

statement to the consumer complaint, original respondent nos. 1 & 2-petitioners herein have preferred the present special leave petition.

2. By order dated 26.09.2018, the State Commission rejected the application filed by the petitioners herein seeking condonation of delay in filing the written statement/written version to the consumer complaint. It is not in dispute that the written version/written statement was filed beyond the prescribed period of limitation provided under the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act'), i.e., beyond the period of 45 days. It is not in dispute that as per the provisions of the Act, the written version/written statement is required to be filed within 30 days and the same can be extended by a further period of 15 days. The order passed by the State Commission came to be confirmed by the National Commission. Hence, the present special leave petition.

3. Shri Ashish Choudhary, learned Advocate appearing on behalf of the petitioners has vehemently submitted that it is true that as per the decision of the Constitution Bench of this Court in the case of *New India Assurance company Limited v. Hilli Multipurpose Cold Storage Private Limited*, reported in (2020) 5 SCC 757, the District Forum has no power to extend the time to file the response to the complaint beyond the period of 15 days in addition to 30 days as is envisaged under Section 13 of the Act. It is submitted that however as observed in paragraph 63, the said judgment shall be applicable prospectively

only. Therefore, it is the case on behalf of the petitioners that the aforesaid decision shall not be applicable retrospectively, and more particularly to the complaints filed before the said decision. It is submitted that in the present case the application for condition of delay came up for consideration before the State Commission on 26.09.2018 and on that date there was a judgment of this Court in the case of *Reliance General Insurance Co. Ltd. v. M/s Mampee Timbers & Hardwares Pvt. Ltd. (Diary No. 2365 of 2017 decided on 10.02.2017)* directing the consumer fora to accept the written statement beyond the stipulated time of 45 days in an appropriate case, on suitable terms, including the payment of costs and to proceed with the matter, keeping in view the fact that the judgment of this Court in the case of *New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Private Limited, reported in (2015) 16 SCC 20* has been referred to a larger Bench. Therefore, it is the case on behalf of the petitioners that the State Commission ought to have condoned the delay in filing the written statement/written version to the consumer complaint.

4. Having heard learned counsel appearing on behalf of the petitioners and so far as the question whether the date on which the State Commission passed the order, then on that date, whether the State Commission has the power to condone the delay beyond 45 days for filing the written statement under Section 13 of the Act is concerned, as such, the said issue whether the State Commission has the power to condone the delay beyond 45 days is now not *res*

integra in view of the Constitution Bench decision of this Court in the case of *New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Pvt. Ltd. reported in (2020) 5 SCC 757*. However, it is submitted by the learned counsel appearing on behalf of the petitioners that as in paragraph 63 it is observed that the said judgment shall be applicable prospectively and therefore the said decision shall not be applicable to the complaint which was filed prior to the said judgment and/or the said decision shall not be applicable to the application for condonation of delay filed before the said decision.

However, the aforesaid cannot be accepted. It is required to be noted that as per the decision of this Court in the case of *J.J. Merchant v. Shrinath Chaturvedi, reported in (2002) 6 SCC 635*, which was a three Judge Bench decision, consumer fora has no power to extend the time for filing a reply/written statement beyond the period prescribed under the Act. However, thereafter, despite the above three Judge Bench decision, a contrary view was taken by a two Judge Bench and therefore the matter was referred to the five Judge Bench and the Constitution Bench has reiterated the view taken in the case of *J.J.Merchant (supra)* and has again reiterated that the consumer fora has no power and/or jurisdiction to accept the written statement beyond the statutory period prescribed under the Act, i.e., 45 days in all. However, it was found that in view of the order passed by this Court in *Reliance General Insurance Co. Ltd. (supra) dated 10.02.2017*, pending the decision of the larger

Bench, in some of the cases, the State Commission might have condoned the delay in filing the written statement filed beyond the stipulated time of 45 days and all those orders condoning the delay and accepting the written statements shall not be affected, this Court observed in paragraph 63 that the decision of the Constitution Bench shall be applicable prospectively. We say so because one of us was a party to the said decision of the Constitution Bench.

5. Now so far as the reliance placed upon the order passed by this Court dated 10.02.2017 in the case of *Reliance General Insurance Co. Ltd. (supra)* is concerned, the same has been dealt with in detail by the National Commission by the impugned order while deciding the first appeal. As rightly observed by the National Commission, there was no mandate that in all the cases where the written statement was submitted beyond the stipulated period of 45 days, the delay must be condoned and the written statement must be taken on record. In order dated 10.02.2017, it is specifically mentioned that it will be open to the concerned fora to accept the written statement filed beyond the stipulated period of 45 days in an appropriate case, on suitable terms, including the payment of costs and to proceed with the matter. Therefore, ultimately, it was left to the concerned fora to accept the written statement beyond the stipulated period of 45 days in an appropriate case. As observed by the National Commission that despite sufficient time granted the written statement was not filed within the prescribed period of limitation. Therefore, the National Commission has

considered the aspect of condonation of delay on merits also. In any case, in view of the earlier decision of this Court in the case of *J.J. Merchant (supra)* and the subsequent authoritative decision of the Constitution Bench of this Court in the case of *New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Pvt. Ltd. (2020) 5 SCC 757*, consumer fora has no jurisdiction and/or power to accept the written statement beyond the period of 45 days, we see no reason to interfere with the impugned order passed by the learned National Commission.

6. In view of the above and for the reasons stated hereinabove, the present special leave petition deserves to be dismissed and is accordingly dismissed.

.....J.
[Dr. Dhananjaya Y. Chandrachud]

New Delhi;
February 11, 2021.

.....J.
[M.R. Shah]