

"Only notice and no complaint: All batter in vain!"

written by Anshu Singh | May 21, 2020



Filing a Response to a Consumer Complaint Time Bound SC Says

It is true that '*justice hurried is justice buried*. But in the same breath, it is also said that '*justice delayed is justice denied*'.<sup>[1]</sup>

A Constitution Bench of the Hon'ble Supreme Court, in the matter of *New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd.*<sup>[2]</sup> held that the District Forums have no power to extend the time for filing a response to a consumer complaint beyond the period of 15 days. The Court also stated that u/s 13 of the Consumer Protection Act, 1986 ("Act") the starting point of limitation of 30 days would be from the date of receipt of the notice accompanied with the complaint by the opposite party, and not just a mere receipt of the notice of the complaint.

Before the Bench, the following issues were sought in the reference filed concerning the grant of time in filing the response to a complaint under the provisions of the Act:

1. Whether the time period for filing the response to the complaint by the opposite party is within 30 days or an extended period of not more than 15 days under Section 13(2) (a) of the Act and if the same should be read as mandatory or directory?
2. What is considered to be the start point of the limitation of 30 days provided under Section 13(2) (a) of the Act?

In response to the first question, it was held that the time limit as provided under Section 13(2)(a) of the Act which is prescribed for filing the reply to the complaint under the Act is mandatory and not a directory and the same should be strictly adhered to. This means that the District Forum does not have the power to extend beyond 15 days in addition to the prescribed 30 days.

After taking into consideration the Statement of Objects and Reasons of the Consumer Protection (Amendment) Bill, 2002 i.e. quick disposal of disputes, the Court observed that sub Section (3A) of Section 13 was inserted with the intention that the complaint should be heard expeditiously and an attempt should be made in deciding the complaint within 3 months and within 5 months if the analysis or testing is required

The intention of the legislature stands clear by enacting a provision under Section 13(3) of the Act. If the opposite party is denied a further extension of time for filing the response to the complaint, it does not mean that there

is a violation of the principles of natural justice but in fact, reinforces the time limit specified in Section 13(2) (a) of the Act. It is also to be noted that the proviso attached to the sub-Section requires that there should not be any adjournment granted and even if granted, upon the imposition of the cost it should be for a valid reason which is to be recorded in writing *"Law prevails over equity, as equity can only supplement the law, and not supplant it."* [3]

Moreover, it is to be kept in mind that the Act has been enacted for the benefit of the consumer and to provide for expeditious disposal of disputes and that the time period of 45 days would not mean that the complaint can avail such a maximum time period as a matter of right always in order to file its response.

Thus, the intention of the legislature is very clear that the opposite party in order to file the response would get the additional 15 days after 30 days time period only at the discretion of the forum. If the legislature's intention was not to make such provision mandatory but only directory, the provision for further extension of the period for filing the response beyond 45 days would have been provided, as has been provided for in the cases of filing of complaint and appeals.

It is furthermore observed that where the provision of the Act is unambiguous and totally clear there is no scope of interpretation on the equitable grounds.

The Court took the reference in a case[4] in which held that *"if the provision is couched in prohibitive or negative language, it can rarely be a directory"*. The use of peremptory language in a negative form is per se indicative of the interest that the provision is to be mandatory.

Thus, the Court is also of the view *"that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision if the language used therein is unequivocal."*

In answer to the second question, the court held that a conjoint reading of Clauses (a) and (b) of sub Section (2) of Section 13 would make the position absolutely clear, that from the date of receipt of notice accompanied by a copy of the complaint the point of limitation of 30 days commences and not merely upon the receipt of the notice.

It clearly makes sense as the response is to be given to the averments made in the complaint and the same is not possible until and unless the copy of the complaint is served to the opposite party. Hence, mere service of notice without the copy of the complaint would not suffice and cannot be the commencing point of 30 days under the Act. It is pertinent to mention that the objection of not receiving a copy of the complaint along with the notice should be raised on the first date itself and not thereafter, as if the same is permitted, it would defeat the essence of the Act of providing speedy redressal to consumer disputes.

Thus, this judgment clarifies both points, and in response to the first question, it is clear that the District Forum does not have any power to extend the time beyond the period of 15 days in addition to 30 days as under Section 13 of the Act to file the response to the complaint. In response to the second question, it is clear that the commencing point of limitation of 30 days under Section 13 of the Act would be from the date of receipt of the notice accompanied with the complaint by the opposite party and not mere

receipt of the notice of the complaint.

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- Consumer Complaint Time Bound SC
- [1] Para 20, New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd., Civil Appeal No. 10941-10942 of 2013
- [2] Civil Appeal No. 10941-10942 of 2013
- [3] Para 19, New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd., Civil Appeal No. 10941-10942 of 2013
- [4] Lachmi Narain v. Union of India – (1976) 2 SCC 953
- [1] Para 20, New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd., Civil Appeal No. 10941-10942 of 2013
- [2] Civil Appeal No. 10941-10942 of 2013
- [3] Para 19, New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd., Civil Appeal No. 10941-10942 of 2013
- [4] Lachmi Narain v. Union of India – (1976) 2 SCC 953

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