

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2140 OF 2018

(Against the Order dated 06/06/2018 in Appeal No. 73/2016 of the State Commission
Madhya Pradesh)

1. KOTAK MAHINDRA OLD MUTUAL LIFE INSURANCE
CO. LTD.

KOTAK INFINITY BUILDING NO. 21, INFINITY PARK VII
FLOOR ZONE II, OFF WESTERN EXPRESS HIGHWAY
GENERAL A.K. VAIDYA MARG, MALAD EAST

MUMBAI-400097

MAHARASHTRA

.....Petitioner(s)

Versus

1. OM PRAKASH DUBEY & ANR.

S/O. LT. SH. RATAN LAL DUBEY R/O. 305, LAXMI
RESIDENCY, VANSHI KI BAGIYA OPP. MADHAV
DISPENSARY KOTORA TAAL,

LASHKAR GWALIOR

MADHYA PRADESH

2. MAHINDRA & MAHINDRA FINANCIAL SERVICE CO.
LTD.

THROUGH BRANCH MANAGER, NEAR
DHARAMKANTA NAKA CHANDRAVADNI
DISTRICT-LASHKAR GWALIOR

MADHYA PRADESH

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. PRAVEEN MAHAJAN, ADVOCATE
MS. VRINDA, ADVOCATES

FOR THE RESPONDENT : R-1 EX PARTE
MR. AMRIT KOUL, ADVOCATE FOR R-2

Dated : 30 April 2024

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondents as detailed above, under section 21 (b) of Consumer Protection Act 1986, against the order dated 06.06.2018 of the State Consumer Disputes Redressal Commission Madhya Pradesh (hereinafter referred to as the 'State Commission'), in RP No. 73 of 2016 in which order dated 09.06.2016 of District Consumer Disputes Redressal Forum, Gwalior (hereinafter referred to as District Forum)) in Consumer Complaint (CC) no. 104 of 2015 was challenged, inter alia praying for:-

i. Setting aside the order dated 06.06.2018 of the State Commission.

(i) Taking on record the Written statement filed by the Petitioner herein by the District Forum.

2. The Revision Petitioner was Respondent No.2 before the State Commission and OP No.2 before the District Forum, Respondent No.1 was Petitioner before the State Commission and Complainant before the District Forum, Respondent No.2 was Respondent No.1 before the State Commission and OP No.1 before the District Forum.

3. Notice was issued to the Respondents on 13.12.2018. Petitioner filed Written Arguments/Synopsis on 11.09.2023. Respondent no.1 was proceeded ex parte as he failed to appear despite service. Counsel for Respondent no.2 stated that since no relief has been sought against them, they do not intend filing any written synopsis / arguments.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that District Forum after admitting the Complaint issued notices to the opposite parties (Respondent no.2 herein and Petitioner herein). According to the Complainant Om Prakash Dubey (before the District Forum), notices issued to OP No.2 / Petitioner on 11.04.2016 was served on 18.04.2016 and the written statement alongwith documents filed by Petitioner herein on 09.06.2016 was beyond the statutory period of 45 days from the date of service. The District Forum did not take the written statement of the Petitioner on record and District Forum fixed the case for producing the evidence by both the parties. Being aggrieved of this order of the District Forum, the Complainant preferred RP before the State Commission and State Commission vide order dated 06.06.2018 set aside the order of the District Forum so far as it relates for filing evidence by both the parties and directed that District Forum shall proceed with the matter in accordance with law. Therefore, the Petitioner is before this Commission now in the present RP.

5. Petitioner has challenged the said Order dated 09.06.2018 of the State Commission mainly on following grounds:

i. The local counsel received written version on 30.05.2016 and filed the same on 09.06.2016. However, he could not attend the proceedings due to requirement of his presence at another court. The local counsel was working under good faith and in his absence right to reply was closed. Moreover, the executed copy of the reply which was

notarized on 24.05.2016 was sent to the advocate for filing and same was received by the local advocate on 30.05.2016 which means that the executed reply was received within 40 days of receipt of the summons at the head office of the Petitioner Company at Mumbai.

- ii. As per judgment of Hon'ble Supreme Court in **Reliance General Insurance Co. Ltd. and Anr. Vs. Mampee Timbers and Hardwares Pvt. Ltd & Anr.** , consumer forums can take the reply on record even beyond 45 days in some circumstances and there was no bar to accept the written statement on record.
- iii. The Hon'ble Supreme Court in **Savithri Amma Vs. Aratha Karthy** AIR 1983 SC 318 observed that when the counsel is occupied in another court, the same is sufficient cause for not being present at the time of hearing. The ratio of this decision can be applied to the case in hand.
- iv. In a case where lawyer does not appear or plead any instruction, the Court should give a notice to the party either to appear in person or to make an alternative arrangement. In the present case, no notice was issued to the Petitioner.
- v. The terms and conditions of the policy were suppressed by respondent no.1 and, therefore, State Commission could not appreciate the terms and conditions.
- vi. The Fora below did not deal with the case of the petitioner that complaint was not maintainable as life assured had committed suicide within 1 year in which case as per terms mentioned in Certificate of Insurance (COI) only 80% of the premium paid is payable to complainant which has already been paid by Petitioner to respondent no.1 and same is not denied by him. The respondent no.1 concealed these facts from the State Commission.
- vii. The life assured never approached the Petitioner during his life time with any complaint or grievance with respect to non receipt of COI or with respect to any terms and conditions of the policy as mentioned in COI. Thus, it is evident that life assured had duly received COI and was satisfied with the terms of subject contract of insurance. The complainant had duly filed claim with the petitioner which makes it clear that life

assured had received the COI and was aware of the policy terms and conditions and not approaching the petitioner during the Free Lock Period.

6. Heard learned counsel for the Petitioner. On account of absence despite notice, Respondent no.1 was proceeded ex-parte. During the hearing, counsel for the Petitioner admitted that no relief has been sought against respondent no.2. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, and records of District Forum and State Commission are summed up below.

6.1 Learned counsel for the Petitioner argued that order of the District Forum dated 05.05.2016 was passed after the judgment of Hon'ble Supreme Court in New India Assurance Co. Ltd. Vs. Hill Multipurpose Cold Storage Pvt. Ltd. , Civil Appeal No10941-10942 dated 04.12.2015 wherein it was held that Consumer Forum do not have right to condone the delay beyond 45 days. However, order dated 06.6.2018 of the State Commission was passed after the order dated 10.02.2017 passed by Hon'ble Supreme Court in Reliance General Insurance Co. Ltd. and Anr. Vs. M/s Mampee Timbers & Hardware Pvt. and, therefore, in view of this, the State Commission ought to have condoned the delay in filing the written statement.

6.2 Counsel further argued that as per judgment dated 10.02.2017 of Hon'ble Supreme Court in Mampee Timbers (supra), it was observed that matter had been referred to larger bench of the Hon'ble Supreme Court and it was directed that pending decision of the larger bench, it will be open to the concerned fora to accept the written statement filed beyond the stipulated period of 45 days, on suitable terms including the payment of cost and to proceed with the matter. Learned counsel relied upon following judgments of Hon'ble Supreme Court and National Commission :

a. Reliance General Insurance Co. Ltd. and Anr. V. Mampee Timbers and Hardware Pvt. Ltd. decided on 10.02.2017;

b. Pan Realtors Pvt. Ltd. Vs. Priyank Kumar Singhal-First Appeal No. 877 of 2016 decided on 18.05.2017

c. Iffco Tokio General Insurance Company Ltd. Vs. Jyoti Dinesh Oswal and Anr. - Revision Petition No. 3059 of 2017 decided on 16.04.2018.

d. Joshi Sweet Mart Vs. M/ Solar Energy Pvt. Ltd. – First Appeal No. 323 of 2021 decided by this Commission on 30.09.2021.

7. We have carefully gone through the order of the State Commission. District Forum and other relevant records and contentions of the petitioner herein. The State Commission in the RP filed by the complainant (respondent no.1 herein) has set aside the order of the District Forum so far as it relates to filing of evidence by the OPs and ordered that while proceeding with the case, the District Forum will not consider the written statement / reply to the complaint and evidence filed by the OPs on record. Vide order dated 09.06.2016, the District Forum did not take on record the reply filed by OP No.2 (petitioner herein) being beyond 45 days and fixed the case for producing evidence by both the parties. The main contention of the complainant / respondent before the State Commission was that once the District Forum has not allowed OP No.2 to file the reply, the District Forum cannot further allow it to produce evidence at a later stage. The State Commission in its order observed that District Forum has rightly not taken the reply / written statement filed by the OPs on record being filed beyond statutory period of 45 days from the date of service. However, the District Forum has erred in allowing the OP to file their evidence and fixed the case on 30.06.2016 for adducing evidence by both the parties. Once the reply was not taken on record, there is no question of adducing evidence. The OPs can only participate in the arguments. The State Commission further observed that parties proceeded ex – parte cannot be stopped to participate in further proceedings but it does not give them right to file evidence in the absence of reply filed by them. They can participate in further proceedings and can argue the matter. State Commission relying on the judgment of Hon'ble Supreme Court in **Dr.J J Merchant and Ors. Vs. Shrinath Chaturvedi 2013 (4) CPR 408 (SC)** concluded that in the absence of reply filed by OPs, within the prescribed period of 45 days, case should not be fixed for producing of evidence by the parties. We are in agreement with the above stated observations / findings of the State Commission and hold that if the written version of the OP is not taken on record on account of having been filed beyond the statutory period of 45 days, OP cannot be allowed to file evidence as indirectly it amounts to allowing his written version to come on record in the form of evidence. Hence, there is no illegality or material irregularity in the order of the State Commission.

8. When the order dated 05.06.2016 was passed by the District Forum for not taking the written version of OP No.2 on record, judgment of Hon'ble Supreme Court in **New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd.**, Civil Appeal No. 10941-10942 of 2013 decided on 04.12.2015 was in force which did not permit the Consumer Forum to condone the delay beyond 45 days. Judgment of the Hon'ble Supreme Court in **Reliance General Insurance Co. Ltd. and Anr. Vs. M/s Mampee Timbers and Hardwares Pvt. Ltd. and Anr.**, Civil Appeal No.2365 of 2017 had come on 10.02.2017 only i.e. after the date of District Forum's order. The contentions of the Petitioner herein that as the order of the State Commission was passed on 06.06.2018 i.e. after the date of the judgment of the Hon'ble Supreme Court in **M/s Mampee Timbers and Hardwares Pvt. Ltd.** (supra), State Commission ought to have condoned the delay in filing the written statement, is without any merits as State Commission in the Revision Petition filed before it

was looking into the legality or otherwise of the District Forum's order in not taking the written version filed by OP No.2 on record but allowing them to file evidence. State Commission was not in its original jurisdiction of considering the consumer complaint to decide whether to allow the filing of written version by the petitioner herein in view of the judgment of the Hon'ble Supreme Court in **M/s Mampee Timbers and Hardwares Pvt. Ltd.** (supra). Hence, the petitioner herein / OP No.2 before the District Forum is not entitled to the benefit of the said judgment of the Hon'ble Supreme Court. Now the issue relating to condonation of delay beyond 45 days in filing the written version is governed by the judgment of the Hon'ble Supreme Court in **New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd.** in Civil Appeal No. 10941- 10942 of 2013 decided on 04.03.2020, which does not permit the OP to file written version beyond 45 days and does not bestow any powers on the Consumer Fora at any level to extend this period beyond 45 days.

9. In view of the foregoing, we are of the view that there is no illegality in the order of the District Forum in not allowing OP No.2 to file written version beyond 45 days and there is no illegality in the order of the State Commission in setting aside the order of District Forum under which it allowed OP No.2 to file evidence despite having they been denied right to file the written statement.

10. In view of foregoing, we are of the view that State Commission has given a well reasoned order. We do not find any reason to interfere with its findings. There is no illegality or material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld. Accordingly, Revision Petition is dismissed.

11. The pending IAs in this case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER