

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 533 OF 2019

(Against the Order dated 07/01/2019 in Appeal No. 913/2018 of the State Commission Chhattisgarh)

1. BRANCH MANAGER, UNIVERSAL SOMPO GENERAL
INSURANCE COMPANY LIMITED. & 2 ORS.

SRI RAM NAGAR, T.V. TOWER ROAD, POST SHANKAR
NAGAR,

RAIPUR-492001

CHHATTISGARH

2. BRANCH MANAGER/REGIONAL MANAGER,
UNIVERSAL SOMPO GENERAL INSURANCE CO. LTD.

1ST FLOOR, KESARI COMPLEX 98 KORBALA NAGAR,

BHUBANESHWAR-751001

ORISSA

3. CHAIRMAN MANAGING DIRECTOR, UNIVERSAL
UNIVERSAL SOMPO GENERAL INSURANCE CO. LTD.

UNIT NO. 401, 4TH FLOOR, SANGAM COMPLEX,
ANDHERI KURLA ROAD,

ANDHERI EAST MUMBAI-400059

MAHARASHTRA

.....Petitioner(s)

Versus

1. DIDWANIYA EXIM PRIVATE LIMITED & ANR.

THROUGH ITS ASHISH DIDWANIA, S/O. LT. SHRI
SITARAM DIDWANIA, R/O. HOUSE NO. 291/A, SAMTA
COLONY,

RAIPUR

CHHATTISGARH

2. BRANCH MANAGER, ALLAHABAD BANK,

SHYAM NAGAR, TELIBANDA

RAIPUR-492001

CHHATTISGARH

.....Respondent(s)

FIRST APPEAL NO. 478 OF 2019

(Against the Order dated 24/01/2019 in Complaint No. 465/2014 of the State Commission Maharashtra)

1. SHABBIR ABDUL HUSSAIN TAMBAWALA & ANR.

406, JASAWANTI LAND MARK, MISTRY COMPOUND ,
OPP TO UNION BANK, LBS MARG , VIKHROLI (W)

MUMBAI 400 079

2. MR. SHABBIR KIKABHAI LAKDAWALA

FLAT NO 505, STERLING TOWN, NEXT TO MAZGAON
COURT

MUMBAI 400 010

.....Appellant(s)

Versus

1. RUNWAL CAPITAL LAND INDIA PVT. LTD.

RUNWAL AND OMKAR ESQUIRE OPP. SION
CHUNABHATTI SIGNAL, SION (EAST)

.....Respondent(s)

MUMBAI 400 022

REVISION PETITION NO. 1352 OF 2015

(Against the Order dated 07/02/2015 in Appeal No. 785/2014 of the State Commission Chhattisgarh)

1. NARAYAN PRASAD KESHARWANI
S/O KAUSHAL PRASAD KESHARWANI R/O L.I.G-241,
MAHARANA PRATAP NAGAR
KORBA
CHHATTISGARH

.....Petitioner(s)

Versus

1. CHHATTISGARH STATE ELECTRICITY KORBA
THROUGH EXECUTIVE ENGINEER (NAGAR)
SAMBHAG, CHHATTISGARH STATE ELECTRICITY
DISTRIBUTION CO.
KROBA
CHHATTISGARH

.....Respondent(s)

REVISION PETITION NO. 2367 OF 2017

(Against the Order dated 29/03/2017 in Appeal No. 159/2016 of the State Commission Haryana)

1. M/S. EDGE INDIA AGROTECH
THROUGH ITS PARTNER NAMELY VIVEK SHARMA, S/O.
GIAN CHAND SHARMA, R/O. D-37, PHASE I, NEW
SHIMLA,
SHIMLA
HIMACHAL PRADESH

.....Petitioner(s)

Versus

1. RENU SINGH & 2 ORS.
W/O. DR. PARMAIL SINGH SANGWAN, R/O. VILLAGE
CHHUDANI, TEHSIL BABADURGAH,
DISTRICT-JHAJJAR
HARYANA
2. DISTRICT HORTICULTURE OFFICER,
DISTRICT-JHAJJAR
HARYANA
3. HARYANA STATE,
THROUGH DIRECTOR GENERAL HORTICULTURE CUM
MISSION DIRECTOR ,HARYANA STATE HORTICULTURE
DEVELOPMENT AUTHORITY
PANCHKULA
HARYANA

.....Respondent(s)

REVISION PETITION NO. 2368 OF 2017

(Against the Order dated 29/03/2017 in Appeal No. 160/2016 of the State Commission Haryana)

1. M/S. EDGE INDIA AGROTECH
THROUGH ITS PARTNER NAMELY VIVEK SHARMA, S/O.
SH. GIAN CHAND SHARMA, D-37, SECTOR 1, PHASE 1,
PHASE 1,
NEW SHIMLA
HIMACHAL PRADESH

.....Petitioner(s)



Versus

1. BIJENDER SINGH & 2 ORS.
 S/O. SH. CHANDER BHAN, R/O. VILLAGE CHHUDANI,
 TEHSIL BAHADURGARH,
 DISTRICT-JHAJJAR
 HARYANA

2. DISTRICT HORTICULTURE OFFICER,
 DISTRICT-JHAJJAR, HARYANA

3. HARYANA STATE
 THROUGH DIRECTOR GENERAL HORTICULTURE CUM
 MISSION DIRECTOR, HARYANA STATE HORTICULTURE
 DEVELOPMENT AUTHORITY
 PANCHKULA
 HARYANA

.....Respondent(s)

REVISION PETITION NO. 3446 OF 2017

(Against the Order dated 06/07/2017 in Appeal No. 1493/2008 of the State Commission Haryana)

1. P.C. JAIN
 B-504 Golf Enclave, Sector 21-C,
 Faridabad - 121 003

.....Petitioner(s)

Versus

1. DR. R.P. SINGH
 Visitech Eye Centre, Plot-2, Pocket-1, Jasola Vihar,
 New Delhi - 110 025

.....Respondent(s)

REVISION PETITION NO. 3644 OF 2017

(Against the Order dated 29/03/2017 in Appeal No. 159/2016 of the State Commission Haryana)

1. RENU SINGH
 W/O. DR. PARMIL SANGWAN, R/O. VILLAGE
 CHHUDANI, TEHSIL BAHADURGARH,
 DISTRICT-JHAJJAR
 HARYANA

.....Petitioner(s)

Versus

1. M/S. EDGE INDIA AGROTECH & 2 ORS.
 THROUGH ITS AUTHORIZED
 REPRESENTATIVE/DIRECTOR, REGISTERED OFFICE AT
 D-37, SECTOR 1, PHASE I, NEW SHIMLA,
 SHIMLA-171009
 HIMACHAL PRADESH

2. THE DISTRICT HORTICULTURE OFFICER,
 JHAJJAR,
 DISTRICT-JHAJJAR
 HARYANA

3. HARYANA OF STATE
 THROUGH THE DIRECTOR GENERAL HORTICULTURE
 CUM MISSION DIRECTOR, HSHDA
 PANCHKULA
 HARYANA

.....Respondent(s)

REVISION PETITION NO. 3645 OF 2017

(Against the Order dated 29/03/2017 in Appeal No. 160/2016 of the State Commission Haryana)

1. BIJENDER SINGH
S/O. SH. CHANDER BHAN, R/O. VILLAGE CHHUDANI,
TEHSIL BAHADURGARH,
DISTRICT-JHAJJAR
HARYANA

.....Petitioner(s)

Versus

1. M/S. EDGE INDIA AGROTECH & 2 ORS.
THROUGH ITS AUTHORIZED
REPRESENTATIVE/DIRECTOR, REGISTERED OFFICE AT
D-37, SECTOR 1, PHASE I,
NEW SHIMLA, SHIMLA-171009
HIMACHAL PRADESH

2. THE DISTRICT HORTICULTURE OFFICER,
JHAJJAR,
DISTRICT-JHAJJAR
HARYANA

3. HARYANA OF STATE
THROUGH THE DIRECTOR GENERAL HORTICULTURE
CUM MISSION DIRECTOR, HSHDA,
DISTRICT-PANCHKULA
HARYANA

.....Respondent(s)

REVISION PETITION NO. 534 OF 2019

(Against the Order dated 07/01/2019 in Appeal No. 914/2018 of the State Commission Chhattisgarh)

1. BRANCH MANAGER, UNIVERSAL SOMPO GENERAL
INSURANCE COMPANY LIMITED. & 2 ORS.
SRI RAM NAGAR, T.V. TOWER ROAD, POST SHANKAR
NAGAR,
RAIPUR-492001
CHHATTISGARH

2. BRANCH MANAGAR/REGIONAL MANAGER,
UNIVERSAL SOMPO GENERAL INSURANCE CO. LTD.
1ST FLOOR, KESARI COMPLEX 98 KORBALA NAGAR,
BHUBANESHWAR-751001
ORISSA

3. CHAIRMAN MANAGING DIRECTOR, UNIVERSAL
UNIVERAL SOMPO GENERAL INSURANCE CO. LTD.
UNIT NO. 401, 4TH FLOOR, SANGAM COMPLEX,
ANDHERI KURLA ROAD,
AHDHERI EAST MUMBAI-400059
MAHARASHTRA

.....Petitioner(s)

Versus

1. DIDWANIYA EXIM PRIVATE LIMITED & ANR.
THROUGH ITS ASHISH DIDWANIA, S/O. LT. SHRI
SITARAM DIDWANIA, R/O. HOUSE NO. 291/A, SAMTA
COLONY,
RAIPUR

.....Respondent(s)

CHHATTISGARH
2. BRANCH MANAGER, ALLAHABAD BANK
SHYAM NAGAR, TELIBANDA
RAIPUR-492001
MAHARASHTRA

REVISION PETITION NO. 535 OF 2019

(Against the Order dated 07/01/2019 in Appeal No. 918/2018 of the State Commission Chhattisgarh)

1. BRANCH MANAGER, UNIVERSAL SOMPO GENERAL
INSURANCE COMPANY LIMITED. & 2 ORS.

SRI RAM NAGAR, T.V. TOWER ROAD, POST SHANKAR
NAGAR,

RAIPUR-492001

CHHATTISGARH

2. BRANCH MANAGAR/REGIONAL MANAGER,
UNIVERSAL SOMPO GENERAL INSURANCE CO. LTD.

1ST FLOOR, KESARI COMPLEX 98 KORBALA NAGAR,

BHUBANESHWAR-751001

ORISSA

3. CHAIRMAN MANAGING DIRECTOR, UNIVERSAL
UNIVERAL SOMPO GENERAL INSURANCE CO. LTD.

UNIT NO. 401, 4TH FLOOR, SANGAM COMPLEX,
ANDHERI KURLA ROAD,

AHDHERI EAST MUMBAI-400059

MAHARASHTRA

.....Petitioner(s)

Versus

1. DIDWANIYA EXIM PRIVATE LIMITED & ANR.

THROUGH ITS ASHISH DIDWANIA, S/O. LT. SHRI
SITARAM DIDWANIA, R/O. HOUSE NO. 291/A, SAMTA
COLONY,

RAIPUR

CHHATTISGARH

2. BRANCH MANAGER, ALLAHABAD BANK,

SHYAM NAGAR, TELIBANDA

RAIPUR-492001

CHHATTISGARH

.....Respondent(s)

REVISION PETITION NO. 686 OF 2014

(Against the Order dated 13/09/2013 in Appeal No. 355/2012 of the State Commission Punjab)

1. KEHAR SINGH KANG

S/O SHRI BALWANT SINGH, R/O VILLAGE MARWA , P.O
NANDPUR, KALOUR, TEHSIL BASSI PATHANA,

DISTRICT: FATEHGARH SAHIB

PUNJAB

.....Petitioner(s)

Versus

1. BLUE STALLION EQUIPMENTS PVT. LTD.

.....Respondent(s)

THROUGH ITS DIRECTOR AT 4472/A, STREET NO-10, OPP
POST OFFICE, SHIMLA, PURI,

LUDHIANA - 141003

PUNJAB

BEFORE:

HON'BLE MR. JUSTICE R.K. AGRAWAL, PRESIDENT

HON'BLE MR. JUSTICE V.K. JAIN, MEMBER

HON'BLE MRS. JUSTICE DEEPA SHARMA, MEMBER

HON'BLE MRS. M. SHREESHA, MEMBER

HON'BLE MR. ANUP K THAKUR, MEMBER

For the Petitioner : For appearance please see full order

For the Respondent : For appearance please see full order

Dated : 21 Jan 2020

ORDER

For the Petitioners/Appellants

: Mr. Rajat Khattry, Advocate
Mr. Siddarth Iyer and
Mr. Debopriya Pal, Advocates
(in RP/533-535/2019)
NEMO in RP/686/2014
Mr. Narayan Prasad Kesharwani,
Petitioner in Person
(in RP/1352/2015)
Mr. Nitin K. Gupta, Advocate
Mr. Munish Garg, Advocate
(in RP/2367-2368/2017)
Mr. Abhimanyu Sharma, Advocate
Mr. Amit Gupta, Advocate
(in RP/3644-3645/2017)
Mr. Ankit Khera, Advocate
(in RP/3446/2017)
Mr. S. B. Prabhavalkar, Advocate
(in FA/478/2019)

For the Respondents

: Mr. Anand Shankar Jha, Advocate
Mr. Arpit Gupta, Advocate
(in RP/533-535/2019)
Ms. Rashmi Singh, Advocate
(in RP/1352/2015)
Mr. Nitin K. Gupta, Advocate
Mr. Munish Garg, Advocate
(in RP/3644-3645/2017)
Mr. Abhimanyu Sharma, Advocate
Mr. Amit Gupta, Advocate
(in RP/2367-2368/2017)
Mr. Sandeep Kapoor, Advocate
(in RP/3446/2017)
Mr. Pulkit Tare, Advocate
Mr. Anup Jain, Advocate
(in RP/686/2014)

Ms. Malvika Kalra, Advocate
Mr. Darpan Narayan Patnayak, Advocate
(in FA/478/2019) (On caveat)

R. K. AGRAWAL, J., PRESIDENT

1. Vide Order dated 21-05-2019 passed in Revision Petitions Nos.533 to 535 of 2019, the question as to whether in Appeal Cases or the Revision Cases, the State Commission and/or the National Commission can exercise the powers of Order 41 Rule 27 of the Code of Civil Procedure, 1908 or the principles laid therein are applicable and permit the parties to adduce/bring on record the additional documents or not, was referred by a two Members' Bench of this Commission to a larger Bench, for its decision. Subsequently, vide Order dated 21-05-2019, 21-05-2019, 29-05-2019, 25-06-2019 and 27-06-2019, of the said two Members' Bench Revision Petition No.3446 of 2017, Revision Petitions Nos.2367, 2368, 3644 and 3645 of 2017, Revision Petition No.1352 of 2015, Revision Petition No.686 of 2014 and First Appeal No.478 of 2019 respectively, in which the same issue arose, were also referred to the larger Bench.

2. The above said matters were clubbed together and listed on 22-07-2019 before the larger Bench of three Members. On 22-07-2019, Mr. S. B. Prabhavalkar, Learned Counsel appearing for the Appellants in First Appeal No.478 of 2019, in order to emphasise that additional documents can be taken on record while exercising jurisdiction under Section 21(b) of the Consumer Protection Act, 1986, took support of an earlier Order of the National Commission, passed by a four Members' Bench, in the case of *Khivraj Motors Vs. V. Chandrababu & Anr., II(2002) CPJ 94 (NC)* in which it was held as under:

“Whatever may be the merits of the case, we do not think State Commission was right in holding that additional evidence cannot be led in the State Commission in Appeal. It is not desirable to take a technical view in order to deprive a party of his right. Procedure merely gives guidance as to how justice is to be rendered but the procedure which comes in the way of rendering justice is to be given a go-by. Salutary guidance which the Consumer Protection Act provides is that principles of natural justice should be complied. A consumer forum is required to follow the rules of natural justice though it is not bound by the strict rules of Code of Civil Procedure. If interest of justice requires that a party be permitted to file some additional evidence of which it was deprived of earlier and there is sufficient cause in favour of the party for not having brought the evidence earlier. Consumer Forum should not stand on any formality and disallow the prayer. Of course, each case will depend on the facts of the case. We, however, wish to say that there is absolutely no bar in the provisions of the Act that any additional evidence cannot be brought on record before the State Commission while hearing appeal.”

3. In view of the above submission made by Mr. S. B. Prabhavalkar, the three Members' Bench referred these matters, in the interest of justice, to a Five Members' Bench. Thereafter, the matters were heard by this Bench.

4. In connected Revision Petitions No.533 to 535 of 2019, having identical facts, the vehicle of the Respondent/Complainant, in each case, which was insured with the Petitioners/Opposite Parties had met with an accident but despite efforts, the claim was denied by the Petitioners. On individual Complaints being filed before it in each case, the District Forum vide its Order dated 23-08-2018 allowed the Complaints and directed that reliefs as claimed may be granted in favour of the Respondent. The Appeals preferred by the Petitioners before the State Commission were also dismissed vide Orders dated 07-01-2019 while giving a common observation in all the three Orders, which is reproduced as hereunder:

“The respondent No.1/complainant had filed all documents regarding accident and his attempts regarding his claim. Astonishingly, the appellants/OP Nos.1 to 3 had not filed the Procedure Manual or Terms and Conditions of the Insurance Policy, to demonstrate the liability of the insured or insured, in case the insured vehicle met with an accident. Whatever documents have been filed by respondent No.1/complainant, the concerned District Forum had allowed the complaint on the basis of entire documents submitted by the respondent No.1/complainant.

We have perused para 8 of the impugned order regarding appreciation for the reliefs claimed by the respondent No.1/complainant.

The pleadings of the respondent No.1/complainant are duly supported by the documents filed by him. On the contrary, the facts surfaced in the written response of the appellants/O.P.No.1 to 3,

are not supported by any document, as the appellants/O.P.No.1 to 3 failed to file any document in their support and defence.”

Challenging the Orders of the State Commission, the Petitioners/Opposite Parties have filed these Revision Petitions along with Application, I.A.No.6184 of 2019 in Revision Petition No.533 of 2019 to bring on record additional documents which were not part of the record below, viz., true copy of the Miscellaneous Vehicle Package Policy No.2315/54036734/00/00 along with Terms & Conditions of the Policy, true copy of the Claim form with number CL15001342 dated 04-04-2015, true copy of email dated 10-07-2016 sent by the Surveyor to the Respondent No.1/Complainant and true copy of the Survey Report dated 25-08-2016 with all its Annexures. Similarly, I.A.No.6185 of 2019 has been filed in Revision Petition No.534 of 2019 to bring on record additional documents which were not part of the record below, viz., true copy of claim form with number CL14072775 dated 28-02-2015, copies of emails dated 22-12-2015 and 28-01-2016, true copy of email dated 10-07-2016 sent by the Surveyor to Respondent No.1/Complainant and true copy of the Survey Report dated 20-08-2016 with all its Annexures. I.A.No.6186 of 2019 has also been filed along with Revision Petition No.535 of 2019 to bring on record additional documents which were not part of the record below, viz., true copy of the Claim form with number CL15006381 dated 24-04-2015, copies of emails dated 22-12-2015 and 28-01-2016, true copy of email dated 10-07-2016 sent by the Surveyor to Respondent No.1/Complainant and true copy of the Survey Report dated 18-06-2016 with all its Annexures.

5. We have heard the Learned Counsel for the parties. Even though a large number of decisions have been cited by the Learned Counsel for either of the parties, but we are of the considered opinion that it is not necessary to go into the decisions cited by the Learned Counsel for the parties for the reason that recently the Hon'ble Supreme Court of India in ***Jiten K. Ajmera & Anr. Vs. Tejas Cooperative Housing Society, (2019) 6 SCC 128***, has held that under Order 41 Rule 27 of the Code of Civil Procedure, 1908, a party can produce additional evidence at appellate stage. Relevant paragraphs of the Hon'ble Supreme Court's judgment are reproduced below for ready reference:

“3.1 We have perused the application filed by the appellants herein for bringing additional evidence on record, along with documents sought to be produced in the pending appeal before the State Commission. These documents have admittedly come into existence after the appeal was filed before the State Commission. The appellants, therefore, could not have produced the said documents before the District Forum.

3.2 Under Order 41 Rule 27 CPC a party can produce additional evidence at the appellate stage, if it establishes that notwithstanding the exercise of due diligence, such evidence was not within its knowledge, or could not even after the exercise of due diligence, be produced by it at the time when the decree appealed against was passed.

3.3 These documents are of relevance to establish that the appellants are not in a position to obtain the occupancy certificate from MCGM until the unauthorised structures, which are in violation of the approved plans, are removed. In the absence of these documents, the appellants would not be in a position to substantiate their case that they are unable to obtain the occupancy certificate and comply with the directions issued by the District Forum.

4. The State Commission was in error by rejecting the application filed by the appellants under Order 41 Rule 27 CPC by merely stating that the documents are “not necessary”. The said order is an unreasoned one. The State Commission must have taken a holistic view of the matter.

5. The National Commission has by the impugned order dated 16-03-2018 affirmed the interim order passed by the State Commission.

6. In the light of the aforesaid discussion, the interim order dated 10-12-2015 passed by the State Commission is hereby set aside, as also the impugned order dated 16-03-2018 passed by the National Commission.

7. The Civil Appeal is allowed. The matter is remitted to the State Commission to take the additional documents on record, and decide the appeal on merits in accordance with law. The State

Commission is further directed to decide the appeal expeditiously since it is pending since 2013. Ordered accordingly.”

6. In view of the law laid down by the Hon’ble Supreme Court in **Jiten K. Ajmera (supra)**, either of the parties are entitled to produce additional evidence in the Appeal and/or Revision Petition at any stage if it establishes that notwithstanding the exercise of due diligence such evidence was not in its knowledge and could not, even after exercise of due diligence, be produced by it at the time when the Consumer Complaint was decided. We, therefore, answer the reference accordingly.

.....J
R.K. AGRAWAL
PRESIDENT
.....J
V.K. JAIN
MEMBER
.....J
DEEPA SHARMA
MEMBER
.....
M. SHREESHA
MEMBER
.....
ANUP K THAKUR
MEMBER

