NEW INDIA ASSURANCE CO. LTD. A

v.

HILLI MULTIPURPOSE COLD STORAGE PVT. LTD.

(Civil Appeal Nos.10941-10942 of 2013)

DECEMBER 04, 2015 B

[ANIL R. DAVE, VIKRAMAJIT SEN AND PINAKI CHANDRA GHOSE, JJ.]

Consumer Protection Act, 1986 – s.13(2)(a) – Procedure on admission of complaint – Limitation period for filing written statement or giving version of the opponent as per the provisions of s. 13(2)(a) – Held: The opposite party is given 30 days time for giving his version and the said period for filing or giving the version can be extended by the District Forum, but extension should not exceed 15 days – Three Judge Bench of this Court in Dr. J.J. Merchant case *rightly held that the District Forum can grant a further period of 15 days to the opposite party for filing his version or reply and not beyond that – View expressed in* Dr. J.J. Merchant case *(decided in 2002) holds the field and prevails over latter view taken in* Kailash case *(decided in 2005) that the time frame for filing the reply was not mandatory, but merely directory – Not only this three-Judge Bench, but even a Bench of coordinate strength of this Court, which decided the case of* Kailash, *was bound by the view taken by a three-Judge Bench in the case of* Dr. J.J. Merchant *– Thus, the law laid down in* Dr. J.J. Merchant case *should prevail.* C D E F

Dr. J.J. Merchant & Ors. v. Shrinath Chaturvedi **(2002) 6 SCC 635 : 2002 (1) Suppl. SCR 469;** *Kailash v. Nanhku & Ors.* **(2005) 4 SCC 480 : 2005 (3) SCR 289;** *Topline Shoes Ltd. v. Corporation Bank* **(2002) 6 SCC 33 : 2002 (3) SCR 1167;** *Central Board of Dawoodi Bohra* G H

A *Community & Anr. v. State of Maharashtra* **(2005) 2 SCC 673 : 2004 (6) Suppl. SCR 1054 – referred to.**

Case Law Reference

B **2002 (1) Suppl. SCR 469**	**referred to**	**Para 1**
2005 (3) SCR 289	**referred to**	**Para 1**
2002 (3) SCR 1167	**referred to**	**Para 12**
C **2004 (6) Suppl. SCR 1054**	**referred to**	**Para 19**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 10941-10942 of 2013.

D From the Judgment and Order dated 30.09.2013 of the National Consumer Disputes Redressal Commission at New Delhi in Review Application No. 309 of 2013in Consumer Complaint No. 52 of 2013

WITH

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C.A. Nos. 10943-10944/2013 and 1774/2014

SLP (C) Nos. 2833/2014 and 11257-11258/2014.

Shyam Divan, Sr. Adv., Vishnu Mehra, Ms. Sakshi Mittal
F (For Ms. Manjeet Chawla), K. R. Sasiprabhu, Vishnu Sharma, Somiran Sharma, Biju P. Raman, Sanjoy Kumar Ghosh, Ms. Rupali S. Ghosh (For Snehasish Mukherjee) for Appellant.

Uday Gupta, Hiren Dasan, Narayan Chandra Das,
G Chand Qureshi (For Mrs. Sarla Chandra), Umesh Kumar Khaitan, Brajesh Kumar Singh, Kedar Nath Tripathy, Sunil Kr. Mund, Sanjeev Joshi, A. K. Mehta, Kuldeep Singh, Santosh Paul, Nitin S. Tambwekar, Seshatalpa Sai Bandaru, Kaushik Poddar, T. V. George, Sayalipso Ray for the Respondent.

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The Judgment of the Court was delivered by A

ANIL R. DAVE, J. 1. While considering Civil Appeal No.D 35086 of 2013, this Court expressed its doubt in relation to the period of limitation for filing the written statement or giving version of the opponent as per the provisions of Section B 13(2)(a) of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act'). The question was, whether the said issue was governed by the law laid down by this Court in ***Dr. J.J. Merchant & Ors. v. Shrinath Chaturvedi,*** [(2002) 6 SCC 635] or ***Kailash v. Nanhku & Ors.*** [(2005) 4 SCC 480]. The C following order was passed by this Court in the aforestated Civil Appeal on 29th November, 2013:

> "1. Heard Mr. Vahanvati, learned Attorney General, in support of these appeals. Mr. Guru Krishna Kumar, D learned senior counsel, appears for the respondent(s).
>
> 2. Learned Attorney General points out that the judgment in Dr. J.J. Merchand & Ors. vs. Shrinath Chaturvedi, reported in [2002(6) SCC 635], has been considered and a different view has been taken in E Kailash vs. Nanhku & Ors., reported in [2005(4) SCC 480], on the issue of limitation. The matters, therefore, require consideration.
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> 3. Delay condoned. F
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> 4. The appeals are admitted.
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> 5. Since this point of law requires to be resolved, we request the Hon'ble the Chief Justice to place these appeals before a larger Bench ....." G

2. In the aforestated circumstances, these matters have been placed before this three-Judge Bench so as to ascertain whether the law laid down in the case of ***Dr. J.J. Merchant*** **(supra)** still holds the field or whether the law has been H

changed in view of the later judgment delivered by this Court in the case of ***Kailash*** **(supra).**

3. The whole issue centers round the period within which the opponent has to give his version to the District Forum in pursuance of a complaint, which is admitted under Section 12 of the Act. Upon receipt of a complaint by the District Forum, if the complaint is admitted under Section 12 of the Act, a copy of the complaint is to be served upon the opposite party and as per provisions of Section 13 of the Act, the opposite party has to give his version of the case within a period of 30 days from the date of receipt of the copy of the complaint. There is a further provision in Section 13(2)(a) that the District Forum may extend the period, not exceeding 15 days, to the opposite party for giving his version. The relevant Section of the Act reads as under:

> "13. **Procedure on admission of complaint –** (1) .....
>
> (2) The District Forum shall, if the complaint admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) 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 Forum;
>
> (b) ....."

Thus, upon plain reading of the aforestated Section, one can find that the opposite party is given 30 days' time for giving his version and the said period for filing or giving the version can be extended by the District Forum, but the extension should

not exceed 15 days. Thus, an upper cap of 45 days has been imposed by the Act for filing version of the opposite party. A

4. The question arose in the case of ***Dr. J.J. Merchant*** **(supra)** whether the Forum can grant time beyond 45 days to the opposite party for filing its version. After considering the aforestated section in the light of the object with which the Act has been enacted, a three-Judge Bench of this Court came to the conclusion that in no case period beyond 45 days can be granted to the opposite party for filing its version of the case. B

5. Without discussing the aforestated three-Judge Bench Judgment in detail, we now turn to another judgment which has been referred to by the referring Bench. The other judgment which has been referred to is ***Kailash*** **(supra),** which pertains to Election Law. The issue involved in the said case was whether time limit of 90 days, as prescribed by the proviso to Rule 1 of Order 8 of the Civil Procedure Code, is mandatory or directory in nature. The said issue had arisen in an election matter where the written statement was not filed by the concerned candidate within the period prescribed under the relevant Election Law and the issue was whether in the Election trial, delay caused in filing the written statement could have been condoned. C D E

6. After considering the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 and several other judgments pertaining to grant of time or additional time for filing written statement or reply, in the interest of justice, this Court came to the conclusion that the provisions of Order VIII Rule 1 C.P.C. are not mandatory but directory in nature and therefore, in the interest of justice, further time for filing reply can be granted, if the circumstances are such that require grant of further time for filing the reply. F G

7. The judgment delivered in the case of ***Kailash*** **(supra)** H

A is later in point of time and while considering the said judgment, judgment delivered in the case of ***Dr. J.J. Merchant*** **(supra)** had also been considered by this Court.

8. In the aforestated circumstances, we have now to B consider whether in a case under the provisions of the Act, where a complaint has been filed and the opposite party has not filed its version to the case within 30 days or within extended period of 45 days, which at the most could have been granted by the District Forum, the version given by the opposite party C can be accepted.

9. The learned counsel appearing for the complainant submitted that the view expressed by the three-Judge Bench of this Court in ***Dr. J. J. Merchant*** **(supra)** is absolutely just D and proper and is on the subject, with which facts of the present case are concerned. The said case also deals with the provisions of Section 13(2)(a) of the Act, whereas case of ***Kailash*** **(supra)** pertains to an Election trial and under a different Act.

E 10. According to the learned counsel appearing for the complainant, in the instant case, in fact, there is no conflict between the two judgments referred to hereinabove as the judgment delivered in ***Dr. J. J. Merchant*** **(supra)** was prior in F time and was on the subject of the Act. Looking at the contents of the said judgment, it is clear that the said judgment also pertains to the provisions with regard to grant of time for filing version of the opposite party before the District Forum. Once a judgment has been delivered by a three-Judge Bench on G the same subject and on the same section, according to the learned counsel, there was no need to re-consider the same.

11. On the other hand, the learned counsel appearing for the other side contended that as per the view expressed in the case of ***Kailash*** **(supra)**, the District Forum can grant time H

beyond 15 days to the other side for giving its version or reply. The learned counsel submitted that the marginal note to Section 13 of the Act reads "procedure on completion of complaint'. Thus, the provisions incorporated in Section 13 of the Act are merely procedural and are directory in nature, as observed by this Court in the case of ***Kailash*** **(supra)**.

12. The learned counsel also referred to a judgment delivered in the case of ***Topline Shoes Ltd. v. Corporation Bank*** [(2002) 6 SCC 33]. This Court was faced with the same issue in the aforestated case. After discussing the provisions of Section 13(2) of the Act, this Court came to the conclusion that procedural rules should not be considered as mandatory in nature. In the said case, ultimately, this Court came to the conclusion that provision contained in Section 13(2)(a) of the Act is procedural in nature. According to the said judgment, the object behind enactment of the Act is speedy disposal of cases pending before the District Forum and therefore, it has been provided that reply should be filed within 30 days and the extension of time may not exceed 15 days. It has been further observed that no penal consequences have been provided in the case of extension of time beyond 15 days and therefore, the said provision with regard to extension of time beyond a particular limit is directory in nature and that would not mean that extension of time cannot exceed 15 days. Relying upon the said judgment and the judgment delivered in the case of ***Kailash*** **(supra)**, the learned counsel submitted that as ***Dr. J. J. Merchant*** **(supra)** has not been followed in a later case though it was considered in the case of ***Kailash*** **(supra)**, the correct legal position would be to treat the said provision with regard to maximum period for filing the reply is directory and not mandatory.

13. The learned counsel further submitted that some of the provisions of Civil Procedure Code do apply to the District

A Forum and in the light of the said fact, in his submission, the provisions of Section 13(2)(a) of the Act are merely directory and not mandatory in nature.

14. The learned counsel also submitted that if further time
B is not granted, irreparable damage would be caused to the other side and in a case where the other side/respondent is staying at a distant place, it might not be possible for the respondent/other side to file its version even within 45 days and therefore, in the interest of justice, the view expressed in
C the case of ***Kailash*** **(supra)** should be accepted.

15. Upon hearing the concerned counsel and upon perusal of both the judgments referred to hereinabove, which pertain to extension of time for the purpose of filing written
D statement, we are of the opinion that the view expressed by the three-Judge Bench of this Court in ***Dr. J.J. Merchant*** **(supra)** should prevail.

16. In the case of ***Dr. J.J. Merchant*** **(supra)**, which is on the same subject, this Court observed as under:
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"13. The National Commission or the State Commission is empowered to follow the said procedure. From the aforesaid section it is apparent that on receipt of the complaint, the opposite party is required to be given
F notice directing him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum or the Commission. For having speedy trail, this legislative mandate of not giving more than 45 days in
G submitting the written statement or the version of the case is required to be adhered to. If this is not adhered to, the legislative mandate of disposing of the cases within three or five months would be defeated.

H 14. For this purpose, even Parliament has amended

Order 8 Rule 1 of the Code of Civil Procedure, which reads thus:

> "1. Written statement. – The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:
>
> Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."

15. Under this Rule also, there is a legislative mandate that written statement of defence is to be filed within 30 days. However, if there is a failure to file such written statement within the stipulated time, the court can at the most extend further period of 60 days and no more. Under the Act, the legislative intent is not to give 90 days of time but only maximum 45 days for filing the version of the opposite party. Therefore, the aforesaid mandate is required to be strictly adhered to."

17. We are, therefore, of the view that the judgment delivered in the case of ***Dr. J.J. Merchant*** **(supra)** holds the field and therefore, we reiterate the view that the District Forum can grant a further period of 15 days to the opposite party for filing his version or reply and not beyond that..

18. There is one more reason to follow the law laid down in the case of ***Dr. J. J. Merchant*** **(supra)**. ***Dr. J. J. Merchant*** **(supra)** was decided in 2002, whereas ***Kailash*** **(supra)** was decided in 2005. As per law laid down by this Court, while deciding the case of ***Kailash*** **(supra)**, this Court ought to have respected the view expressed in ***Dr. J.J. Merchant*** **(supra)**

A as the judgment delivered in the case of ***Dr. J.J. Merchant*** **(supra)** was earlier in point of time. The aforestated legal position cannot be ignored by us and therefore, we are of the opinion that the view expressed in ***Dr. J.J. Merchant*** **(supra)** should be followed.

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19. Our aforestated view has also been buttressed by the view expressed by this Court in the case of ***Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr.*** [(2005) 2 SCC 673], wherein a question C had arisen whether the law laid down by a Bench of a larger strength is binding on a subsequent Bench of lesser or equal strength. After considering a number of judgments, a five-Judge Bench of this Court, finally opined as under :

D "12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

E (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot disagree or F dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the G Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing

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before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted. A

(3) The above rules are subject to two exceptions : (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and B

(ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in ***Raghubir Singh*** and ***Hansoli Devi***." C D E

20. In view of the aforestated clear legal position depicted by a five-Judge Bench, the subject is no more *res integra*. Not only this three-Judge Bench, but even a Bench of coordinate strength of this Court, which had decided the case of ***Kailash*** **(supra)**, was bound by the view taken by a three-Judge Bench in the case of ***Dr. J.J. Merchant*** **(supra)**. F

21. In view of the aforestated legal position, we are of the view that the law laid down by a three-Judge Bench of this Court in the case of ***Dr. J.J. Merchant*** **(supra)** should prevail. The Reference is answered accordingly. G

Nidhi Jain Reference answered. H