

**(2014) 03 NCDRC CK 0086**

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**

**Case No:** None

M/S. Shree Ostwal  
Builders Ltd.

APPELLANT

Vs

Subhash G.Master

RESPONDENT

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**Date of Decision:** March 3, 2014

**Citation:** 2014 0 NCDRC 124

**Hon'ble Judges:** K.S.CHAUDHARI , B.C.Gupta J.

**Advocate:** VINAY NAVARE , SATYAJEET KUMAR , K.Solanki

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**Judgement**

1. THIS revision petition has been filed by the petitioners against the order dated 6.5.2013 & 10.10.2013 passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (in short, "the State Commission ") in CC No. 13/99 - Mr. Subhash G Master & Anr. Vs. M/s. Shree Ostwal Builders Ltd. & Anr. by which, application for extension of time for filing written statement was dismissed.

2. BRIEF facts of the case are that complainants/Respondents filed complaint before State Commission which was admitted on 1.4.2013 and notices were issued to OP/petitioner for filing written statement and case was fixed for 6.5.2013. As none appeared for the OP and no written statement was filed by OP on 6.5.2013, State Commission directed the complainant to file evidence and matter was adjourned to 3.7.2013. On

2013, OP filed application before Ld. State Commission and submitted that time may be extended to file written statement and reply to interim application. Learned State Commission vide order dated 10.10.2013 dismissed application on the ground that

Commission has no power to recall or review its order against which, this revision petition has been filed. 3. Heard learned Counsel for the parties finally at admission stage and perused record.

3. LEARNED Counsel for the petitioner submitted that notice issued by State Commission was not in accordance with law and learned State Commission committed error in dismissing application for extension of time for filing written statement; hence, revision petition be allowed and impugned order be set aside and petitioner be allowed to file written statement. On the other hand, learned Counsel for the respondent submitted that petitioner has not challenged order dated 6.5.2013 and orders passed by learned State Commission are in accordance with law; hence, revision petition be dismissed.

4. PERUSAL of record reveals that complaint was admitted on 1.4.2013 and notice was issued by State Commission on 9.4.2013 for appearance before State Commission on 6.5.2013 meaning thereby 27 days " notice was given to file written statement. Learned Counsel for the petitioner has drawn our attention to Section 13 (i) (a) of the Consumer Protection Act which provides that on admission of the complaint notice is to be issued to OP directing him to give his written statement within a period of 30 days or such extended period not exceeding 15 days. In the case in hand, only 27 days " time has been given for filing written statement and learned Counsel for the petitioner submitted that minimum 30 days " time was required to be given. Learned Counsel for the respondent submitted that on account of negligence of the clerk of the State Commission, notice was issued after 8 days for which, respondent cannot be blamed. It is true that notice should have been issued by the concerned clerk immediately after admission of the complaint and in normal course 30 days " time should have been given by learned State Commission for filing written statement, but we do not agree with the submission of the learned Counsel for the petitioner that notice for less than 30 days " period for filing written statement is not in accordance with law. Section 13 (i) (a) prescribes that notice will be issued to file written statement within a period of 30 days " meaning thereby, notice for smaller period is also permissible which can be extended for another 15 days, but it does not mean that notice of shorter period from 30 days is not in accordance with law.

Petitioner was supposed to appear before State Commission on 6.5.2013 and should have filed written statement, but petitioner did not appear and learned State Commission

directed complainant to file evidence along with affidavit. Learned State Commission has not passed any order for proceeding ex -parte against the OP on that date and matter was adjourned to 3.7.2013. On 3.7.2013, Counsel for the OP appeared and filed application for extension of time to file written statement which was dismissed by learned State Commission vide order dated 10.10.2013.

5. LEARNED Counsel for the respondent submitted that as petitioner has not challenged the order dated 3.7.2013, revision petition is not maintainable. This argument is devoid of force as no order against OP was passed by learned State Commission on 3.7.2013, but the matter was adjourned for hearing of the application filed by the OP and ultimately by order dated 10.10.2013 application was dismissed on the ground that it would amount to recall or review its order.

6. AS no ex -parte order was passed by learned State Commission on 6.5.2013, there was no question of recalling ex -parte order as observed by learned State Commission in order dated 10.10.2013 and learned State Commission should have disposed of application on merits.

As application for extension of time was filed on 3.7.2013, the date on which the case was adjourned for complainant 's evidence with submissions that third party right has already been created in the disputed flat; OP may be allowed to file written statement.

7. LOOKING to the facts and circumstances of the case, we deem it proper to allow the revision petition and also allow OP/petitioner to file written statement subject to payment of cost.

8. CONSEQUENTLY , revision petition filed by the petitioner is allowed and impugned order dated 10.10.2013 passed by learned State Commission in CC No. 13/99 - Subhash G. Master Vs. M/s. Shree Ostwal Builders Ltd. & Ors. is set aside and order dated 6.5.2013 is modified and application filed by the OP for extension of time for filing written statement is allowed subject to cost of Rs.5,000/- to be paid by the OP to the complainant.

Parties are directed to appear before the State Commission on 15.3.2014 and OP is further directed to file written statement on or before 15.3.2014.