

**Consumer Protection Act, 1986, Section 13 (2) (a) and Section 13 (2 ) (b) (ii) - Consumer Protection Regulations, 2005, - Learned District Consumer Disputes Redressal Forum, Imphal should not have passed the order for proceeding ex parte, before completing the hearing hours of the Consumer Forum, for denying the statutory rights of the petitioner to file the written statement/written objection as provided under Section 13 (2) (a) of the Consumer Protection Act, 1986 - Denial of such right would cause gross injustice to the petitioner and as such, the passing of impugned order would amount to exercising its jurisdiction so vested with material irregularity and illegally - Therefore, we have no alternative but to set aside the impugned order passed by the learned District Consumer Disputes Redressal Forum, and thereby allowing the petitioner to file the written statement/ written objection in the complaint case - In the result, the impugned order is hereby set aside and the Complaint Case before the learned District Consumer Disputes Redressal Forum, Imphal shall start from the stage of filing the written statement/ written objection of the complaint case.**

#### **Facts:**

Petitioner filed a Vakalatnama for appointing his counsel on 26.05.2016 and the complaint case was fixed for written objection on 14.06.2016. However, the complaint case was adjourned to 30.06.2016 for filing of written objection/written statement. On 30.06.2016, when the counsel of the petitioner reached the learned District Consumer Disputes Redressal Forum, Imphal at about 1.00 p.m. the case was found to have been proceeded Ex-parte. It is stated that the learned counsel for the petitioner could not reach the District Consumer Disputes Redressal Forum, Imphal at 11.00 a.m. as the counsel of the petitioner was struck in heavy traffic. It is categorically alleged that the learned counsel for the petitioner at that relevant time was accompanied with written objection/written statement of the petitioner for filing in the complaint case. After reaching the learned District Consumer Disputes Redressal Forum, Imphal at about 1.30 p.m., the learned counsel for the petitioner requested the learned counsel for the respondent/complainant to receive the show cause/written statement of the petitioner. However, the learned counsel of the respondent refused to receive the same saying that the case had been proceeded Ex-parte.

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State Consumer Disputes Redressal Commission

BEFORE THE MANIPUR STATE CONSUMER DISPUTES REDRESSAL COMMISSION (STATE COMMISSION) IMPHAL MANIPUR

Nameirakpam Ronel Singh vs Leisangthem Ibomcha Singh

22 February, 2017

Revision Petition No. RP/1/2016 (Arising out of Order Dated 30/06/2016 in Case No. CC/12/2016 of District Imphal)

BEFORE:

HON'BLE MR. JUSTICE T.Nandakumar PRESIDENT

HON'BLE MR. M.Padmeshwor Singh JUDICIAL MEMBER

HON'BLE MRS. A.Nibedita Devi MEMBER

22 Feb 2017

ORDER

**By Justice T. Nandakumar Singh.**

Petitioner is challenging the order of the learned District Consumer Disputes Redressal Forum, Imphal dated 30.06.2016 passed in Complaint Case No. 12 of 2016 for proceeding Ex-parte against the petitioner.

2. Sans detail but sufficient fact for deciding the matter in question in the present Revision Petition is briefly recapitulated. The respondent/complainant filed the Complaint Case No. 12 of 2016 against the petitioner before the learned District Consumer Disputes Redressal Forum, Imphal for a compensation of Rs. 19,00,000/- (Rupees nineteen lakhs). The respondent/complainant alleged that there was deficiency of service on the part of the petitioner in repairing the Fiat Punto Aveo car which met with an accident on 29.11.2016 in spite of full payment for the repair of the vehicle.

3. Notice of the Complaint Case No. 12 of 2016, was served to the petitioner on 25.05.2016 after admission of the complaint, with a direction to appear before the learned District Consumer Disputes Redressal Forum, Imphal on 26.05.2016. After receiving the said notice of summon, the petitioner filed a Vakalatnama for appointing his counsel on 26.05.2016 and the complaint case was fixed for written objection on 14.06.2016. However, the complaint case was adjourned to 30.06.2016 for filing of written objection/written statement. On 30.06.2016, when the counsel of the petitioner reached the learned District Consumer Disputes Redressal Forum, Imphal at about 1.00 p.m. the case was found to have been proceeded Ex-parte. It is stated that the learned counsel for the petitioner could not reach the District Consumer Disputes Redressal Forum, Imphal at 11.00 a.m. as the counsel of the petitioner was struck in heavy traffic at Uripok. It is categorically alleged that the learned counsel for the petitioner at that relevant time was accompanied with written objection/written statement of the petitioner for filing in the complaint case. After reaching the learned District Consumer Disputes Redressal Forum, Imphal at about 1.30 p.m., the learned counsel for the petitioner requested the learned counsel for the respondent/complainant to receive the show cause/written statement of the petitioner. However, the learned counsel of the respondent refused to receive the same saying that the case had been proceeded Ex-parte.

4. The petitioner filed an application being Misc. Case No. 36 of 2016 on 05.07.2016 for allowing to file the written objection/written statement of the petitioner. The respondent

refused to receive a copy of the said Misc. Case No. 36 of 2016 when the learned counsel of the petitioner requested him/her to receive the same. The said Misc. Case No. 36 of 2016 was disposed of by the learned District Consumer Disputes Redressal Forum, Imphal by passing an order dated 19.09.2016.

5. After admitting the present Revision Petition, the records of the Complaint Case No. 12 of 2016 was called from the learned District Consumer Disputes Redressal Forum, Imphal. On receipt of the records of the same, this Commission had carefully perused the same and found that the petitioner had filed the written objection/written statement dated 30.06.2016 before the District Consumer Disputes Redressal Forum, Imphal and the learned District Consumer Disputes Redressal Forum, Imphal had made an endorsement for receiving the said Misc. Case accompanied with the written objection/written statement of the petitioner dated 30.06.2016 on 05.07.2016.

6. Heard Mr. S. Robindro, learned counsel appearing for the petitioner and Mr. S. Lokendro Singh, learned counsel appearing for the respondent.

7. Section 13 of the Consumer Protection Act, 1986 provides the procedure on admission of complaint. Section 13(2) which would be pertinent for deciding the Revision Petition is reproduced hereunder :

*“13. Procedure on admission of complaint.*

*(2) The District Forum shall, if the complaints 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) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer disputes, –*

*(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or*

*(ii) [ex parte on the basis of evidence] brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum ;*

*(c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.”*

8. Section 13 (2) (b) (ii) of the Consumer Protection Act, 1986 provides for ex parte on the

basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum. Section 13 (2) (a) of the Consumer Protection Act, 1986 clearly provides that the opposite party should give his version/written statement within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum.

9. In the instant case, admittedly, the petitioner received the notice from the learned District Consumer Disputes Redressal Forum, Imphal directing him to file the written objection on 25.05.2016. Section 13 (2) (a) of the Consumer Protection Act, 1986 provides that written statement/show cause could be filed within the extended period of 45 days but the said period of 45 days was not completed when the petitioner filed his written objection/written statement dated 30.06.2016 before the learned District Consumer Disputes Redressal Forum, Imphal and undoubtedly the learned District Consumer Disputes Redressal Forum, Imphal made an endorsement on 05.07.2016 for receiving the said written objection/written statement.

10. Mr. S. Robindro, learned counsel appearing for the petitioner strenuously contended that Regulation 5 of the Consumer Protection Regulations, 2005 clearly provides the working hours of the District Forum. For easy reference, Regulation 5 of the Consumer Protection Regulations, 2005 is reproduced hereunder :

*"Hearing hours. - Subject to the provisions of the rules, the normal working hours of the Consumer Forum for hearing matters shall be from 10.30 a.m to 1.00 p.m. and 2.00 p.m. to 4.00 p.m. on all working days of the Central Government in the case of the National Commission and on all working days of the State Government in the case of the State Commission and the District Forum."*

*On bare perusal of the Regulation 5, it is clear that the normal working hour of the District Forum shall be from 10.30 a.m. to 1.00 p.m. and 2.00 p.m. to 4.00 p.m. on all working days of the State Government. By referring to Section 13 (2) (a), Section 13 (2) (b) (ii) and Regulation 5 of the Consumer Protection Regulations, 2005, Mr. Robindro further contended that the petitioner/opposite party had a right to file his written objection/written statement upto 4 p.m. of 30.06.2016 as permitted by the learned District Consumer Disputes Redressal Forum, Imphal vide its order dated 14.06.2016 which reads as " 14.06.2016. The complainant by counsel appeared. The opposite party is also appeared by his counsel and sought for adjournment of the proceeding for today on the ground of incomplete arrangement of written statement/objection. It is not objected. Allowed.*

*Fix on 30.06.2016 for filing of written statement/objection if any."*

Mr. S. Robindro, learned counsel for the petitioner further contended that the learned District Consumer Disputes Redressal Forum, Imphal has acted in exercise of its jurisdiction illegally and with material irregularity in passing the impugned order dated 30.06.2016 and as such this Commission in exercise of its jurisdiction under Section 17 (1) (b) of the Consumer Protection Act, 1986 may interfere with the impugned order dated 30.06.2016 passed by the learned District Consumer Disputes Redressal Forum, Imphal in

Complaint Case No. 12 of 2016.

11. Mr. Lokendro, the learned counsel appearing for the respondent strenuously contended that this Commission by invoking its jurisdiction under Section 17 (1) (b) of the Consumer Protection Act, 1986 could interfere with the impugned order dated 30.06.2016 only on jurisdictional matter. Section 17 (1) (b) of the Consumer Protection Act, 1986 clearly provides that the State Commission in exercise of its Revisional jurisdiction can interfere with the order of the District Consumer Disputes Redressal Forum, Imphal only when : (i) District Forum has exercised a jurisdiction not vested in by law, or (ii) has failed to exercise a jurisdiction so vested, or (iii) has acted in exercise of its jurisdiction illegally or with material irregularity. Section 17 (1) (b) of the Consumer Protection Act, 1986 is parimateria with section 115 of the Code of Civil Procedure, 1908. Civil Court similarly, in exercise of its jurisdiction under Section 115 of the Code of Civil Procedure, 1908 can interfere with the order of the Subordinate Court if :- (a) have exercised a jurisdiction not vested in it by law, or (b) have failed to exercise a jurisdiction so vested, or (c) have acted in the exercise of its jurisdiction illegally or with material irregularity. No doubt, it is no more res integra that the revisional court can interfere with the order of the Subordinate Court on jurisdictional matters.

12. For reading, Section 17 (1) (b) of the Consumer Protection Act, 1986 and Section 115 of the Code of Civil Procedure, 1908 at juxtaposition; Section 17 (1) (b) of Consumer Protection Act, 1986 and Section 115 of Code of Civil Procedure, 1908 are reproduced hereunder :

Section 17 (1) (b) of Consumer Protection Act, Section 115 of the Code of Civil Procedure, 1986

*15. Revision. - [(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears -*

*17. Jurisdiction of the State Commission. -*

*(a) to have exercised a jurisdiction not vested in [(1)] Subject to the other provisions of this Act, it by law, or the State Commission shall have jurisdiction -*

*(b) to have failed to exercise a jurisdiction so*

*(a) ..... vested, or*

*(b) to call for the records and pass appropriate (c) to have acted in the exercise of its orders in any consumer dispute which is pending jurisdiction illegally or with material before or has been decided by any District irregularity , Forum within the State, where it appears to the State Commission that such District Forum has the High Court may make such order in the case exercised a jurisdiction not vested in it by law, or as it thinks fit : has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally [Provided that the High Court shall not, under or with material irregularity . this section, vary or reverse any*

*order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.*

13. On reading Section 17 (1) (b) of Consumer Protection Act, 1986 and Section 115 of the Code of Civil Procedure, 1908 at juxtaposition, it is clear that the reasons for invoking the revisional jurisdiction of this Commission under Section 17 (1) (b) of the Consumer Protection Act, 1986 are similar with those under Section 115 of the Code of Civil Procedure, 1908. Mr. Lokendro, the learned counsel appearing for the respondent further contended that it is not open to the High Court in the exercise of its revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908, to question the finding of fact recorded by a subordinate Court. Section 115 applies to the cases involving questions of jurisdiction, i.e. question regarding irregular exercise or non-exercise of jurisdiction or illegally assumption of jurisdiction by a Court and it is not directed against conclusion of law or fact in which question of jurisdiction are not involved [reference Manindra Land and Buyilding Co. Ltd. Vs. Bhuthnath Banerjee and others AIR 1964 Supreme Court ]. Mr. Lokendro in order to buttress his submission also relied upon the decisions of the Apex Court in (i) Pandurang Dhoni Chogule and others Vs. Maruti Hari Jadhav and others AIR 1966 SC 153 and (ii) The Managing Director (MIG) Hindustan Aeronautics Ltd. Balangar, Hyderabad and another Vs. Ajit Prasad Tarway, Manager (Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar, Hyderabad AIR 1973 Supreme Court 76 . This Commission is not disputing the question of law propounded by Mr. Lokendro. However, the question falls for consideration in this Revision Petition is whether or not the learned District Consumer Disputes Redressal Forum, Imphal had exercised its jurisdiction illegally and/or with material irregularity?

14. There is basic difference between Appellate and Revisional jurisdiction. Appellate jurisdiction confers right upon the aggrieved persons to complain in the prescribed manner to a higher forum whereas, revisional power has a different object and purpose altogether as it confers the right and responsibility upon the higher forum to keep the subordinate tribunals/court within the limits of the law. Such revisional power have to be exercised sparingly, only as a discretion in order to prevent gross injustice and the same cannot not be claimed, as a matter of right by any party . [reference State of Gujarat and Another Vs. Gujarat Revenue Tribunal bar Association and Another (2012) 10 SCC 353 ].

It is clear the ratio decendi of the Gujarat Revenue Tribunal bar Association case (supra) that revisional power could be exercised in order to prevent gross injustice to the party. In the present case, if the petitioner is not permitted to file the written objection/written statement within the periods permitted under section 13 (2) (a) of the Consumer Protection Act, 1986 because of the impugned order dated 30.06.2016 which was passed by the learned District Consumer Disputes Redressal Forum, Imphal in exercise of his jurisdiction so vested illegally, a gross injustice shall cause to the petitioner.

15. The scope of revisional power of the Court and appellate power of the Court has been discussed by the Hon'ble Supreme Court (Constitution Bench) in Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh (2014) 9 SCC 78 and held that there is distinctive

difference between the appellate jurisdiction and revisional jurisdiction. Para 28, 29, 30 and 31 of the SCC in *Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh (supra)* read as follows :

*"28. Before we consider the matter further to find out the scope and extent of revisional jurisdiction under the above three Rent Control Acts, a quick observation about the "appellate jurisdiction" and "revisional jurisdiction" is necessary. Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceedings has an inherent right to appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for the appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of Revisional Court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the Tribunal/appellate authority, the decision of the Revisional Court is the operative decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction .*

*29. With the above general observation, we shall now endeavour to determine the extent, scope, ambit and meaning of the terms "legality or propriety"; "regularity, correctness, legality or propriety"; and "legality, regularity or propriety" which are used in the three Rent Control Acts under consideration:*

*29.1. The ordinary meaning of the word "legality" is lawfulness. It refers to strict adherence to law, prescription, or doctrine; the quality of being legal .*

*29.2 The term "propriety" means fitness; appropriateness, aptitude; suitability; appropriateness to the circumstances or condition conformity with requirement; rules or principle, rightness, correctness, justness, accuracy.*

*29.3 The terms "correctness" and "propriety" ordinarily convey the same meaning, that is, something which is legal and proper. In its ordinary meaning and substance, "correctness" is compounded of "legality" and "propriety" and that which is legal and proper is "correct" .*

*29.4. The expression "regularity" with reference to an order ordinarily relates to the procedure being followed in accord with the principles of natural justice and fair play.*

*30. We have already noted in the earlier part of the judgment that although there is some difference in the language employed by the three Rent Control Acts under consideration which provide for revisional jurisdiction but, in our view, the revisional power of the High Court under these Acts is substantially similar and broadly such power has the same scope save and except the power to invoke revisional jurisdiction suo motu unless so provided*

expressly. None of these statutes confer on revisional authority the power as wide as that of the appellate court or appellate authority despite such power being wider than that provided in Section 115 of the Code of Civil Procedure. The provision under consideration does not permit High Court to invoke the revisional jurisdiction as the cloak of an appeal in disguise. Revision does not lie under these provisions to bring the orders of the trial court/rent Controller and the appellate court/appellate authority for rehearing of the issues raised in the original proceedings .

31. We are in full agreement with the view expressed in *Sri Raja Lakshmi Dyeing Works* that where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become coextensive with that of the trial court or the subordinate tribunal which is never the case. The classic statement in *Dattonpant* that revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a second court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three rent control statutes, the High Court is not conferred a status of second court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent.

16. Marginal note of Section 13 of the Consumer Protection Act, 1986 clearly speak on unequivocal terms that it is a procedure only. The Hon'ble Supreme Court (3 Judges) in *Salem Advocate Bar Association, T.N. Vs. Union of India (2005) 6 SCC 344* held that

*"20. The use of the word "shall" in Order 8 Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word "shall" is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice ."*

17. The Hon'ble Supreme Court (Constitution Bench) in *Rupa Ashok Hurra Vs. Ashok Hurra and Another (2002) 4 SCC 388* held that

*"69. ... Manifest injustice is curable in nature rather than incurable and this Court would lose its sanctity and thus would belie the expectations of the founding fathers that justice is*

above all. There is no manner of doubt that procedural law/procedural justice cannot overreach the concept of justice and in the event an order stands out to create manifest injustice, would the same be allowed to remain in silentio so as to affect the parties perpetually or the concept of justice ought to activate the Court to find a way out to resolve the erroneous approach to the problem? Mr. Attorney-General, with all the emphasis in his command, though principally agreed that justice of the situation needs to be looked into and relief be granted if so required but in the same breath submitted that the Court ought to be careful enough to tread on the path, otherwise the same will open up a Pandora's box and thus, if at all, in rarest of the rare case, further scrutiny may be made. While it is true that law courts have overburdened themselves with the litigation and delay in disposal of matters in the subcontinent is not unknown and in the of any further appraisal of the matter by this Court, it would brook no further delay resulting in consequences which are not far to see but that would by itself not in my view deter this Court from further appraisal of the matter in the event the same, however, deserves such an additional appraisal – the note of caution sounded by Mr. Attorney-General as regards opening up of a Pandora's Box, strictly speaking, however, though may be very practical in nature but the same apparently does not seem to go well with the concept of justice as adumbrated in our Constitution. True it is, that practicability of the situation needs a serious consideration more so when this Court could do without it for more than 50 years, which by no stretch of imagination can be said to be a period not so short. I feel it necessary, however, to add that it is not that we are not concerned with the consequences of reopening of the issue but the redeeming feature of our justice delivery system, as is prevalent in the country, is adherence to proper and effective administration of justice in strict. In the event there is any affectation of such administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system, technicality ought not to outweigh the course of justice – the same being the true effect of the doctrine of *ex debito justitiae*. The oft-quoted statement of law of Lord Hewart, C.J. in *R. v. Sussex Justices, ex p McCarthy* that it is of fundamental importance that justice should not only be done, should manifestly and undoubtedly be seen to be done, had this doctrine underlined and administered therein .  
....."

18. Ratio decendi of Ashok Hurra' case (supra) was reiterated by the Hon'ble Supreme Court in *Ashiq Hussain Faktoo Vs. Union of India & Anr.* (2016) 9 SCC 739 . The Hon'ble Supreme Court (3 Judges) in *Kailash Vs. Nanhku & Ors.* (2005) 4 SCC 480 held that "42. Ordinarily, the time schedule prescribed by Order 8 Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps fro drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for the asking, more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order 8 Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by

reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended .”

19. It was so happened that the Hon’ble Supreme Court without considering the decisions of the Constitution Bench and also the 3 (three) Judges Bench of the Supreme Court in Ashok Hurra and Another’s case (supra) and in Salem Advocate Bar Association, T.N.’s case (supra) respectively that procedure is a handmaid and not the Mistress of justice and it is made to advance the cause of justice and not to defeat it in New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage Pvt. Ltd. AIR 2016 SC 86 held that “17. We are, therefore, of the view that the judgment delivered in the case of Dr. J.J. Merchant (AIR 2002 SC 2931 : 2002 AIR SCW 3424) (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.”

20. Very recently, the Hon’ble Supreme Court passed an order dated 10.02.2017 in Civil Appeal No. ..... of 2017 (D. No. 2365 of 2017) Reliance General Insurance Co Ltd. & Anr Vs. M/s Mampee Timbers and hardwares Pvt. Ltd. & Anr that

“Heard.

Delay condoned.

The question involved in this appeal is whether the time stipulated under Section 13 of the Consumer Protection Act, 1986 for filing written statement is mandatory and whether no flexibility is available with the Court in the interest justice.

This question has been answered in the affirmative in New India Assurance Company Limited Vs. Hilli Multipurpose Cold Storage Private Limited in Civil Appeal No. D. 35086 of 2013 etc. (2015) 16 SCC 20 , reiterating the view in J.J. Merchant and Ors. Vs. Shrinath Chaturvedi (2002) 6 SCC 635 .

Thereafter, the matter has been referred to a larger bench in view of contra views in the judgments of this Court in Topline Shoes Limited Vs. Corporation bank (2002) (6) SCC 83; Kailash Vs. Nankhu (2005) 4 SCC 480 and Salem Advocate bar Association Vs. Union of India (2005) 6 SCC 344.

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 Fora.

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 the 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 appeal".*

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 payments 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."

21. In the given case, keeping in view of Section 13 (2) (a) and Section 13 (2 ) (ii) of the Consumer Protection Act, 1986 and Regulation 5 of the Consumer Protection Regulations, 2005, we are of the considered view that the learned District Consumer Disputes Redressal Forum, Imphal should not have passed the impugned order dated 30.06.2016 for proceeding ex-parte, before completing the hearing hours of the Consumer Forum on 30.06.2016, for denying the statutory rights of the petitioner to file the written statement/written objection as provided under Section 13 (2) (a) of the Consumer Protection Act, 1986. Denial of such right would cause gross injustice to the petitioner and as such, the passing of impugned order dated 30.06.2016 would amount to exercising its jurisdiction so vested with material irregularity and illegally. Therefore, we have no alternative but to set aside the impugned order dated 30.06.2016 passed by the learned District Consumer Disputes Redressal Forum, Imphal in Complaint Case No. 12 of 2016 and thereby allowing the petitioner to file the written statement/ written objection dated 30.06.2016 in the complaint case being No. Complaint Case No. 12 of 2016. In the result, the impugned order dated 30.06.2016 is hereby set aside and the Complaint Case No. 12 of 2016 before the learned District Consumer Disputes Redressal Forum, Imphal shall start from the stage of filing the written statement/ written objection of the complaint case.

22. Revision petition is allowed.

23. Registry is directed to send back the record of the Complaint Case No. 12 of 2016 to the learned District Consumer Disputes Redressal Forum, Imphal immediately.

24. Parties are directed to appear before the learned District Consumer Disputes Redressal Forum, Imphal on 10.03.2017.