

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1947 OF 2019

(Against the Order dated 28/06/2019 in Appeal No. 79/2016 of the State Commission Orissa)

1. BRANCH MANAGER CHOLAMANDALAM M S
GENERAL INSURANCE COMPANY LTD.
PLOT NO. 6, PUSA ROAD, OPP. METRO PILLAR NO. 18,
KAROL BAGH
DELHI-110005

.....Petitioner(s)

Versus

1. MINATI DEI & ANR.
W/O. BASANTA KUMAR SAHOO, VILLAGE
CHADEYAPALLI, P.O. PANCHARIDA MANPUR, P.S.
SARANKUL,
DISTRICT-NAYAGARH

2. THE BRANCH MANAGER,NAYAGARH DISTRICT
CENTRAL CO-OPERATIVE BANK,
SARANKUL BARNCH, SARANKUL, AT PO/PS,
SARANKUL
DISTRICT-NARYAGARH

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER :

FOR THE PETITIONER : MR.ASHISH VERMA, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENTS : EX-PARTE VIDE ORDER DATED
18.03.2024

Dated : 14 June 2024

ORDER

1. The present Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against the order dated 28.06.2019, passed by the State Consumer Disputes Redressal Commission, Odisha ('State Commission') in First Appeal No.79/2016, wherein the Appeal filed by the Petitioner/ Opposite Party was dismissed. In turn, the District Consumer Disputes Redressal Forum, Khandapara Road, Nayagarh, Odisha ('District Forum') vide order dated 25.08.2015 allowed the complaint ex-parte.

2. For ease of reference, the parties mentioned in the original Complaint filed before the District Forum.

3. Brief facts of the case, as per the Complainant are that she obtained a loan of Rs.9,57,032/- from the OP-2 Nayagarh District Central Cooperative Bank, Sarankul for purchase of tractor Sonalika and Trolley Registration No. OD 25A-1394. The said tractor insured with the Opposite Party No.1-Cholamandalam MS General Insurance Co. Ltd. vide policy No.3380/006566/55/000/00 valid from 24.12.2013 to 23.12.2014. On 04.01.2014

when her husband went to bring the tractor for tilling purposes, he found the tractor was burnt due to fire by some unknown persons. An FIR was lodged with PS-Sarankul vide FIR No.02/2014, intimation was given to the Insurer and a claim for Rs.2,66,743/- was also filed with the Insurer. OP-1 did not settle the claim. Being aggrieved, she filed a complaint before the District Forum seeking compensation of Rs.3,00,000/- for deficiency in service and Rs.1,00,000/- for mental agony.

4. The OP-1 Insurance Company was proceeded ex-parte on 28.07.2015 due to non-appearance. In its reply, the OP-2 Bank has stated that there is no deficiency in service in the present case on its part and therefore the complaint should be dismissed qua OP-2. It was further contended that OP-2 provided loan to the Complainant as per the terms and conditions of loan agreement between the parties.

5. The District Forum, vide order dated 30.09.2015 allowed the complaint with the following directions:

“The complaint is allowed on contest against OP No.2 and on ex-parte against OP No.1 with cost. The OP No.1 is directed to pay the repair amount of Rs.2,66,743/- with interest w.e.f 25.03.2014 @ 8% to the complainant within two months from the date of this order. The OP No.2 to realize the loan amount from the complainant w.e. from 08.8.2015 after deduction of subsidy amount. Both OPs are liable to pay cost of Rs.5,000/- only each to the complainant within two months from the date of this order.”

(Extracted from translated copy)

6. Being dissatisfied, the Petitioner/OP-1 filed an Appeal against the District Forum Order dated 20.09.2015 and the State Commission, vide order dated 28.06.2019 dismissed the Appeal FA No.79 of 2016 with the following observations:

“From the above order of the learned District Forum it is clear that appellant was set ex parte due to non appearance and non filing of written version. The plea of appellant before the Forum below for not giving opportunity to file written version within the statutory period is not sustainable as the plea taken before the Forum below for not filing written version in due time was due to administrative paraphernalia which is not a good ground and not acceptable.

Further, the plea taken by appellant that Insurance Co. is liable to pay the amount as assessed by the surveyor and it is well settled preposition of law that surveyor report is an important document, is also not tenable. As there was no pleadings placed before learned District Forum and order was passed exparte against appellant. The submissions made by learned counsel for appellant at the stage of appeal is not sustainable.

From the observations made by learned District Forum along with materials available on record it is evident that respondent/complainant had submitted the repair bills of Rs.2,66,743/- before appellant-Insurance Co. but no payment made.

From the above observations, we are of considered opinion that learned District Forum has rightly ordered.

In the result, appeal is dismissed confirming the order dated 30.9.2015 passed by learned District Forum, Nayagarh in C. Case no. 24 of 2015.

Records received from the District Forum be sent back forthwith.”

7. In his arguments, learned Counsel for Petitioner/ OP-1 asserted that the OP-1 received notice on 13.07.2015 for the matter listed on 28.07.2015 before the District Forum. On 28.07.2015, OP-1 failed to appear and was proceeded against ex-parte. On 31.07.2015, OP-1 entered appearance through an advocate, seeking setting aside of the ex-parte order and permission to file a Written Version. OP-1 had explained the delay as was due to logistical issues, absence of any office at Nayagarh, branch office is in Bhubaneswar, the head office is in Chennai and this had led to a 2-day delay, which was neither intentional nor malicious and requested condonation of the delay. He further argued that the prescribed period for filing the Written Version is 30 days from the date of receipt of notice. In this case, notice was received on 13.07.2015, so the limitation period lapsed on 11.08.2015. The District Forum proceeded ex-parte against OP-1 on 28.07.2015, before the limitation period expired. He further contended that the District Forum's action was premature and sought to set aside the impugned orders, allowing OP-1 an opportunity to contest the case. He has relied upon the following judgments:

(i) Raj Process Equipments and Systems Pvt. Ltd. & Ors. Vs. Honest Derivatives Pvt. Ltd., 2022 LiveLaw (SC) 928;

(ii) Diamond Exports & Ans. Vs. United India Ins. Co. Ltd. & Ors., Civil Appeal No.7546 of 2021, decided on 14.12.2021 by the Hon'ble Supreme Court;

(iii) Hemlata Verma Vs. M/s. ICICI Prudential Life Insurance Co. Ltd. & Anr., Civil Appeal No.5131 of 2019, decided on 01.07.2019 by the Hon'ble Supreme Court;

(iv) M/s. Lintas India Pvt. Ltd. Vs. M/s. Prasar Bharti, CS(COMM) 72/2018 decided on 18.01.2023 by the Hon'ble Delhi High Court;

8. The Respondents No.1 and 2 did not appear on 18.03.2024 before this Commission and thus they were proceeded ex-parte. However, they filed their written submission before this Commission. The Respondent No.1 in Written Submissions stated in favour of the concurrent findings of the impugned orders passed by the fora below. He sought to dismiss the Revision Petition with costs. He relied upon the judgment of the ***Hon'ble Supreme Court in the case of Mrs. Rubi (Chandra) Dutta vs. M/s. United India Insurance Co. Ltd., 2011 AIAR (All India Appeal Report) (Civil) 451.*** The Respondent No.2 - Bank, in its Written Note of Arguments, submitted that it has granted loan to the Complainant as per loan agreement executed between the complainant and the Bank. There is no deficiency in service on its part and sought to dismiss the Revision Petition.

9. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned Counsels for the petitioner and Written Arguments submitted on behalf of the Respondents.
10. The main question revolves in the present case is whether the District Forum's decision dated 28.07.2015 to proceed ex-parte against Petitioner/OP-1 was appropriate?
11. In this regard, it is undisputed position that the notice was issued to the Petitioner/OP-1 by the District Forum on 07.07.2015 and the same was received by Petitioner/OP1 on 13.07.2015. The prescribed limitation for filing the Written Version is 30 days from the date of receipt of the notice. However, it is revealed from the learned District Forum order dated 28.07.2015 that the Petitioner/OP-1 was proceeded ex-parte on 28.07.2015. It is also uncontested position that the Petitioner/OP-1 entered appearance and sought to set aside the ex-parte order and to file the written version on 31.07.2015, which was still within the permissible period of 30 days. However, the learned District Forum did not consider the Petitioner/OP-1 request and passed final order on 30.09.2015. The learned State Commission also dismissed the Appeal filed by the Petitioner/OP-1 vide impugned order dated 28.06.2019.
12. A Constitution Bench of the Hon'ble Supreme Court in ***New India Assurance Company Limited vs. Hilli Multipurpose Cold Storage Private Ltd & Ors. (2020) 5 SCC 757*** vide order dated 04.03.2020 held that the Consumer Forums under the Consumer Protection Act, 1986 now replaced by the Consumer Protection Act, 2019, have no power to condone the delay in filing of the Written Statement if it is filed beyond 45 days of the date of receipt of the notice/summon as provided under Section 13(1)(a) of the said Act. However, the said decision was to operate prospectively.
13. Similarly, the Hon'ble Supreme Court in ***Civil Appeal No.7546 of 2021, Diamond Exports & Anr. vs. United India Insurance Company Ltd. & Ors. decided on 14.12.2021*** has clarified the position that only in such cases where the delay condonation Application has been allowed on or before 04.03.2020 or Applications seeking condonation of delay in filing the Written Statement has been filed on or before 04.03.2020 are to be considered and the delay can be condoned even beyond 45 days on being satisfied with reasons given in the Application.
14. In the present case, the Petitioner/OP-1 received the notice before the District Forum on 13.07.2015. The prescribed period of limitation for filing the Written Version is 30+15 days under Section 13(1)(a) of the Act. The prescribed limitation for filing the Written Version lapsed on 26.08.2015. However, the learned District Forum proceeded ex-parte against the Petitioner on 28.07.2015 itself. The Petitioner entered appearance and sought to set aside the ex-parte order and to file the written version on 31.07.2015, which was still within the permissible period. Therefore, clearly the District Forum order dated 28.07.2015 to proceed ex-parte against Petitioner before the expiry of prescribed period for filing written version is premature.
15. In view of the foregoing discussions, the RP No.1947 of 2019 is allowed and the learned State Commission order dated 28.06.2019 and the District Forum order dated 28.07.2015 and 30.09.2015 are set aside. The matter is remanded to the learned District

Forum for consideration to allow opportunity to Petitioner/OP-1 to file Written Version and decide the complaint, as per law.

16. All the pending Applications stand disposed of accordingly.

17. All the parties are directed to appear before the District Forum on 31.07.2024.

.....
AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER