



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 04.11.2024

Judgment delivered on: 20.11.2024

+ CM(M) 33/2024 & CM APPL. 942/2024 & CM APPL. 14223/2024
& CM APPL. 14225/2024

M/S TDI INFRASTRUCTURE LTD

.....Petitioner

versus

VIKRAM BARWAL & ORS.

.....Respondents

+ CM(M) 39/2024 & CM APPL. 1158/2024 & CM APPL. 14222/2024
M/S CANNES PROPERTY MANAGEMENT SERVICES PVT.
LTD.

.....Petitioner

versus

VIKRAM BARWAL AND ORS

.....Respondents

Memo of Appearance

For the Petitioner: Ms. Kanika Agnihotri with Mr. Sachin Sharma, Advocates
in CM(M) 33/2024.

Mr. Karan Minocha with Mr. Sidharth Arora, Advocates
in CM(M) 39/2024.

For the Respondent: Mr. Sahil Tagotra with Mr. Chandrachur Bhattacharya and
Mr. Sujay Jain, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. The respondents, thirty-two in number, filed a joint complaint before the learned National Consumer Disputes Redressal Commission ("NCDRC" in short) on its original side.
2. The opposite parties (OPs) therein are M/S TDI Infrastructure Ltd.



and M/S Cannes Property Management Services Pvt. Ltd. Learned NCDRC, vide order dated 20.09.2023, closed their right to file written statements and consequently dismissed applications of OPs. Their review applications were also dismissed, observing that there was no mistake apparent on the face of record.

3. Such orders are under challenge.

4. Since both the petitioners herein are defending the same complaint and are Opposite Party No.1 and 2 respectively in said complaint and since similar contentions have been raised by them, both the petitions are being disposed of by this common order. The petition filed by M/S TDI Infrastructure Ltd bearing No. CM (M) No. 33/2024 shall be treated as lead case for reference purpose.

5. For the sake of convenience, I would be referring to the parties as per their nomenclature before the learned Commission and, therefore, the petitioner - M/S TDI Infrastructure Ltd would be referred to as 'Opposite Party No. 1' and M/S Cannes Property Management Services Pvt. Ltd. would be referred as 'Opposite Party No. 2' and all the respondents herein would be referred to as 'complainants'.

6. There is no dispute that as and when any such complaint is filed, the opposite party is required to file its written statement. The initial period, within which such written statement/response is to be filed, is 30 days, which can be further extended by another period of 15 days.

7. Thus, in all, any such opposite party (OP) is entitled to have a period of 45 days, within which it can file its response.

8. It is also no longer, *res integra*, that such period is rigid and the Commission has no power to extend the time for filing such response



beyond the period of 15 days, in addition to initial period of 30 days. Such time-limit, in view of judgment of Constitution Bench of Supreme Court given in *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*: (2020) 5 SCC 757 has been held as inflexible which cannot be extended. Para 62 of said judgment reads as under:-

“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.”

9. There is no qualm that such time would start to run from the date of receipt of notice, accompanied with complaint.

10. The question is as to what would be the starting time where though the notice accompanies the complaint, certain pages and annexures thereof are found to be dim and illegible.

11. According to learned counsel for OP No.1, the service was effected only on 23.05.2022 and as per the notice received from the learned Commission, they were required to appear before the learned Commission on 24.08.2022. Thus, the date of 24.08.2022 was ‘first date’ for the opposite parties to appear before the learned Commission. However, since several pages of complaint were faint, dim and not fully legible, they were in no position to submit appropriate response and, therefore, they prayed that the complainants may be directed to provide them with a complete and legible set of paper book of the complaint so as to enable them to file written statement in the stipulated period to be reckoned from the receiving of the



complete and legible set of such paper book.

12. Such applications were moved by them on 04.07.2022.

13. It was also mentioned in the applications that the statutory period to file written statement had not lapsed on account of intervening summer vacation.

14. Paras 5 to 9 of their application read as under:-

“5. A Copy of the said Notice along with the paperbook of the Complaint was received in the office of the Opposite party No. 1 Company on 23.05.2022. The Opposite Party No.1 is in the process of collating all the documents that are necessary for the purpose of filing a reply to the present Complaint, which are voluminous.

6. However, while going through the Complaint and the documents annexed thereto, it was discovered by the Opposite Party No.1 that the annexures with the Complaint are illegible and dim. Further, it has also come to notice of the Opposite Party No.1 that the Complainants have annexed incomplete copies of the annexures. For the convenience of this Hon'ble Commission, the said Opposite Party has enumerated the pages that are dim and illegible, 118 to 138, 186-206, 319 to 321, 618 to 619, 624, 588 to 617, 559 to 557, 550-551. For the kind perusal of this Hon'ble Commission a few of the said pages are annexed herewith and marked as ANNEXURE A-2 (Colly).

7. Further, it is pertinent to note that a perusal of S.No. 96 of the Index to the Complaint indicates that the Complainant have Annexed Digitally dated Coloured Photographs to the present Complaint, however, the copy of the Petition so supplied to the Opposite Party bears black and white copies of the Photos so annexed. The said Annexures containing photographs is incomprehensible and will cause grave prejudice to the Opposite Party's ability to file a requisite response to the same.

8. For the Opposite Party No. 1 to prepare a response to the Complaint, it is imperative that the entire and legible copy of the paper-book of the Complaint be supplied to the Opposite Party No. 1.

9. In light of the facts stated above, it is most respectfully prayed that the Complainants be directed to provide a complete and legible set of paper-book of the Complaint to the Opposite Party No. 1 and further, the Opposite Party No. 1 be permitted to file Written



Statement to the Complaint in the stipulated period on receiving the complete and legible set of the paper-book.”

15. Such applications were resisted by the complainants and according to them, the process was rather received by the OPs on 10.05.2022 and if the period is reckoned from the date of such service, the statutory period of 45 days stood expired on 24.06.2022 whereas the applications under disposal were moved later i.e. on 04.07.2022 and 06.07.2022 and since both such applications had been filed after the expiry of period of 45 days, the applications were liable to be dismissed.

16. It was also contended by them, there was nothing to indicate that the notice was received by the OPs on 23.05.2022 and such fact was not corroborated by them by placing on record any documentary proof.

17. It would be also worthwhile to mention here that in order to resolve the controversy as to when the OPs were served, the learned Commission directed its Registry to obtain report from Postal Department and such report indicated that the notice was duly served upon both the opposite parties on 10.05.2022, instead of 23.05.2022 as claimed by them.

18. Learned Commission, though, noted that the submission of the OPs was not looking convincing but it still granted them an opportunity to produce the original envelopes in which the process was delivered to them. Said opportunity, it seems, was never availed by them.

19. Be that as it may, learned Commission observed that the applications were, manifestly, time-barred even if the extended period of 15 days was to be included. It also observed that there was no summer vacation in the Commission.

20. Indubitably, learned Commission did observe that few of the



annexures were slightly dim and illegible but went on to observe that these defects could not be considered sufficient enough to hold that there was no valid service of the complaint and observing that such submission was nothing more than a flimsy attempt to cover up the manifest delay on the part of the opposite parties in filing their written version or to justify putting in their appearance after service within the statutory permissible time, the applications were dismissed and the complaints were fixed up for filing of evidence by the complainants.

21. Ms. Kanika Agnihotri, learned counsel for petitioner/opposite party no. 1 has contended that though the service took place only on 23.05.2022, even if the service is assumed to be on 10.05.2022, such service was neither proper nor valid service in eyes of law.

22. It is submitted that the service has to be a *meaningful one* and since admittedly, many pages were dim and illegible, the OPs were in no position to file their response.

23. It is also submitted that the first day before the learned Commission was 24.08.2022 and since the OPs were having *bonafide* intention and they were never interested in unnecessarily delaying the matter, they did not wait for 24.08.2022 and moved applications in the first week of July, 2022 and learned Commission, instead of directing the complainants to supply them with the complete legible set, dismissed their applications which has resulted in grave prejudice as they have not been given any opportunity to refute the claim of the complainants.

24. Relying on *New India Assurance Co. Ltd* (supra), it has been claimed that the opposite parties were permitted to raise the grievance '*on the first date*' and since the service was not meaningful service, the impugned order



runs contrary to the specific observations made by Constitution Bench of Hon'ble Supreme Court in above said case.

25. Petitioners have also placed reliance upon *Manjit Singh Grewal Alias Gogi vs Union of India and Others: 1990 SCC (Cri) 608 (2)*, *Nahar Enterprises vs Hyderabad Allwyn Ltd and Another: (2007) 9 SCC 466*, *Pragati Silicons (P) Ltd. vs Commissioner of Central Excise, Delhi: (2007) 9 SCC 470*, *Lucina Land Development Ltd vs Union of India and Others: 2022 SCC OnLine Del 1274* and *Rajesh Kathpal vs Shubh Steel: 2022 SCC OnLine Del 3403*.

26. According to learned counsel for complainants, the intention of the opposite parties was other than *bonafide* right from the inception as though they were duly served on 10.05.2022, for the reasons best known to them, they claimed such service was effected upon them only on 23.05.2022. This, according to them, was a calculated move from OPs as they wanted to project that they had moved the applications seeking supply of legible sets within 45 days of their being served. According to complainants, they were duly served on 10.05.2022 which fact was verified by the learned Commission and the fact whether such documents were eventually, seen by their legal team on 23.05.2022 would not make any difference with respect to the date of service.

27. It is also claimed that it was never a case where the process was never accompanied with complaint and even if few pages were not fully legible, it could not have prevented the OPs to have either immediately rushed to the learned Commission seeking supply of copy or, at least, to have filed their response, while reserving right to file additional written statement, once the alleged dim copies were substituted by legible ones.



28. Complainants have placed reliance upon *Ibrat Faizan vs Omaxe Buildhome Private Limited: (2023) 11 SCC 594*, *Garment Craft vs Prakash Chand Goel: (2022) 4 SCC 181* and *CICILY Kallarackal vs. Vehicle Factory: (2012) 8 SCC 524* and contended that the impugned order does not call for any interference.

29. At the very outset, I may observe that it cannot be said that such petition is not maintainable. Reason is obvious. Right to seek supervisory intervention under Article 227 can never be foreclosed. However, at the same time, the OPs need to demonstrate that there is complete perversity in the impugned order, necessitating interference. In *Omaxe Buildhome Pvt. Limited vs.. Ibrat Faizan: 2022 SCC OnLine Del 2606*, this Court has observed as under:-

“6. There is no gainsaying that, in exercise of jurisdiction under Article 227 of the Constitution of India, this Court does not sit in appeal or even in judicial review over findings of fact entered by the authorities below. In the following passage from Sadhana Lodh v. National Insurance Co. Ltd., the Supreme Court has distilled the scope of jurisdiction vested in High Courts by Article 227:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the



evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.”

7. The following passages from Estralla Rubber and Garment Craft, to which the Supreme Court also refers in Ibrat Faizan, underscore much the same position:

Estralla Rubber

“7. This Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand⁵ in AIR para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh v. Amarnath⁶. This Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarte⁷ has observed that the power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order.”

Garment Craft

“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel v. Garment Craft] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to



reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

16. *Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd. has observed : (SCC pp. 101-102, para 6)*

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains



uncorrected. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

30. Thus, it is within the above narrow confines, it needs to be assessed whether any interference is warranted.

31. There is no dispute that the service was effected on 10.05.2022. Any internal movement of process, within the office of OPs, shall not give them any fresh lease of life, particularly, when the period is inflexible and cannot be extended.

32. It is also not the case where the process was not accompanied with any complaint.

33. Merely because few pages were dim and not fully legible would not mean anything substantial in the present context.

34. Things might have been different had no complaint accompanied the process. Moreover, keeping in mind the nature of documents, which were allegedly dim, it cannot be said that OPs were absolutely prevented from filing any response. This court is conscious of the following observations contained in *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd. (supra)*:-

“61. Now reverting to the provisions of the Consumer Protection Act, a conjoint reading of clauses (a) and (b) of sub-section (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.”

35. Here, it not the case where there was no service of complaint at all and, therefore, OPs cannot be permitted to take shelter behind said observations.

36. Merely because few pages were dim would not mean that OPs can lay back, casually and calmly, or that the time stood automatically bestowed and extended and they had no other option except to make a request on such first day only.

37. They cannot be permitted to take the things for granted.

38. The statutory provision cannot be given a *go bye* in this manner.

39. Undoubtedly, service has to be meaningful but herein, the service cannot be held otherwise merely because few pages were dim.

40. Once OPs came to know about the process, they should have immediately moved NCDRC with appropriate request for the needful.

41. This court has seen the precedents cited at the Bar. In *Manjit Singh Grewal Alias Gogi (supra)*, the appellant, who had been detained under



Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974, had asked for certain copies of the documents from Union of India. Copies of the documents were supplied, but the same were not legible. It was observed that the safeguards provided by the Constitution had not been followed which eventually resulted in quashing of detention order. The said proposition is on all fours when one considers a case of detention which takes away someone's liberty. In *Nahar Enterprises vs Hyderabad Allwyn Ltd. and Another (supra)*, there was no service of copy of plaint at all and, therefore, it was observed that the defendant was in no position to file any written statement. Relying on *Rajesh Kathpal vs Shubh Steel (supra)*, it has been contended that service of summons in a suit, in order to constitute a starting point for the time available for filing of a written statement, has to be meaningful service. In other words, the time for filing written statement would commence from the date when the suit along with the documents is provided to the defendant. In that case, the defendant contended that it had not received a complete set of the plaint with its annexures and the concerned plaintiff undertook to provide a copy of the plaint along with the annexures during the course of the day and, therefore, the defendant was granted 30 days' time from the day when a complete copy of the plaint with annexures was provided by the petitioner, to file written statement. It was in the above backdrop that written statement was taken on record. Here, as already noticed, there was complete inaction and indolence by OPs and their approaching learned Commission, even before the next date, would not earn them any reprieve, particularly, when the timeline is rigid and fixed.

42. As per section 38 of Consumer Protection Act, 2019, the Commission shall 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 Commission. Thus, the response has to come within 30 days and such period can be extended by Commission by a maximum period of 15 days. Thus, obviously extension can take place when OP approaches the Commission and demonstrates his inability to file response. OPs should have knocked the doors of Commission within 30 days of service, even if they were of the view that some pages were not legible enough. Here, as already noted, the service was effected on 10.05.2022 and they approached the learned Commission only in first week of July. Moreover, it is also not a case where OPs were totally incapacitated, on account of few pages being dim, and were in no position to file any written statement.

43. This Court while dealing with a matter¹ related to a commercial suit, wherein also the timeline are specified and rigid held as under:-

“15. As per the above said specific provision, the initial onus is on the defendant to file written statement within a period of 30 days and in case, he fails to file written statement within the above said period of 30 days, he can be allowed to file written statement on such other day as may be specified by the Court, for the reasons to be recorded in writing and on payment of such cost, as the Court may deem fit.

16. Though, the outer permissible limit to file written statement can be construed to be of 120 days but that does not mean that, once having received the summons, any defendant can walk-in anytime, at his own whims and fancies, and can contend that he should be given a fresh lease of life because of the fact that he had not been given a complete set of documents.

17. If at all, the defendant was having any concern with respect to non-supply of

¹Vivek Kumar Saxena Vs. M/S College Book Store :2024 SCC OnLine Del 7485



complete set of documents or if according to him, certain pages were not legible, it was expected of him to have knocked the doors of learned Trial Court immediately. Nothing of that sort was ever contemplated or thought of by the petitioner herein. He chose not to appear, even, on the date when the matter was fixed before the learned Trial Court.

18. On 02.09.2023, there was no appearance from his side and by that time the matter was already around three months' old, reckoned from the date of service upon him.

19. Undoubtedly, the Court can always extend period of filing of written statement beyond 30 days but the Court cannot do the same on its own. It could have been done only when the defendant had appeared before the Court and had submitted and demonstrated that the set supplied to him was either incomplete or illegible. Since the petitioner did not even bother to appear before the learned Trial Court and filed an application after 3½ months of service, he cannot expect that he would, automatically, become entitled for a fresh lease of life.

20. The bare language of said Section empowers the Court to extend the period for filing written statement but it presupposes twin conditions viz any such defendant must approach Court within 30 days and must assign some reason which precluded him from filing written statement. Only, thereafter, Court can record some reasons and grant him time, with any condition as it may deem fit.

21. Unquestionably, service has to be meaningful and it is obligatory to ensure that the summons accompany the complete set of plaint and documents. Generally, the Ahlmad of the court, when prepares summons, ensures that such summons is duly accompanied with complete set of plaint. Be that as it may, Court cannot assume suo moto that the set, so supplied, was not complete or that some documents were not legible.

22. It is for the recipient to raise protest and grievance in this regard.

23. Thus, it was incumbent on the part of the defendant to have immediately rushed to the Court, particularly, keeping in mind the rigid timeline provided in the Act but for the reasons best known to him, he approached the Court only on 20.09.2023.



24. This Court cannot come to rescue of a litigant who is in complete hibernation mode.”

44. In view of the above, this court does not find any merit or substance in the present petitions.

45. The same are dismissed.

46. No order as to costs.

(MANOJ JAIN)
JUDGE

NOVEMBER 20, 2024/sw