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

% ***Date of decision: 16th October, 2024***

+ **CM(M) 2749/2024 & CM APPL. 34251/2024**

DEEPASRI MULTISPECIALITIES HOSPITAL & ORS.

.....Petitioners

Through: Mr. Kamal Mehta with Dr. Sushil
Kumar Gupta, Mrs. Sunita Gupta and
Mr. Sakshit Bhardwaj, Advocates.

versus

MS ANUPAMA NH & ORS.

.....Respondents

Through: Ms. Prachi Johri with Ms. Abhipsa
Sahu, Ms. Pooja Singh and Mr. Hitesh
Nagar, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioners are defending a complaint filed by respondents before learned National Consumer Disputes Redressal Commission (in short 'NCDRC') under Section 21 of Consumer Protection Act, 1986.
2. Their written statement was not taken on record and during the pendency of the abovesaid complaint, they also raised certain interrogatories. They assail orders dated 24.03.2023, 14.03.2024 and 04.04.2024, which pertain to such interrogatories. Simultaneously, it has also been prayed that learned NCDRC may be requested to take on record the written statement, which they had filed on 13.01.2020.
3. Section 13(2) of the Consumer Protection Act, 1986 stipulates



that opposite party shall submit its version, in response to the complaint, within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum. Such period, 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.”

4. This Court has seen order dated 13.12.2022 passed by learned NCDRC which records that the written statement had been filed with a delay of 15 days i.e. 15 days beyond the permitted period of 45 days (30 + 15 days) and, therefore, the right to file written statement was forfeited. Apparently, the application has been decided summarily, without going into the cause. Quite possibly, learned NCDRC refused to take such reply on record in view of the above specific provision contained in Consumer Protection Act, 1986.

5. During course of the arguments, learned counsel for the petitioners (opposite party) has strongly relied upon *Dr. Vijay Dixit & Others Vs. Pagadal Krishna Mohan & Others*: 2024 SCC OnLine SC 2279 and submits that since with respect to the complaint in question,



they had submitted their written statement much prior to 04.03.2020 and since along with the written statement, they had also submitted an application seeking condonation of delay which, too, had been submitted prior to 04.03.2020, the application ought to have been considered on merits and should not have been dismissed summarily.

6. As per *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.*: (supra), such period is mandatory and inflexible which cannot be extended, even if there is a cause. Fact remains that though, it observed that the rigours of Section 13 of Consumer Protection Act, 1986 needed to be complied with mandatorily and, therefore, the condonation of delay was not within the power of the *consumer fora*, it was also, categorically, mentioned therein that the judgement was to operate prospectively. The date of such decision is 04.03.2020.

7. Keeping in view some divergence of opinion in this regard, *Dr. Vijay Dixit* (supra) clarified the position while observing as under:-

“4. In the considered opinion of this Court, the categorical observation(s) of the Constitution Bench in New India Assurance 2 (Supra); coupled with the finding(s) of a Bench of 3 Judges of this Court in Diamond Exports (Supra) have authoritatively brought quietus to the underlying issue. The application(s) seeking condonation of delay preferred before the consumer fora prior to 04.03.2020 i.e., the date of pronouncement of New India Assurance 2 (Supra), must be decided on merits; and ought not to be summarily dismissed.”

8. It is quite apparent from the above observations of the Hon’ble Supreme Court that if any application seeking condonation of delay in filing the written statements/reply has been preferred prior to



04.03.2020, it must be decided on merits. By implication, the cause cannot be gone into if application is moved after 04.03.2020, and as a necessary corollary, such application can be dismissed, summarily.

9. Learned counsel for the respondents/complainants has vehemently opposed the present petition and has submitted that such benefit cannot be permitted to be given to a party who did not take any action for all these years. It is also contended that if the opposite party was actually aggrieved by the above said order dated 13.12.2022, it should have challenged the same, without any delay.

10. Of course, the above said order was not challenged immediately but fact remains that said application seeking condonation of delay had been preferred prior to the above cut-off date and, therefore, it ought not to have been dismissed summarily.

11. During the arguments, learned counsel for the petitioner submits that he is not pressing the present petition with respect to the other three orders dated 24.03.2023, 14.03.2024 and 04.04.2024 and he merely seeks a direction to learned NCDRC to consider the application seeking condonation of delay in filing the written statement afresh. It is reiterated by him that such application was filed on 13.01.2020 i.e. much prior to the cut-off date mentioned in the above said judgment and, therefore, learned NCDRC should have considered such application on merits.

12. The matter is now reportedly fixed before learned NCDRC on 28.10.2024.



13. Keeping in mind the above said peculiar position and exercising supervisory powers under Article 227 of the Constitution of India, this Court deems it appropriate to make request to learned NCDRC to consider the above said application, seeking condonation of delay in filing the written statement, afresh, in view of foregoing discussion.

14. Needless to emphasize, this Court has not made any observation about the merits of the cause behind the alleged delay in filing written statement and it will be up to the learned NCDRC to consider the same after giving due opportunity of hearing to both the sides. Depending on the outcome thereof, learned NCDRC may proceed further with the matter in accordance with law.

15. The petition stands disposed in the aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 16, 2024/st