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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 22nd May, 2025**
+ **CM(M) 2064/2024 & CM APPL. 29426/2025**
M/S COSMIC ORANGE INFRAVENTURES PVT. LTD.

.....Petitioner

Through: Mr. Sameer Nandwani, Advocate.
versus

L. SUBRAMAINAM & ANR.Respondent

Through: Mr. Hemant Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. A complaint was filed by Mr. L Subramainam and his wife before the learned State Consumer Disputes Redressal Commission (in short "SCDRC"), Delhi which was registered as Complaint Case No. 452/2016.
2. The abovesaid complaint was taken up by the learned State Commission, Delhi on 12.07.2023 and, while closing the right of the opposite party to submit any written statement, keeping in view the fact that there was no appearance from the side of complainant, the complaint was dismissed for *non-prosecution*. Such order reads as under:-

"12.07.2023

Present: None for the complainant.

Mr. Robin Singh Pande, (Enrolment No. D/4208/2022 , Ph. 8169092060) , proxy counsel for the OP.

C-452/16

Perusal of record shows that Mr. Rajiv Mason, Advocate had appeared for opposite party on 25.09.2017 and Ms. Pratibha Singh, Advocate had appeared for opposite party on 14.11.2018.

The complaint was dismissed for non-prosecution vide order dated 20.09.2019 passed by this Commission and was restored vide order dated 15.02.2022 passed by the Hon'ble National Consumer Dispute Redressal Commission in first appeal no. 234/2021. Thereafter, file was taken up on 21.03.2022 and adjourned on 29.08.2022.

Mr. Shivam Jha, counsel for the complainant and Mr. Robin Singh



Pandey, proxy counsel for Mr. Sameer Nandwani, counsel for the opposite party had appeared as per order dated 29.07.2022. On 29.08.2022, opposite party was directed to file written statement within 30 days from 29.08.2022 and advance copy of the same be supplied to the complainant. However, the same has not been filed till date. Hence, right of opposite party to file written statement stands closed. Neither the complainant nor his counsel have appeared today. It appears that complainant is not interested in this matter. The complaint stands dismissed for non-prosecution. File be consigned to the record room.”

3. Though, the right of the opposite party to file written statement was closed but, naturally, since the complaint had also been dismissed, there was no occasion for the opposite party to have raised any further grievance, either before the learned State Commission or, for that matter, before the learned Appellate Commission.
4. Fact, however, remains that feeling aggrieved by the dismissal of their complaint for *non-prosecution*, an appeal was filed by complainants.
5. Such appeal i.e. First Appeal No. 18/2024 was taken up by learned National Consumer Disputes Redressal Commission (in short “NCDRC”) on 29.01.2024.
6. There was delay of 133 days in lodging such appeal and on the very first day, while entertaining such appeal, learned NCDRC, holding that there appeared sufficient cause, not only condoned the delay but also allowed the appeal by directing restoration of the abovesaid complaint with direction to the learned State Commission to adjudicate the complaint on merits, after providing adequate opportunity to both the parties to pursue the matter as per law.
7. Such order is under challenge.
8. Learned counsel for petitioner (opposite party in the abovesaid



complaint) contends that the learned NCDRC is fully empowered to condone the delay and to even restore the complaint but before passing any such order, it should have issued a notice to them.

9. It is submitted that without giving any notice to them, the appeal has been allowed and complaint has been restored and, therefore, such order needs to be set aside.

10. Undoubtedly, the abovesaid order though records that the learned State Commission would adjudicate the complaint on merits after providing adequate opportunity to both the parties, fact remains that, as already noticed above, on 12.07.2023, the right to file written statement on behalf of *opposite party* was also closed and the defence of *opposite party* is not before learned State Commission.

11. Evidently, since the complaint was also dismissed simultaneously, there was no reason for the *opposite party* to have made any request seeking further opportunity to file written statement.

12. An appeal can, though, always be dismissed in *limine* but if the appeal has been filed belatedly and there is also delay of around 133 days in lodging such appeal, ideally speaking, any such Forum or Authority, before allowing the appeal *in toto* should take response from the opposite side, by issuing appropriate notice. Though, even after opportunity of hearing is given to opposite side, result might still be the same, such requirement of giving notice, being imperative, cannot be given go by. Reference be made to *Hanumant Singh v. Kiran Kumari*, (2012) 1 SCC 225 and *Shivaji v. Parwatibai*, 2024 SCC OnLine SC 3542.

13. Manifestly, a serious prejudice has been caused to the petitioner herein.



14. Of course, the aspect related to dismissal of complaint for *non-prosecution* is, essentially, between the Commission/Court and the concerned litigant but, as noted, the complaint was dismissed when the other side was duly represented on 12.07.2023. Therefore, before passing any order or appeal, an opportunity of hearing should have been given to opposite party. Moreover, if so advised, it could have also filed any cross-appeal or objection as its valuable right to file written statement has also been closed.

15. Resultantly, the petition is allowed and while setting aside the order dated 29.01.2024, the abovesaid first appeal i.e. First Appeal No. 18/2024 is directed to be restored to its original position and the parties are requested to appear before the learned NCDRC on 30.05.2025.

16. Before parting, this Court would clarify that this Court has not given any observation with respect to the merits of the abovesaid appeal and learned NCDRC is at liberty to dispose of the appeal in accordance with law, after giving due opportunity of hearing to both the parties.

17. Petition stands disposed of in aforesaid terms.

18. Pending application also stands disposed of.

19. Order *dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

MAY 22, 2025/sw/SS