



2024:DHC:4954



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 02nd JULY, 2024

IN THE MATTER OF:

+ **W.P.(C) 4733/2024**

DELL INTERNATIONAL SERVICES INDIA PRIVATE LIMITED

..... Petitioner

Through: Mr. Pratyush Miglani and Mr. Hrithik
Yadav, Advocates.

versus

ADEEL FEROZE & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court under Article 226 and 227 of the Constitution of India challenging the Order dated 12.12.2023, passed by the Delhi State Consumer Dispute Redressal Commission (*hereinafter referred to as 'the State Commission'*) in Revision Petition No.51/2023 by which the State Commission has upheld the Order dated 04.07.2023, passed by the Consumer Dispute Redressal Commission (*hereinafter referred to as 'the District Commission'*) in Complaint Case No.113/2022, which was filed by the Respondent No.1 herein against the Petitioner herein. *Vide* Order dated 04.07.2023, the District Commission has refused to take on record the written statement filed by the Petitioner herein on the ground that the same was filed beyond the period of limitation.

2. Considering the fact that the Consumer Forums are Tribunals which are vested with the powers to determine conclusively the rights of two or



more contending parties with regard to any matter in controversy between them and being a purely judicial Tribunal and the matter arising out of revisional jurisdiction of the State Consumer Redressal Commission which would attract the power of superintendence under Article 227, this Court gave a suggestion to the learned Counsel for the Petitioner that it would be appropriate for the Petitioner to file a Civil Miscellaneous Main (CMM) Petition, which is the appropriate course while approaching this Court under Article 226 of the Constitution of India. However, the learned Counsel for the Petitioner declined the suggestion of this Court and contended that since the present Writ Petition is a composite petition under Article 226 and 227 of the Constitution of India, the same is maintainable.

3. At this juncture, it is pertinent to mention that under Article 226 of the Constitution of India this Court holds Original Jurisdiction and under Article 227 of the Constitution of India this Court holds Appellate Jurisdiction.

4. The present Writ Petition arises out of an Order passed in a Revision Petition and, therefore, in the present Writ Petition, this Court is sitting as an Appellate authority over a revisional order passed by a judicial tribunal. It is also pertinent to mention that the Apex Court in Ibrat Faizan v. Omaxe Buildhome Private Limited, **2022 SCC OnLine SC 620**, after taking notice of its Judgment in Associated Cement Companies Limited v. P.N. Sharma, **AIR 1965 SC 1595**, has observed as under:

“44. An authority other than a court may be vested by statute with judicial power in widely different circumstances, which it would be impossible and indeed inadvisable to attempt to define exhaustively. The proper thing is to examine each case as it arises, and to ascertain whether the powers vested in the authority can be truly described as judicial functions or judicial powers of the State. For the purpose of this case, it is sufficient to say that any outside authority empowered by the State to



determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them satisfies the test of an authority vested with the judicial powers of the State and may be regarded as a tribunal within the meaning of Article 136. Such a power of adjudication implies that the authority must act judicially and must determine the dispute by ascertainment of the relevant facts on the materials before it and by application of the relevant law to those facts. This test of a tribunal is not meant to be exhaustive, and it may be that other bodies not satisfying this test are also tribunals. In order to be a tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule. An authority or body deriving its power of adjudication from an agreement of the parties, such as a private arbitrator or a tribunal acting under Section 10-A of the Industrial Disputes Act, 1947, does not satisfy the test of a tribunal within Article 136. It matters little that such a body or authority is vested with the trappings of a court. The Arbitration Act, 1940 vests an arbitrator with some of the trappings of a court, so also the Industrial Disputes Act, 1947 vests an authority acting under Section 10-A of the Act with many of such trappings, and yet, such bodies and authorities are not tribunals.

45. The word “tribunal” finds place in Article 227 of the Constitution also, and I think that there also the word has the same meaning as in Article 136.”

5. Instead of filing the present Petition as a CMM, the Petitioner has chosen to file the present Writ Petition under Articles 226 & 227 of the Constitution of India for the reason that an LPA would not be maintainable against an Order passed by this Court in CMM. In order to avoid further delay, this Court, in the present Writ Petition, has also examined the case on merits as well.

6. The facts of the case reveal that Respondent No.1 herein filed a Consumer Complaint Case No.113/2022 against the Petitioner herein before



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the District Commission on 19.09.2022. On 16.11.2022 summons was issued by the District Commission in the said complaint case. Admittedly, the summons was received by the Petitioner on 23.12.2022. It is stated that the documents received by the Petitioner on 23.12.2022 were incomplete. On the basis of the documents received by the Petitioner herein, a written statement was filed by the Petitioner on 31.01.2023. Though the Written Statement was objected to by the learned counsel for the Respondent No.1 herein before the District Commission as it was filed beyond the time prescribed, however, the same was taken on record. It is also stated that the complete set of documents was also handed over by the Counsel for the Respondent No.1 herein to the Counsel for the Petitioner before the District Commission. On 18.04.2023, a rejoinder to the written statement was filed by the Petitioner herein and on 16.05.2023 an application for condonation of delay of seven days in filing the written statement was filed by the Petitioner herein before the District Commission. The District Commission dismissed the application of the Petitioner herein by observing as under:

“3.2. The OP1/applicant is taking paradoxical plea and in the application it is contended in case there is delay it may be condoned but in the written arguments a different contention is taken that period is to be computed from 31.01.2023 when complete copy was provided. There is a further request that there is delay of 7 day and it may be condoned if the services is to be assumed from 23.12.2022. However, the record speaks the things differently.

When refused registered article containing notice to OP2 was received back in the Commission, it was opened and it was handed over to the counsel for OPs. It was a complete set without any deficiency. The registered article sent to OP1 was in the same state of affairs of postal charges and weight. Moreover, the applicants/OP2 enquired about the deficiency of



record then it is explained that copy of complaint was received and no other document. Whereas, the total documents are 1-113, out of them complaint pages are from page-1-15 and remaining papers are annexures (page-16-113), it would not be possible that for the same weight of article the complaint was just sent to the OP1. It infers and proved the OP was served with the complete record, otherwise the OPs would have mentioned on whatsapp in annexures were not received. Neither in the annexures nor in the application it is mentioned about receipt of complaint papers only or the number of papers. Therefore, the plea of OP1 is not bona-fide, it had received the complete set but in order to gain the time the whatsapp message was sent, which was protested by the complainant also by response to it and also in order to justify the delay the application was filed. Since, there is no satisfactory and natural course of event plea, application in respect of OP1 is dismissed.”

7. The District Commission refused to condone the delay of seven days in filing the Written Statement because of the false case put up by the Petitioner herein. The Petitioner herein thereafter challenged the Order passed by the District Commission by filing a Revision Petition under Section 47B of the Consumer Protection Act, 2019, before the State Commission. The State Commission *vide* its Order dated 12.12.2023 found that there was no material irregularity in the Order dated 04.07.2023 and refused to exercise its revisional jurisdiction. It is this Order which has been challenged by the Petitioner in the present Writ Petition.

8. The Petitioner has filed a screenshot of conversation between the Petitioner and the Respondent No.1 herein to demonstrate that the entire copy of the complaint along with all the annexures was not received by the Petitioner on 23.12.2022 and it was only handed-over to the counsel for the Petitioner before the District Commission only on 31.01.2023. The

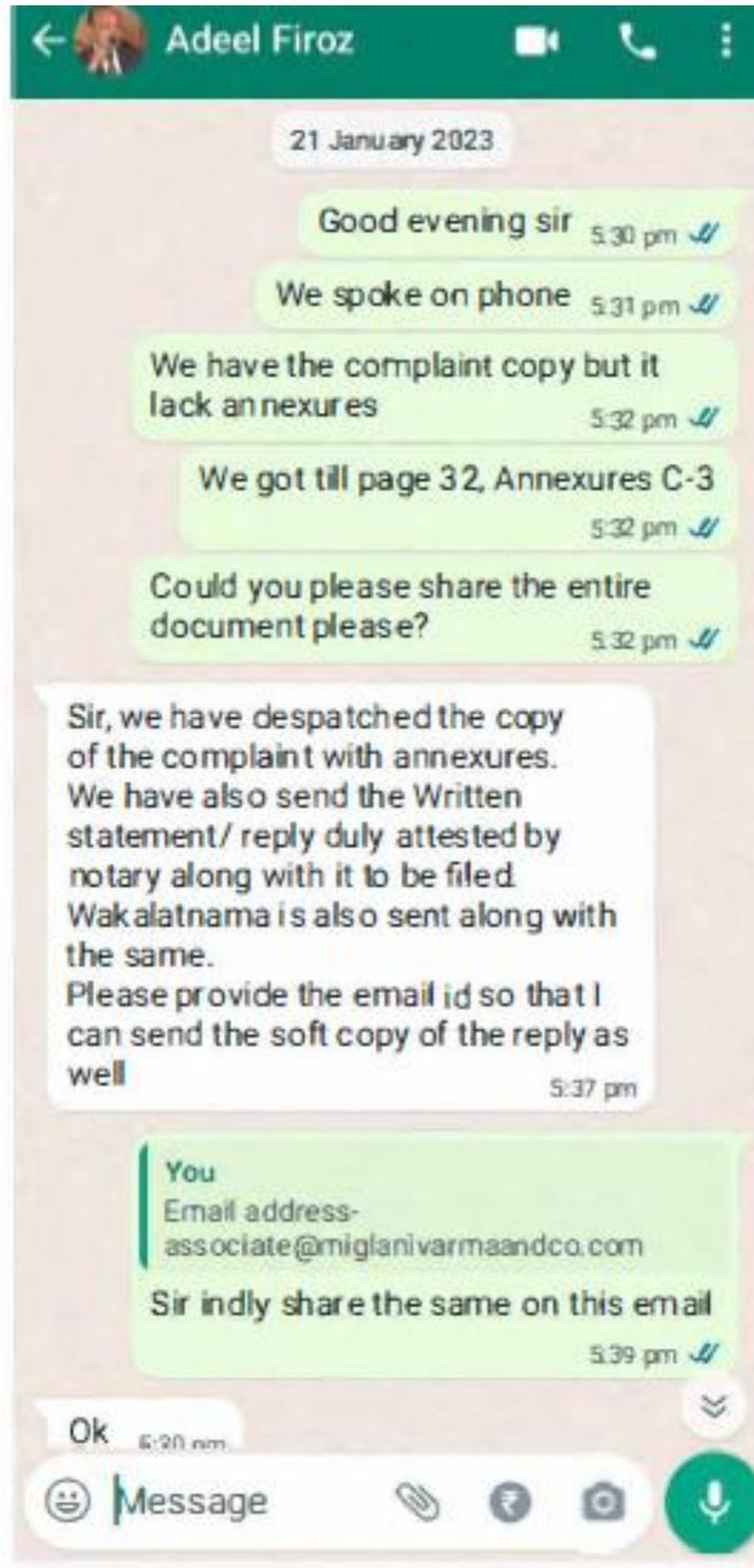


Whatsapp chats are reproduced herein and the same reads as under:





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9. The District Commission examined the matter in great detail. It called for postal receipts of the documents which were sent along with the summons and were received by the Petitioner on 23.12.2022. The District Commission analysed the weight of the documents sent along with the summons and the postal charges and came to the conclusion that complete set of documents was sent along with the summons and the same was received by the Petitioner on 23.12.2022. The District Commission, therefore, held that the application of the Petitioner herein for condonation of delay of seven days in filing the Written Statement is not *bona fide*.

10. This Court, under Articles 226 and 227 of the Constitution of India, is examining the present matter as an Appellate Authority and is exercising its power of superintendence. Even though the present Writ Petition is not a Writ of Certiorari, it is well established that even assuming that the instant case is one under writ of certiorari, then also the High Court does not sit as a Court of appeal and the Court is only concerned with the question as to whether the Tribunal has or has not acted without jurisdiction or contravened the principles of natural justice in the exercise of its jurisdiction. The Court does not substitute its decision to the one arrived at by the authorities below just because another view is possible. Unless the view taken by the forum below is perverse or arbitrary, the Court does not interfere with the decision of the forum below under Article 226 of the Constitution of India.

11. The screen shot of whatsapp conversations cannot be taken into account by this Court while dealing with a Writ Petition under Article 226 of the Constitution of India, more so, when there is nothing to show that the conversations were produced before the State Commission as this Court



does not find any reference of the same in the present Writ Petition. Further, there is no discussion of the same in the Order of the State Commission. In any event, the Whatsapp conversations cannot be read as evidence without there being a proper certificate as mandated under the Evidence Act, 1872.

12. The State Commission, in exercise of its revisional jurisdiction, has come to the conclusion that no valid reason has been given by the Petitioner herein for condonation of delay in filing the written statement. At this juncture, it is pertinent to reproduce Section 38(2)(a) of the Consumer Protection Act, 2019 and the same reads as under:

“38. Procedure on admission of complaint.—

(2) Where the complaint relates to any goods, the District Commission shall,—

(a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint 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 it;.....”

13. A reading of the abovementioned Section would show that the period of filing a written statement after receiving the copy of the complaint is 30 days and the same can be extended up to fifteen days if the District Commission deems it fit to do so. In the present case, the summons was issued on 17.12.2022 and it was received by the Petitioner herein on 23.12.2022 and the period of 30 days got over on 21.01.2023. The Petitioner filed its Written Statement only on 31.01.2023 and raised a plea that it has not received a complete set of documents along with the summons when, in fact, a complete set of documents has been served to the Petitioner along



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with the summons as is evident from the weight of the documents sent along with the summons and the postal charges.

14. In view of the above, this Court does not find any reason to hold that the reason given by the District Commission in refusing to condone the delay in filing the written submission is erroneous.

15. Accordingly, the Writ Petition is dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

JULY 02, 2024

Rahul