

Sl.12
23.04.2025
Court No.6
BP

C.O. 1350 of 2025

Peerless Hospitex Hospital and Research
Centre Limited and Others
-versus-
Monotosh Saha and Others

Mr. Aniruddha Chatterjee, Sr. Advocate
Mr. Rahul Karmakar
Mr. Tapan Nag Chowdhury
..for the petitioners

Mr. Rabin Majumder
Ms. Mousumi Roy
Mr. Joydeep Mukherjee
..for the opposite parties

On the prayer of the learned senior advocate appearing for the petitioner, leave is granted to the learned advocate on record to correct the typographical error in the cause title of the civil revision application, here and now.

The certified copy of the judgement and order dated 5th June, 2024 passed by the President, State Consumer Disputes Redressal Commission, West Bengal in Revision Petition No. RP/152/2022 is taken on record. Let the certified copy of the said order be tagged along with the records of this case.

This application under Article 227 of the Constitution of India is at the instance of the opposite

party nos. 1, 4 and 5 in the Complaint Petition being no. CC/387 of 2022 and is directed against the judgement and order dated September 19, 2024 passed by the learned National Consumer Disputes Redressal Commission in Revision Petition No. 1981 of 2024 affirming the judgement and order dated June 5, 2024 passed by the learned President of the State Consumer Disputes Redressal Commission in Revision Petition No. 152 of 2022.

The opposite party nos. 1 and 2 herein filed a Complaint Case being no. CC/387/2022 before the learned District Consumer Disputes Redressal Commission (for short “the District Commission”). The learned District Commission by an order dated November 10, 2022 accepted the written version filed by the petitioners herein.

Challenging the order dated November 10, 2022 the opposite party nos. 1 and 2 herein filed a Revision Petition being no. 152 of 2022 before the learned State Consumer Disputes Redressal Commission at Kolkata (for short “the State Commission”). The learned State Commission by an order dated June 5, 2024 allowed the revision petition thereby setting aside the order passed by the learned District Commission. Being aggrieved by the order dated June 5, 2024 passed by the learned State Commission, the petitioners herein preferred a revision petition before the Hon’ble National Consumer Disputes

Redressal Commission, New Delhi (for short “the National Commission”) being Revision Petition No. 1981 of 2024. The National Commission by an order dated September 19, 2024 dismissed the revision petition thereby affirming the order passed by the learned State Commission. The petitioners herein preferred a Special Leave Petition before the Hon’ble Supreme Court being Special Leave to Appeal (C) Nos. 2962/ 2025 which was dismissed by an order dated 7th March, 2025. Thereafter the petitioners filed the instant application under Article 227 of the Constitution of India challenging the order dated September 19, 2024 passed by the Hon’ble National Commission.

Mr. Chatterjee, learned senior advocate appearing for the petitioners submits that pursuant to the liberty granted by the Hon’ble Supreme Court in the order dated 7th March, 2025, the petitioners herein have preferred the instant application under Article 227 of the Constitution of India. He submits that the learned District Commission by an order dated 21st September, 2022 fixed 10th November, 2022 for filing of the written version by the petitioners herein. He contends that the petitioners complied with the directions passed by the learned District Commission to file the written version and for such reason the learned State Commission erred in law by reversing the said order. He submits that the petitioners herein did not pray for extension of time to file the written version. He further submits that the petitioners herein raised such

issue before the National Commission but the National Commission did not consider such contention of the petitioners.

Per contra, the learned advocate appearing for the opposite parties submits that Section 38(3)(a) of the Consumer Protection Act, 2019 provides for a time limit of thirty days to file the written version from the date of service of copy of the complaint upon the opposite parties in a complaint case. He further submits that there is a provision for extension of time by a further period of fifteen days but the District Commission cannot extend the time to file the written statement thereafter. In support of such contention he placed reliance upon the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of New India Assurance Company Ltd. Vs. Hilli Multipurpose Cold Storage Private Ltd. reported at (2020) 5 SCC 429. He further submits that the petitioners herein have willfully delayed the proceedings before the learned District Commission by not filing their written version within the stipulated time limit of forty five days as per Section 38(3)(a) of the 2019 Act. He further submits that the petitioners also caused delay in the proceeding by approaching the Hon'ble Supreme Court and thereafter this Court under Article 227 of the Constitution of India.

Heard learned advocates for the respective parties and perused the materials placed.

The issue as to whether the time limit fixed under Section 38(3)(a) of the 2019 Act for filing of the written version can be extended is no longer *res integra*. The Hon'ble Supreme Court in the case of Hilli Multipurpose Cold Storage Private Ltd (*supra*) has held that the District Forum has no power to extend the time for filing the response to the complaint beyond the period of fifteen days in addition to thirty days as is envisaged under Section 13 of the Consumer Protection Act, 1986. The issue as to the starting point of the limitation of thirty days is also no longer *res integra* as it has been held in the said decision that the time limit of thirty days would start to run from the date of receipt of the notice accompanied with the complaint by the opposite party.

From the order sheets appended to this civil revision application, it appears that the learned District Forum fixed September 21, 2022 for service returns and for appearance of the parties.

It is not in dispute that the petitioners herein, who are the opposite party Nos.1, 4 and 5 before the learned District Commission entered appearance before the learned District Commission on September 21, 2022 and prayed for time for filing written version. The learned District Commission by an order dated September 21, 2022 fixed November 10, 2022 for filing written version by the petitioners herein. It is not in dispute that the written version was filed within the time limit stipulated by the

learned District Commission vide order dated September 21, 2022.

The issue that arises for consideration is whether the written version filed by the petitioners herein within the time limit fixed by the learned District Commission could have been taken off the records on the ground that the same was filed beyond the period of 45 days from the date of service of notice upon the petitioners herein.

It is not in dispute that the notice upon the petitioners herein were served on September 6, 2022. Record reveals that the petitioners entered appearance on September 21, 2022 and prayed for time to file the written version. Such prayer was allowed fixing November 10, 2022 for filing written version. The petitioners have complied with the directions passed by the learned District Commission with regard to filing of the written version.

The order dated September 21, 2022 fixing November 10, 2022 for filing of the written version has not been challenged by the opposite party Nos.1 and 2 herein. In other words, the order dated September 21, 2022 had attained finality and the same is binding upon the parties.

The learned advocate appearing for the opposite party Nos.1 and 2 herein would contend that since September 21, 2022 was within the stipulated period of 45 days from the date of service of the notice upon the

petitioners herein, the opposite party Nos.1 and 2 herein was not required to challenge the same.

However, the fact remains that the order dated September 21, 2022 directing for filing of the written version on November 10, 2022 is binding upon the parties.

It is well-settled that no one should suffer by an act of Court. Reference may be made to the order of the Hon'ble Supreme Court in the case of ***Karnataka Rare Earth & Anr. vs. Senior Geologist, Department of Mines & Geology & Anr.***, reported at ***(2004) 2 SCC 783***. In paragraph 10 of the said reports the Hon'ble Supreme Court held thus:

“10. In South Eastern Coalfields Ltd. this Court dealt with the effect on the parties who have acted bona fide, protected interim orders of the court and incurred rights and obligations while the interim orders stood vacated or reversed at the end. The Court referred to the doctrine of actus curiae neminem gravabit and held that the doctrine was not confined in its application only to such acts of the court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the court would not have so acted had it been correctly apprised of the facts and the law.”

The Hon'ble Supreme Court held that the doctrine of *actus curiae neminem gravabit* is not confined in its application only to such acts of the Court which was erroneous, the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and laws.

Even if for the sake of argument it is accepted that the District Commission, could not have fixed the date for filing the written version beyond the period of 45 days, the petitioner having filed the written version within the period fixed for such purpose should not be made to suffer.

This Court has already observed that the petitioners herein have filed their written version within the time limit fixed by the learned District Commission. It is not a case of extension of time at the instance of the petitioners as they have filed their written version within the time limit stipulated by the learned District Commission and such order is binding upon the parties as the same has not been assailed by either of the parties before any superior forum.

For all the reasons as aforesaid, this Court is inclined to interfere with the order passed by the learned National Commission and the State Commission.

Accordingly, the order dated September 19, 2024 passed by the learned National Commission and the order dated June 5, 2024 passed by the learned State

Commission stand set aside. Consequently, the order dated November 10, 2022 passed by the learned District Commission insofar as it relates to acceptance of the written version of the opposite party Nos.1, 4 and 5/petitioners herein in Consumer Case No.CC/387/2022 is affirmed.

CO 1350 of 2025 stands allowed without, however, any order as to costs.

The learned District Commission is directed to proceed with the hearing of the Consumer Case No.CC/387/2022 in accordance with law.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)