

(2017) 05 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

Case No : 1270 of 2016

SARFRAZ ALI KHAN, & ORS.

APPELLANT

Vs

CHAIRMAN-CUM-MANAGING DIRECTOR, M/S. RPS
INFRASTRUCTURE LIMITED & ANR.

RESPONDENT

Date of Decision : 11-05-2017

Acts Referred:

Citation : (2017) 05 NCDRC CK 0016

Hon'ble Judges : S.M. Kantikar

Advocate : Manoj Ranjan Sinha, Peeyoosh Kalra, Praphull Sinha, Sudhindra Tripathi

Judgement

1. The appellants filed a complaint being C. C. No. 286 of 2015 against respondent/OP before Delhi State Consumer Disputes Redressal Commission. The complaint was admitted on 25.5.2015 and the notice was directed to be issued to the OP.

2. Pursuant to the notice, OP appeared before the State Commission on 26.8.2015. On the said date, copy of complaint was supplied to the counsel for OP and the OP was directed to file written statement within four weeks, with advance copy to learned counsel for the complainant. The OP, however, filed written statement after the expiry of four weeks" time given to him on 17.2.2016. The State Commission on 24.2.2016 taking note of the fact that the written statement was filed after the expiry of stipulated statutory period and directed that the written statement filed by the Op on 17.2.2016 be taken of the record.

3. The OP being aggrieved of the order dated 24.02.2016 filed an application for modification of the order and the State Commission vide its order dated 5.9.2016 reviewed its order vide order dated 24.02.2016 and stayed the proceedings in view of pending decision of larger Bench of Hon"ble Supreme Court in New India Assurance Co. Ltd. vs. Hilli Multipurpose Cold Storage Private Limited in Civil Appeal No. D 35086 of 2013 etc. (2015) 16 SCC 20. Being aggrieved of the said

order, the complainants have preferred this appeal.

4. I have heard the learned counsel for the parties and perused the record. The first contention raised by the appellants is that the impugned order is without jurisdiction in view of the law laid down by Hon'ble Supreme Court in *Rajeev Hitendra Pathak and Ors. Vs. Achyut Kashinath Karekar and Anr.* (2011) 9) SCC 541, that the District Forum and the State Commission has no power to review or modify their decision. There is a force in the argument. The State Commission has erred in modifying the order datd 24.02.2016 in violation of the law laid down by the Apex Court. Ordinarily, I would have allowed the appeal and referred the matter back to the State Commission but for the submission of learned counsel for the respondent that refusal of the right to file the written version of the respondent on technical ground of limitation would result in gross injustice to the OP.

5. Learned counsel for the respondent has contended that the Hon'ble Supreme Court in its latest judgment in Civil Appeal of 2017 arising out of D. No. 2365 of 2017- *Reliance General Insurance Co. Ltd. and Anr. Vs. M/s Mampee Timbers and Hardwares Pvt. Ltd.* and another has held as under:-

" It has been brought to our notice that in view of uncertainty in law, proceedings in number of cases is held up before the Consumer For a.

This Court has passed interim order dated 11.02.2016 in *M/s Bhasin Infotech and Infrastructure Pvt. Ltd. vs. M/s Venezia Buyers Association (Regd.)* in C.A. Nos. 1083-1084/2016 to the following effect:

"The proper course in our opinion is to permit the appellant-company to file its response, which was delayed by just about one day. We accordingly, permit the appellant to file its reply before the National Commission within two weeks from today subject to payment of Rs.50,000/- as costs to be paid to the opposite party. The Commission can upon deposit of costs proceed with the trial of the complainant on merits after receiving the reply filed by the respondent. The pendency of present proceedings shall not be an impediment for the Commission to do so. This however is subject to the condition that complainant-respondent is ready and willing to take the proceedings forward on the conditions aforementioned. In case the complainant-respondents have any objection to the continuance of the proceedings before the Commission they shall be free to seek stay of such proceedings pending disposal of these appeals in which event the proceedings shall remain stayed till disposal of the present appeals."

We consider it appropriate to direct that pending decision of the Larger Bench, it will be open to the concerned Fora to accept the written statement filed beyond the stipulated time of 45 days in an appropriate case, on suitable terms, including the payment of costs, and to proceed with the matter.

The appeal is disposed of in above terms.

It will be open to the respondents to move this Court if they are aggrieved by

this order."

6. In view of the above, I am of the view that the interest of justice shall be served if the written statement already filed by the OP on 17.2.2016 is taken on record, subject to costs of Rs.25,000/- to the complainants. Both the parties to appear before the State Commission on 31.7.2017. The appeal is disposed of accordingly with the direction that the State Commission to decide the complaint, in accordance with law. It is clarified that if the cost is not paid by the OP on or before 31.7.2017, the appeal preferred by the complainant shall be deemed to have allowed.