

**(2022) 03 DEL CK 0157**

**In the Delhi High Court**

**Case No :** Civil Miscellaneous (Main) No. 256 Of 2022, Civil Miscellaneous Application No. 13859 Of 2022

Dr. Syamasis Bandyopadhyay

APPELLANT

Vs

Dr. Kalyani Das Sarkar & Ors

RESPONDENT

**Date of Decision :** 22-03-2022

**Acts Referred:**

Constitution Of India, 1950 — Article 227

**Citation :** (2022) 03 DEL CK 0157

**Hon'ble Judges :** C.Hari Shankar, J

**Bench :** Single Bench

**Advocate :** Sugata Shankar Roy, Sanjoy Kumar Ghosh

**Final Decision :** Disposed Of

## Judgement

C.Hari Shankar, J

1. This petition under Article 227 of the Constitution of India, assails orders dated 22nd January, 2020 and 12th February, 2020, passed by the learned National Consumer Dispute Redressal Commission ("the learned NCDRC"), in Consumer Case 73/2017.

2. In as much as I am proposing to dispose of this petition with an order which would not cause any prejudice to the respondent, I do not deem it necessary to issue formal notice in the matter.

3. A short history of the litigation is necessary. A complaint was filed by Respondent 1 against the petitioner and Respondents 2 and 3 before the learned NCDRC. The petitioner was Opposite Party No. 3. Replies were filed, to the complaint, by the three opposite parties, including the petitioner. On 27th April, 2017, the learned NCDRC directed the respondents to file rejoinder to the replies filed by the petitioner and Respondents 2 and 3 within four weeks. This time was extended by subsequent orders dated 20th June, 2017 and 13th November, 2017.

4. Three rejoinders, one to each of the replies filed by the three opposite parties (including the present petitioner), were filed by the respondent on 12th February, 2018, with an application for granting extension of time to take the rejoinders on record. Vide order dated 20th February, 2018, the learned NCDRC permitted the rejoinders to be taken on record subject to payment of costs of ₹ 5,000/-.

5. On 24th April, 2018, the petitioner filed an objection to the rejoinder filed by Respondent No. 1 to his counter affidavit. While the said objection was pending, on 6th August, 2018, Respondent 1 filed Application 14589/2018, to correct the rejoinder earlier filed by him to the reply of the petitioner. This application, alleges the petitioner, was filed under the signature of the Counsel for Respondent 1, and the affidavit accompanying the application was also affirmed only by the Counsel. The signature of the Respondent 1 did not figure on the application or on the affidavit. This application sought replacement of certain pages of the rejoinder earlier filed by the respondent on 12th February, 2018.

6. The petitioner filed his objection to the aforesaid application Application 14589/2018, before the learned NCDRC, on 7th December, 2018.

7. Vide order dated 13th December, 2018, the learned NCDRC permitted Respondent 1 to file the corrected rejoinder within four weeks. This period was extended by subsequent order dated 3rd April, 2019, by three weeks, subject to payment of costs of ₹ 25,000/-. By a subsequent order dated 20th September, 2019, however, the learned NCDRC waived the costs earlier imposed by it on 03rd April, 2019 and directed that, if they had already been deposited, the costs be refunded to the Respondent. The respondent was permitted to file the corrected rejoinder within six weeks.

8. On 30th October, 2019, the Respondent 1 filed three fresh rejoinders which, according to the petitioner, differed in several material particulars from the rejoinders which had earlier been filed on 12th February, 2018 and incorporated several changes which were in excess of those envisaged by Application 14589/2018. In effect, the petitioner alleges that the aforesaid rejoinders sought to overcome the objections raised by the petitioner and Respondents 2 and 3 in their replies to the Respondent 1's complaint.

9. At this stage, in January, 2020, the petitioner approached this Court by way of CM(M) 6/2020, which was disposed of by a coordinate Bench by order dated 7th January, 2020, which reads thus:

"1. The grievance of the Petitioner is that the National Consumer Disputes Redressal Commission (hereinafter 'NCDRC') has been repeatedly granting adjournments since 2017 for filing of a rejoinder by the Complainant. The Petitioner relies upon the orders dated. 27th April, 2017, 20th June 2017, 13th November 2017, 20th February 2018, 13th December 2018, 23rd January 2019, 3rd April 2019, 1st August 2019, 6th August 2019 & 20th September; 2019 when repeated adjournments have been granted on one ground or the other for filing a rejoinder and a proper rejoinder with a proper affidavit. The grievance of

the Petitioner is that in this manner the decision in the complaint is being delayed for no reason and fault of the Petitioner or the Hospital.

2. It is prayed that directions be issued for hearing of the matter by the NCDRC. A perusal of the orders dated 1st August, 2019 and 6th August, 2019 shows that there is some confusion being created as to who, in fact, appears for the Complainant and who is to file the rejoinder. It is stated that the matter is now listed before the NCDRC on 22nd January, 2020.

3. It is, accordingly, directed that irrespective of whether the rejoinder has been filed properly by the Complainant or not and whether the same is on record or not, the complaint shall be heard finally on the said date. No further accommodation shall be granted to the Complainant to file rejoinder and the complaint shall be proceeded with in an expeditious manner in accordance with The Consumer's Protection Rules, 1987 and the Consumer Protection Act, 1986. The NCDRC shall also pass orders making it clear as to who is representing the Complainant in order to ensure that there is no confusion in respect of service of the pleadings and leading of evidence by the Complainant.

4. The Vakalatnama by the Ld. Counsel for the hospital be filed within 10 days from today.

5. The petition along with the pending application is disposed of in the above terms."

10. The petitioner produced the afore-extracted order dated 07th January, 2020, before the learned NCDRC, which proceeded to pass the following order on 22nd January, 2020:

"Learned Counsel for the Opposite Parties has placed before us an Application No. Nil of 2020 filed on 20.01.2020 enclosing the copy of the Order dated 07.01.2020 passed by the Delhi High Court in CM (M) 6/2020 & CM APPL. 234/2020, "Dr. Syamasis Bandyopadhyay Vs. Dr. Kalyani Das Sarkar & Ors." in which certain directions were issued.

We have perused the Order dated 07.01.2020 passed by Delhi High Court. Mr. Rabin Majumdar, learned Counsel for the Complainant stated that he will be appearing for the Complainant. We record his statement and henceforth only Mr. Rabin Majumdar, Advocate will appear on behalf of the Complainant.

Evidence by way of affidavit filed by the Complainant.

Opposite Parties may file the Evidence by way of Affidavit within three weeks.

Pending IAs shall be considered at the time of final arguments.

List on 18.05.2020 for final hearing."

11. Though the petitioner has impugned the afore-extracted order dated 22nd January, 2020, I am unable to understand the reason why. The order merely notes the placing on record, by the petitioner, of the order dated 7th January.

2020, passed by this Court, and make certain innocuous directions, which cannot be said to prejudice the petitioner in any manner.

12. The petitioner, however, moved the learned NCDRC by way of RA/60/2020, seeking review of the order dated 22nd January, 2020 supra.

13. The petitioner is aggrieved by the order that the learned NCDRC has come to pass on the said RA/60/2020 on 12th February, 2020, which reads thus:

"RA/60/2020

This Review Application has been filed by the Opposite Party No. 3 seeking review of the order dated 22.01.2020, on the ground that the Hon'ble High Court of Delhi in its order dated 07.01.2020 had directed that no further Rejoinder or documents will be taken on record. This plea was raised by the learned Counsel for Opposite Parties on 22.01.2020, which was not accepted by the Bench. However, we may mention here that Rejoinder had been filed on 30.10.2019. Consequences of the Order dated 07.01.2020 passed by the Hon'ble High Court of Delhi will be considered at the time of final hearing of the Complaint. Accordingly, this Review Application is dismissed."

14. To a query from the Court as to the error that the petitioner perceives in the order dated 12th February, 2020, passed by the learned NCDRC in RA/60/2020, Mr. Roy, learned Counsel for the petitioner, advances two submissions. The first is that the rejoinder filed on 30th October, 2019, could not have been taken on record, as it was filed without any accompanying application to place the rejoinder on record with the changes contained therein. The changes envisaged in IA 14589/2018, earlier filed to amend the rejoinder placed on record prior thereto, he submits were different from those which found place in the rejoinder which subsequently came to be filed on 30th October, 2019. Without any application for permission to incorporate the changes contained in the amended rejoinder dated 30th October, 2019, vis-à-vis the rejoinders earlier filed on 12th February, 2018, Mr. Roy submits that the respondent was not entitled to file the amended rejoinder on 30th October, 2019.

15. The second exception that Mr. Roy takes, to the impugned order dated 12th February, 2020, is to the observation of the learned NCDRC that the consequences of the order dated 07th January, 2020, passed by this Court in CM(M) 6/2020, would be considered at the stage of final hearing of the complaint.

16. Adverting to the second objection first, I do not see how this Court could interfere therewith, in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

17. If the learned NCDRC chose to consider the ramifications of the order dated 07th January, 2020 at the stage of final hearing of the complaint, that is merely a matter of procedure, which cannot constitute a ground for interference by this Court in the exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. Even assuming this Court were exercising supervisory

jurisdiction over the learned NCDRC, that jurisdiction cannot extend to monitoring the manner in which the learned NCDRC decides to deal with applications, unless manifest injustice results therefrom.

18. In so far as the first ground of challenge by Mr. Roy is concerned, this Court finds itself inhibited from granting relief on that ground principally for the reason that the rejoinder dated 30th October, 2019 had been filed and was on record much prior to the passing of the order dated 7th January, 2020, by this Court in CM(M) 6/2020. If therefore, the petitioner had any grievance against the taking of the rejoinder dated 30th October, 2019 on record, it should have been urged and canvassed in CM(M) 6/2020. CM(M) 6/2020 has not been placed on record; nonetheless Mr. Roy candidly acknowledges that no objection was raised in the said petition for taking on record of the rejoinder dated 30th October, 2019.

19. The fact that such a rejoinder had been filed does not appear to have been brought to the notice of this Court on 7th January, 2020, when CM(M) 6/2020 was disposed of. The said order does not record any objection, by the petitioner, to the taking on record of the rejoinder dated 30th October, 2019. Rather, the order, properly read, merely interdicts the learned NCDRC from granting any further opportunity to the respondent to file rejoinder. No exception can, therefore, be taken to the observation of the learned NCDRC, in the impugned order dated 12th February, 2020 in RA/60/2020, to the effect that the rejoinder already stood filed on 30th October, 2019, prior to the passing of the order dated 7th January, 2020, by this Court. It does not even appear to be the case that any formal order, taking the rejoinder filed on 30th October, 2019, on record after the passing of the order dated 7th January, 2020, by this Court was passed by the learned NCDRC.

20. The filing of the rejoinder on 30th October, 2019 cannot, therefore, be said to be in violation of the order dated 7th January, 2020, passed by this Court. It is not possible, therefore, for this Court to direct the learned NCDRC to ignore the said rejoinder.

21. Having said that, the contention of Mr. Roy that the rejoinder filed on 30th October, 2019 contained changes was in excess of the amendments proposed by IA/14589/2018, and that, therefore, these changes should not be taken into account by the learned NCDRC, does appear to merit serious consideration.

22. I deem it appropriate, therefore, to avoid prejudice to either party, to permit the petitioner to place on record, before the learned NCDRC, within a period of four weeks from today, a surrejoinder, in which the petitioner would be permitted to advance any objections that it may deem appropriate to the rejoinder dated 30th October, 2019. The learned NCDRC would also take the said objections into account and assess their merit while considering the worth and value to be accorded to the rejoinder dated 30th October, 2019.

23. Should the learned NCDRC feel that, in the interests of justice, the respondent should be permitted to file a response to the surrejoinder that the

petitioner is being permitted to file by the order passed today, it shall be at liberty to do so.

24. The petition is disposed of in the aforesaid terms with no orders as to costs.