$~89

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

% ***Date of decision: 14th October, 2024***

\+ CM(M) 3603/2024 & CM APPL. 60205/2024 & CM APPL. 60206/2024

UNITED INDIA INSURANCE CO LTD .....Petitioner

Through: Mr. Amit Kumar Singh with Ms. K. Enjoli Sema, Ms. Chubalemla Chang and Mr. Prang Newmai, Advocates.

versus

STERLITE POWER TRANSMISSION LTD .....Respondent

Through: Mr. Deepak Khurana, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT *(oral)*

1. Petitioner has been defending a complaint filed under Section 35 of Consumer Protection Act, 2019.

2. At the moment, we are not concerned with the merits or demerits of the claim as such.

3. There is no dispute that the petitioner herein (opposite party in the above said complaint) was duly served with the notice of said complaint and there was appearance of its counsel before the learned District Commission on 27.04.2022. When the matter was taken up by the learned District Commission on 27.04.2022, the following order was passed:-

> *"The counsel for OP undertakes to get the copy of the complaint collected by tomorrow i.e. 28.04.2022 and file the reply within the stipulated time. The counsel for complainant submits that she has already e-mailed to OP vide e-mail dated 27.10.2021. Let the matter be listed for reply by OP with an*

advance copy to the Ld. counsel for complainant. Put up on 24.08.2022."

4. Evidently, the responsibility of collecting the copy of the complaint was undertaken by the counsel for the opposite party and since the reply was filed belatedly, learned District Commission, keeping in mind the specific provision contained in Consumer Protection Act, 2019 and observing that there was no discretion with the Commission to extend the period of limitation, refused to take such reply on record.

5. Section 38(3)(a) of the Consumer Protection Act, 2019 reads as under:-

> *"Section 38(3): The District Commission shall, if the complaint admitted by it under sub-section (2) of Section 36 relates to goods in respect of which the procedure specified in sub-section (2) cannot be followed, or if the complaint relates to any services,-*
>
> *(a) 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;*

6. Learned District Commission observed that the lawyer of the opposite party had made appearance on 27.04.2022 and himself undertook to collect the complaint copy and then to file reply within the stipulated period and the copy had been collected by the opposite party as late as on 13.10.2022 and, therefore, keeping in mind the above said specific provision and also keeping in mind the judgment of the Hon'ble Supreme Court passed in *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.* : (2020) 5 SCC 757, refused to take the same on record.

7. Undeniably, such period, in view of the above judgment of

Constitution Bench of Supreme Court is inflexible and cannot be extended.

8. 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. Feeling aggrieved, an appeal under Section 41 of the Consumer Protection Act, 2019 was filed before the learned Delhi State Consumer Disputes Redressal Commission and the learned Commission vide order dated 10.11.2023, dismissed the said appeal while observing as under:-

> *"10. Respondent has also referred a judgement passed by the Hon'ble High Court of Delhi in case 'Moddus Media Pvt. Ltd. vs. Scone Exhibition Pvt. Ltd. 2017 SCC Online Del8491 wherein Para No.13 of the judgement reads as under:-*
>
> > *"13. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree...."*
>
> *11. It is clear from the above dicta that the appellant has to be vigilant about its rights and judicial proceedings and not blame lawyers for any delay in the case. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant company, which cannot be accepted and ought not to have been accepted.*

> *12. Resultantly, in view of the abovementioned dicta and aforementioned reasons as the written statement/ reply has not been filed within the statutory period, we find no infirmity in the order dated 02.06.2023, passed by the District Consumer Disputes Redressal Commission-X, Delhi. Accordingly, the present Appeal stands dismissed with no order as to costs.*

10. Thereafter, the petitioner herein approached learned National Consumer Disputes Redressal Commission (in short 'NCDRC') and did not meet any success.

11. It will be also equally important to mention here that feeling aggrieved by the aforesaid order dated 30.04.2024 passed by learned NCDRC, the petitioner had earlier filed Special Leave Petition SLP(C) No.19268/2024 before the Hon'ble Supreme Court, but since there was a remedy available to the petitioner by filing a petition under Section 227 of the Constitution of India in view of *Universal Sompo General Insurance Co. Ltd. V. Suresh Chand Jain and Another.* : 2023 SCC OnLine SC 877, the liberty was given to the petitioner to withdraw the above said special leave petition and to avail such alternative remedy.

12. This is how the present petition has been filed.

13. According to learned counsel for the petitioner, though the service of notice was effected upon the opposite party and the authorized counsel of the opposite party also did appear before the learned District Commission on 27.04.2022, the proceedings used to be conducted through virtual mode those days. The concerned counsel did appear before the learned District Commission to collect the copy on 28.04.2022 but the concerned staff was not available and when he visited next week, the situation remained the same and thus he could

not obtain the copy. It is thus submitted that it was only due to mistake and inadvertence on the part of the concerned counsel that the copy was collected as late as on 13.10.2022. It is thus contended that the time should start to run only with effect from 13.10.2022 and not from any earlier date.

14. Undoubtedly, according to the complainant, it had even e-mailed the complaint copy to the opposite party by sending e-mail on 27.10.2021. In response thereto, learned counsel for the opposite party submits that any such e-mail containing attachment for a size larger than 5 MB would have not been received by the recipient Insurance Company on account of the limitation in its mail account. However, such excuse does not look to be permissible or plausible.

15. It is rather obligatory and incumbent on the part of such a big Insurance Company like the petitioner herein to upgrade its mail account suitably so that it is in a position to receive all such e-mails.

16. Be that as it may, fact remains that learned counsel for the opposite party did appear before the learned District Commission on 27.04.2022 and undertook to collect the copy by the next day i.e. 28.04.2022 and also undertook to file reply within the stipulated time. In case for any reason whatsoever, despite his alleged visit on 28.04.2024 or, for that matter, on any subsequent date, it could not collect the copy on account of alleged non-availability of staff, the same should have brought to the immediate knowledge and attention of the learned District Commission. Nothing of that sort was either contemplated or attempted even and for the reasons best known to the learned Counsel for the opposite party, the copy was collected as late as

on 13.10.2024.

17. Interestingly, the averment in this respect is also in air as there is nothing in the shape of any acknowledge or documentary proof which may corroborate the aforesaid version of receiving copy on 13.10.2024. No such document or acknowledgment has seen the light of the day, so far.

18. Undoubtedly, the affidavit of the concerned counsel has been attached with the present petition in which, such learned counsel for the opposite party has reiterated the same facts while also claiming that it was only under inadvertence and mistake that the copy could not be collected.

19. This Court is conscious of the fact that no party should be penalized for the action or negligence on the part of its counsel but the situation here is unusual. The time given to any such opposite party is rigid and mandatory and cannot be extended in view of the *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd.* : (2020) 5 SCC 757. Moreover, if such excuse is permitted to be entertained, it would not only mitigate against the specific legislative intention but would also be against the dictum of said judgment of Constitutional Bench. Moreover, no party can be allowed to earn any compassion on such vague reason.

20. It is obvious that the matter has been dealt with by the opposite party in somewhat casual manner. Even if, its counsel, for the reasons best known to him, could not collect the copy, somebody from the Insurance Company itself should have kept the track of the matter. Thus, all in all, the opposite party itself is to be blamed for its miseries.

21. In view of the above, this Court though fully comprehends the peculiar position in which the opposite party now finds itself, more so when the claim in question is reported to be a substantial one, keeping in mind the settled legal position, this Court cannot come to the rescue of the petitioner. In *New India Assurance* (supra), it has also been observed that in some cases, the opposite party might face hardship because of such provision but such hardship has to be ignored in order to achieve the object of the Act which is speedy and simple redressal of a consumer dispute.

22. The petition is, accordingly, dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 14, 2024/st