

CASE NO.:
Appeal (civil) 3654-58 of 2002

PETITIONER:
TOPLINE SHOES LTD.

RESPONDENT:
CORPORATION BANK

DATE OF JUDGMENT: 08/07/2002

BENCH:
D.P. MOHAPATRA & BRIJESH KUMAR

JUDGMENT:
JUDGMENT

2002 (3) SCR 1167

The Judgment of the Court was delivered by

BRIJESH KUMAR, J. Leave granted. Heard appellant in person and the learned counsel for the Respondent.

This appeal has been preferred against the order dated April 9, 2001 passed by the National Consumer Disputes Redressal Commission dismissing the revision filed by the appellant. The short point in controversy is, as to whether or not the State Consumer Disputes Redressal Commission, could grant time to the respondent to file his reply, beyond a total period of 45 days, in view of Section 13 (2) (a) of the Consumer Protection Act 1986 (for short the Act).

The appellant filed a complaint before the Gujarat State Consumer Redressal Commission, claiming compensation against the respondent, on account of alleged failure on the part of the respondent in advancing the loan to the appellant despite of furnishing the security for the same. The respondent received notice, issued by the Commission, on 22.2.2000. According to the said notice 4.4.2000 was the date fixed before the State Commission. The respondent appeared on 4.4.2000 and moved an application for adjournment of the case and grant of time to file reply. The case was adjourned for 4.5.2000. On the said date, namely, 4.5.2000, the respondent-Bank filed its reply. The appellant thereafter seems to have filed their rejoinder to the reply filed by the respondent. On the next date, namely, 24.7.2000 the appellant moved an application before the State Commission saying that the reply filed by the respondent was beyond a period of 30 days initially admissible for filing reply and also beyond a further period of 15 days as could be extended for the purpose. Hence, it was prayed that the reply of the respondent may not be accepted on record and the rejoinder filed by the appellant may also be returned to it. According to the appellant, a total period of time for filing of reply could not exceed beyond 45 days, as per Section 13 (2)(a) of the Act. The application was, however, rejected by the State Commission but a cost of Rs. 500 was imposed upon the respondent for late filing of the reply.

While refusing the prayer to reject the reply, the Commission observed that the delay did not appear to be gross or contrary to the order passed granting adjournment on 4.4.2000. The Commission further observed that the discretion vested to extend time for 15 days could be exercised from time to time as the occasion may require and for arriving at this conclusion, the State Commission has relied upon decisions of this Court reported in National Sewing Thread Co., Chidambaram v. James Chadwick & Bros. Ltd. AIR (1953) SC 357 and Vasantlal Maganbhai Sanjanwala v. The State of Bombay, AIR (1961) SC 4 as well as on Section 14 of the General Clauses Act. It has also been observed that these are matters of procedure which are hand-made of justice. The revision preferred against the said order before the

National Consumer Disputes Redressal Commission was dismissed as it was considered that no ground was made out to interfere in exercise of its revisional jurisdictions.

Shri H.M.G. Murthy who appeared in person for the appellant, submitted that the State Commission had no power to accept a reply filed beyond a total period of 45 days. Initially the respondent is required to submit the reply within 30 days which period could be extended not exceeding 15 days as would be evident from the plain and bare reading of Section 13 (2) (a) of the Act. It is also submitted that the discretion vested in the Forum/Commission to extend the time cannot be exercised from time to time as held by the State Commission since that would frustrate the purpose of the provision itself. The case of the Respondent is that the provision fixing a period for submission

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of reply, is only procedural in nature, and it cannot be interpreted in a manner so as to deprive a party of being heard on merits of his case. It is also submitted, on facts, that the notice was received on 22.2.2000 and the appellant was required to be present before the State Commission on 4.4.2000 that is to say after a period of 30 days. On application for adjournment the time was extended upto 4.5.2000. The respondent had submitted his reply within the time allowed. Extension was sought only once. The appellant had also filed their rejoinder to the reply. There was therefore no occasion to plead that the written statement be rejected and the rejoinder of the appellant be returned.

We may peruse the relevant provisions of Section 13 of the Consumer Protection Act, 1986. It reads as under:

"Section

13.-----

Sub-section

(2)-----

(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 dispute, -

(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) 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.

A reading of clause (a) of sub-section (2) of Section 13 no doubt makes it clear that the District Forum would give time of 30 days to the opposite party for the purposes of giving his version. An extension of time for filing reply could be granted but not exceeding 15 days. Thus the total period during which the reply can be filed is 45 days after extension of fifteen days is granted. The question which however arises is as to whether the provision prescribing limit for filing reply is mandatory or directory in nature. The Statement of Objects and Reasons of the Consumer Protection Act, 1986 indicates that it has been enacted to promote and protect the

rights and interests of consumers and to provide them speedy and simple redressal of their grievances. Hence, quasi-judicial machinery has been set up for the purpose, at different levels. These quasi-judicial bodies have to observe the principles of natural justice as per clause (4) of the Statement of Objects and Reasons which reads as under:

"To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided," (emphasis supplied)

Thus the intention to provide a time frame to file reply, is really meant to expedite the hearing of such matters and to avoid unnecessary adjournments to linger on the proceedings on the pretext of filing reply. The provision however, as framed, does not indicate that it is mandatory in nature. In case the extended time exceeds 15 days, no penal consequences are prescribed therefor. The period of extension of time "not exceeding 15 days," does not prescribe any kind of period of limitation. The provision appears to be directory in nature, which the consumer forums are ordinarily supposed to apply, in the proceedings before them. We do not find force in the submission made by the appellant, in person, that in no event, whatsoever, the reply of the respondent could be taken on record beyond the period of 45 days. The provision is more by way of procedure to achieve the object of speedy disposal of such disputes. It is an expression of "desirability" in strong terms. But it falls short of creating of any kind of substantive right in favour of the complainant by reason of which the respondent may be debarred from placing his version in defence in any circumstances whatsoever. It is for the Forum or the Commission to consider all facts and circumstances along with the provisions of the Act providing time frame to file reply, as a guideline, and then to exercise its discretion as best it may serve the ends of justice and achieve the object of speedy disposal of such cases keeping in mind principles of natural justice as well. The Forum may refuse to extend time beyond 15 days, in view of Section 13(2) (a) of the Act but exceeding the period of 15 days of extension, would not cause any fatal illegality in the order.

On behalf of the appellant reliance has been placed on a few decisions of this Court reported in AIR 1980 S.C. 303 Sharif-ud-Din v. Abdul Gani Lone. The case relates to election dispute under the Representation of People Act, and non-compliance of requirements as provided, such provisions were held to be mandatory in nature. Specific consequences as a result of non-compliance, were provided for. It is also observed that normally procedural rules should not be considered as mandatory in nature. The election law is a technical law which also provides consequences of non-compliance of certain provisions but in the present case we find that no consequence is provided in case the time granted to file reply exceeds total period of 45 days. It may at best be said to be an irregular way of exercise of discretion. Normally the Forum or Commission would act in accordance with the provision relating to procedural matters and while considering the question whether any further time may or may not be granted, it would be relevant to take into account the limit placed for extension of time in accordance with the provisions of the Act. In the absence of any penal consequences to follow, it will not be open for the appellant to contend that the reply filed by the respondent within the time granted though beyond 45 days, is liable to be rejected. The appellant therefore cannot derive any help from the decision referred to above. The other case which has been relied upon is reported in AIR 1986 S.C. 1370 Life Insurance Corporation of India v. Escorts Ltd. and Ors. Our attention has been drawn to the observations made by the Court that the proper way to interpret a Statute is to give due weight to the use, as well as the omission, to use the qualifying words in different provisions of the Act. The provision of the Statute has to be read in the plain and simple manner and in the light

of the purpose which is sought to be achieved by the enactment. This case also does not take the case of the appellant any further in view of discussion earlier. Yet another case referred to is reported in AIR 1959 S.C. 198 Siraj-ul-Haq Khan and Ors. v. The Sunni Central Board of Waqf, U.P. and Ors. It has also no application to the present case. Our attention has particularly been drawn to Paragraph 17 wherein it has been observed as follows:

".....These decisions illustrate the principle that where the literal meaning of the words used in a statutory provision would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to adopt the rule of liberal construction so as to give meaning to all parts of the provision and to make the whole of it effective and operative"

The above observations may perhaps help more to the respondent's stand. Learned counsel appearing for the respondent on the other hand, placed reliance on a decision reported in AIR 1955 S.C. 425 Sangram Singh v. Election Tribunt Kotah and Anr. The matter relates to an election petition where ex parte proceedings were ordered. This Court as a general proposition of interpretation of Statutes observed as follows:

"Now a code of procedure must be regarded as such. It is 'procedure' something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both sides') lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle"

Another decision relied upon on behalf of the respondent is reported in [1985] 3 SCC 53 Ganesh Prasad Sah Kesari and Anr. v. Lakshmi Narayan Gupta. The tenant had failed to deposit the rent within the time permitted under the provisions of the Act. It was held that period of 15 days as provided was directory in nature. The Court had discretion to extend the period in suitable cases.

We have already noticed that the provision as contained under clause (a) of sub-section (2) of Section 13 is procedural in nature. It is also clear that with a view to achieve the object of the enactment, that there may be speedy disposal of such cases, it has been provided that reply is to be filed within 30 days and the extension of time may not exceed 15 days. This provision envisages that proceedings may not be prolonged for a very long time without the opposite party having filed his reply. No penal consequences have however been provided in case extension of time exceeds 15 days. Therefore, it could not be said that any substantive right accrued in favour of the appellant or there was any kind of bar of limitation in filing of the reply within extended time though beyond 45 days in all. The reply is not necessarily to be rejected. All facts and circumstances of the case must be taken into account. The Statement of Objects and Reasons of the Act also provides that principles of natural justice have also to be kept in mind.

We would like to observe that the decision of this Court in the cases of

National Sewing Thread Co. and Vasantlal Maganbhai Sanjanwala (supra) would not be applicable to the case in hand. In those cases it was held that a power which is vested in the Court can be exercised repeatedly in the absence of intention to the contrary contained in the Statute. Such a question is not involved in the present case. The power to extend time under Clause (a) is with a rider that the extension may not exceed 15 days. We have, however, already held that the provision saying that extended time may not exceed 15 days is directory in nature. It does not mean that orders extending the time to file reply may be passed repeatedly unmindful of and totally ignoring the provision that the extension may not exceed 15 days. This provision has always to be kept in mind while passing an order extending the time to file a reply to the petition. It is another matter, as we have found that in case time is extended exceeding 15 days, it may not be kind of an illegality which may deny or deprive the respondent to file his reply within the time granted by the Forum/Commission.

So far the facts of the present case are concerned, we find that at the first instance the Commission itself had fixed the date beyond 30 days and the respondent sought further time which prayer was accepted and 4.5.2000 was fixed. The respondent filed his reply on the date fixed. In such circumstances there was no occasion to contend that the reply of the respondent should be rejected.

For the discussion held above, we find no merit in the appeal. The same is dismissed with costs.