor the cost was paid.

16. In ***Bhasin Infotech and Infrastructure (P) Ltd.*** (supra), the Supreme Court by its interim order dated 11.02.2016 had allowed the appellant company therein to file its written version before the Consumer Forum subject however to the condition that the complainant is ready and willing to take the proceedings forward on the condition mentioned therein. Placing reliance on the said order, the Supreme Court in ***Reliance General Insurance Co. Ltd. and Ors.*** (supra) has observed as under:-

“8. We consider it appropriate to direct that pending decision of the larger bench, it will be open to the concerned Fora 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.”

(Emphasis supplied)

17. The reference was thereafter answered by the Supreme Court in its judgment in *New India Assurance Co. Ltd.* (supra), affirming its earlier judgment in *Dr. J. J. Merchant and Ors. v. Shrinath Chaturvedi*, (2002) 6 SCC 635, and holding that the time prescribed in Section 13(2)(a) of the Act is mandatory and 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 envisaged under Section 13 of the Act. The said judgment was, however, made prospectively applicable.

18. The prospective application of the said judgment was also considered by the Supreme Court in *Daddy's Builders Pvt. Ltd. and Ors* (supra).

19. As far as the facts of the present case are concerned, as noted hereinabove, time for filing of the written version by the respondent no. 1 was extended on 03.07.2018. The same was thereafter extended on 31.08.2018 on a submission made by the respondent no. 1 that the written version will be filed during the course of the day. Admittedly, the same was not filed even thereafter. It was only on 12.10.2018 that the right of the defendant no. 1 to file its written version was forfeited by the learned Commission. There is no application filed by the respondent no. 1 seeking review of that order. The said order could not have been reviewed thereafter only on an application, if at all filed by the respondent no. 1 seeking condonation of delay in filing of the written version.

20. Even in the application seeking extension of time to file of written version on record, the respondent no. 1 has not explained the delay between 12.04.2018 till 12.10.2018 in filing of the same. The explanation has been rendered only thereafter and, in fact, only from the time that it was communicated the order dated 12.10.2018.

21. Delay in filing of the written version cannot be condoned on the mere asking. In the present case, the Impugned Order does not reflect the application of mind by the learned Commission to the reasons attributed by the respondent no. 1 for seeking condonation of delay in filing the written version. Therefore, apart from the statutory bar that restricts the power of the learned Commission to condone the delay in filing of the written version, there is also no reason given by the learned Commission in the Impugned Order for condoning the delay.

22. Though the learned counsel for the respondent submits that no prejudice would be caused to the petitioner if the delay is condoned inasmuch as the case had not proceeded between 12.10.2018 to 25.01.2019 in any substantive manner, I do not find the same to be a sufficient reason to condone the delay which otherwise was not condonable, or for the learned Commission to review an order for which no review was prayed for.

23. The prospective application of the judgment of the Supreme Court in ***New India Assurance (Ltd.)*** (supra) will also not come to the aid of the petitioner inasmuch as the respondent never accepted the order passed by the learned Commission and in fact immediately challenged the same before this court by way of the present petition.

24. The fact of payment of the cost by the respondent is also of no assistance to the respondent in the present case inasmuch as the cost was paid only on 13.11.2018, which was also beyond the period as directed by the learned Commission in the order dated 31.08.2018.

25. Even equity cannot come to the aid of the respondent no. 1. The respondent no. 1 having failed to file its written version within the time prescribed and even after having availed of further opportunities given by the learned Commission, cannot claim such equity.

26. As far as the maintainability of the present petition is concerned, the impugned order being without jurisdiction and in teeth of Section 13 of the Act, availability of an alternate remedy cannot be a bar to the present petition being entertained by this court.

27. In view of the above, the Impugned Order dated 25.01.2019 of the learned Commission insofar as it allows the written version of the respondent no. 1 to be taken on record is set aside. The written version filed by the respondent no. 1 shall be not taken on record by the learned Commission. This would however, not prejudice the respondent no. 1 in its future defence in the consumer complaint, in accordance with the law.

28. The petition is allowed in the above terms. There shall be no order as to cost.

NAVIN CHAWLA, J

MARCH 1, 2021/NS/Arya