

HIGH COURT OF KERALA**Bench: The Honourable Dr. Justice Kauser Edappagath****Date of Decision: 11th June 2024**

Case No.: OP(C) Nos. 2277/2023, 2444/2023, 2486/2023, 2541/2023, 2543/2023, 2566/2023, 2597/2023, 2574/2023 & 2586/2023

Petitioner(s):**NTC Nidhi Ltd, Nemara Branch, Nemara P.O., represented by its Branch Manager Smt. Saritha M., PIN - 678508Petitioner****VERSUS****Respondent(s):****Thishya Rekshit Krishna S, S/O. Shaj B., Nedungodu House, Kiliyalloor, Cheramangalam, Alathur Taluk, Palakkad District, PIN - 678703****Shaj B., S/O. Balakrishnan, Nedungodu House, Kiliyalloor, Cheramangalam, Alathur Taluk, Palakkad District, PIN - 678703****Rajula C., W/O. Shaj B., Nedungodu House, Kiliyalloor, Cheramangalam, Alathur Taluk, Palakkad District, PIN - 678703Respondents****Legislation:**

Section 38(3)(b)(ii) of the Consumer Protection Act, 2019

Subject: Original Petitions challenging the orders of the District Consumer Disputes Redressal Commission (DCDRC), Palakkad, dismissing applications to set aside ex-parte orders due to late filing of the petitioner's version.

Headnotes:

Consumer Protection Law – Setting Aside Ex-parte Orders – Petitioner, NTC Nidhi Ltd, was set ex-parte by the DCDRC for filing the version beyond the statutory period – Petitioner contended active participation in proceedings despite late filing – Supreme Court precedent supports participation rights even if declared ex-parte [Paras 2-6].

Right to Participate in Proceedings – Emphasis on participation despite procedural lapses – High Court set aside DCDRC's orders, allowing petitioner to take part in proceedings, adduce evidence, cross-examine witnesses, and

present arguments – Version filed out of time not accepted on record [Paras 5-6].

Supreme Court Precedent – Cited ARN Infrastructure India Limited v. Hara Prasad Ghosh and Saint Gobian India Pvt. Ltd v. Deepak Achuthan, confirming participation rights in the interest of justice [Paras 5-6].

Decision: Original petitions allowed – DCDRC's orders set aside – Petitioner permitted to participate in further proceedings, excluding the late version filing [Para 6].

Referred Cases:

- ARN Infrastructure India Limited v. Hara Prasad Ghosh [2023 KLT Online 1772 (SC)]
- Saint Gobian India Pvt. Ltd v. Deepak Achuthan [2024 (3) KLT 188]

Representing Advocates:

For Petitioner: John Joseph (Roy)

For Respondents: No appearance despite notice

J U D G M E N T

[OP(C) Nos.2277/2023, 2444/2023, 2486/2023, 2541/2023, 2543/2023, 2566/2023, 2597/2023, 2574/2023 & 2586/2023]

All these original petitions are connected and hence I am disposing of them together.

2. The challenge in all these original petitions is against the orders passed by the District Consumer Disputes Redressal Commission, Palakkad (DCDRC) dismissing the applications filed by the petitioner herein to set aside ex-parte orders.

3. The petitioner in all the original petitions is the opposite party in the respective consumer complaints filed against it by the respective respondent. The consumer complaints were filed for compensation alleging deficiency of service by the petitioner. The petitioner filed version in all the

cases out of time. The petitioner was to file version in all the cases on or before 27.6.2023. But the version could be filed only on 4.7.2023. Since the version was filed beyond the statutory period, it was rejected and the petitioner was set ex-parte as contemplated under Section 38(3)(b)(ii) of the Consumer Protection Act. Thereafter, the petitioner filed applications in all these cases to set aside the ex-parte orders. The DCDRC dismissed the applications in all the cases as per the impugned orders. It is challenging the said orders, the opposite party has approached this Court.

4. I have heard Sri. John Joseph, the learned counsel for the petitioner. Even though notice has been served to the respondents there is no appearance.

5. The learned counsel for the petitioner submitted that even in a case where the opposite party did not file version or opposite party was set ex-parte, still he/she has the right to take part in the proceedings and to cross examine the respondents. Reliance is placed on the recent decision of the Supreme Court in **ARN Infrastructure India Limited V. Hara Prasad Ghosh** [2023 KLT online 1772(SC)]. The counsel further submitted that, a party to the proceedings can only be declared ex-parte, if he/she entirely fails to make any form of representation before the court and it implies that even if a party fails to file version, as long as they continue to represent their case in any manner, they cannot be subjected to an ex-parte order under the statute. Reliance is also placed on the decision of a learned Single Judge of this Court in **Saint Gobian India Pvt. Ltd V. Deepak Achuthan** (2024 (3) KLT 188).

6. Coming to the facts of the case, it appears that the petitioner all along actively participated in the proceedings before the CDRC. It had also filed its version, though out of time. The petitioner was declared ex-parte only for the reason that the version was filed out of time. It is true that if the opposite party

failed to file version within time, they cannot be allowed to do so beyond it. But at the same time for the mere reason that the opposite party failed to file version within time, it cannot be said that they failed to represent the case before the DCDRC. In these circumstances, I am of the view that the impugned orders passed by the DCDRC are not sustainable. Accordingly, they are set aside. The applications filed by the petitioner to set aside the ex-parte orders stand allowed. Since the version is not filed within time, it may not be taken on file. But the DCDRC shall allow the petitioner to take part in the proceedings. The DCDRC shall allow the petitioner to adduce evidence and also to cross examine the witnesses of the complaint and also make arguments.

The original petitions are disposed of as above.

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