2025:BHC-AS:55075

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12510 OF 2024

New India Assurance Co. Ltd.
Through its Regional Office No. 2 ...Petitioner

Versus

Gayatridham Phase Co-op. Housing Society
& Anr. ...Respondents

Mr. Rushabh Vidyarthi *a/w* Mohit Turakhia *i/b Asim Vidyarthi for Petitioner.*
Mr. Ashutosh Marathe *for Respondent No. 1.*
Mr. Ajit M. Savagave *for Respondent No. 2-Bank.*
Ms. Savina Crasto, *AGP for State-Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.
RESERVED ON : DECEMBER 4, 2025
PRONOUNCED ON: DECEMBER 15, 2025

JUDGEMENT :

1. Rule. By consent of parties, made returnable forthwith and taken up for final hearing.

Context and Factual Background:

2. This Petition impugns a judgement passed by the National Consumer Disputes Redressal Commission ("***National Commission***")

dated March 4, 2024 (***"National Commission Order"***), refusing to interfere with an Order passed by the State Consumer Disputes Redressal Commission, Maharashtra ("***State Commission***") dated November 15, 2016 (***"State Commission Order"***).

3. The Petitioner, New India Assurance Co. Ltd. (***"New India"***) had issued a Standard Fire and Special Perils Policy on July 25, 2004 (***"Insurance Policy"***) to the Respondent No.1, Gayatridham Phase Co-op Housing Society (***"Society"***) which was scheduled to expire on July 24, 2005. Ahead of the scheduled expiry, on July 17, 2005, the Society paid the applicable premium amount for renewal of the Insurance Policy. The cheque towards premium amount for Rs.18,910/- had been drawn on Respondent No. 2, The Thane District Central Co-operative Bank Ltd. (***"Thane Bank"***).

4. On July 22, 2005, New India renewed the Insurance Policy and issued a fresh Policy for the next year i.e. between July 25, 2005 and July 24, 2006. Two days into the new policy, on July 26, 2005, torrential rains struck Mumbai leading to severe damage being caused to the Society and its property, which led to filing of a claim on August 7, 2005.

5. As it transpires, although the cheque had been received on July 17, 2005, after which the insurance policy was issued on July 22, 2005, New India had deposited the cheque only on July 30, 2005. On August 4, 2005, New India claims to have written a standard letter to the Society stating that the cheque issued by the Society had been dishonoured, purportedly on account of insufficient funds, because of which the insurance policy issued to the Society was being cancelled.

6. On August 7, 2005 the Society filed a claim request with New India making a claim seeking indemnification for the loss suffered by the Society on July 26, 2005. There is nothing on record to indicate that New India expressed surprise at the claim being made on a cancelled insurance policy. The Thane Bank is on record confirming that the Society had adequate and sufficient funds.

7. As it transpired, on August 11, 2005, the Thane Bank wrote to New India that the transaction had not been processed owing to the torrential rains. According to the Thane Bank, the advice issued by New India to the Society, namely that the cheque had been dishonoured owing to insufficient funds was not accurate. According to the Thane Bank, it had in fact indicated that the cheque ought to be presented afresh by State Bank of India, which was New India's banker, and that

the dishonour was owing to the breakdown of infrastructure due to the floods and not due to insufficiency of funds in the account of the Society.

8. In the course of two rounds of proceedings before the State Commission and the National Commission, a copy of the original advice that would have been received by New India from State Bank of India of by State Bank of India from the Thane Bank was not traceable. It is the stance of the Thane Bank throughout proceedings that the State Bank of India had been asked to present the cheque afresh and there was no question of the Thane Bank having confirmed that there had been insufficiency of funds.

9. The State Commission directed by an order dated October 17, 2008, that the cheque return memo be produced. However, it is common ground that the original cheque return memo could not be produced by the Thane Bank or by New India.

10. The Society had repeatedly written to New India on multiple occasions, contemporaneous with the making of the claim, following up on the processing of the claim. There is nothing to indicate that New India responded to these follow up letters contemporaneously, asserting that the policy had been cancelled and repudiated on August 4, 2005.

11. The letters from the Society to New India, first raising the claim on August 7, 2005, and then on September 18, 2005, September 23, 2005 and November 7, 2005, following up and complaining about non-settlement of the claim, and also threatening legal action, do not appear to have been responded to by New India. Eventually, on January 31, 2006 the Society wrote to New India threatening to take legal action against New India. On the same date i.e. on January 31, 2006, evidently New India had written to one Mr. Suratkar, New India's Surveyor, Mr. Suratkar ("***Surveyor***") with the subject "*Claim of M/s. Gayatridham Co-operative Housing Soc. Ltd., Phase II, Titwala*", which was also copied to the Society, requesting the Surveyor to urgently forward the Survey Report to the Regional Office since the matter had been handed over to another office of New India.

12. The said letter also called on the Surveyor to attend New India's office for a discussion of the claim on or before February 2, 2006, failing which New India would take up the Surveyor's matter with the insurance regulator namely the Insurance Regulatory Development Authority (***"IRDA"***). In other words by this letter it appears that the claim raised by the Society was indeed being processed at New India's end. Had the insurance policy been cancelled, there would have been no

question of processing the claim or following up with the Surveyor to furnish the survey report.

13. All of this was adjudicated by the State Commission, which partly allowed the complaint filed by the Society, by directing New India and the Thane Bank to jointly and severally pay compensation in an amount of Rs. 5 Lakhs to the Society within sixty days after which the amount attract interest at the rate of 9% per annum. The Society was also awarded costs, quantified in the sum of Rs.25,000/- to be paid jointly and severally by New India and the Thane Bank.

14. Both the Society and the Thane Bank were aggrieved by the State Commission's decision. They filed appeals before the National Commission. Notably, New India did not file any appeal. The findings of the State Commission appear to have been embraced by New India, which indeed participated in the appeals filed by the Society and the Thane Bank. According to Thane Bank, all the fault was at the doorstep of New India and a direction to jointly and severally pay the compensation was unfair. According to the Society, its claim ought to have been processed and a mere Rs. 5 lakh compensation was unfair.

15. The National Commission Order allowed the Appeal of the Society, and also relieved the Thane Bank of any liability to pay the

Society. The National Commission Order required New India to honour its obligation under the Insurance Policy and towards this end, reviewed an assessment made by a valuer empanelled by this Court, and discounted that assessment of loss and directed New India to pay compensation in a sum of Rs.34,78,002.40, which was held to be "*a fair and equitable amount*", computed at the rate of 80% of the estimation made by the aforesaid valuer (in the sum of Rs.43,47,503/-).

16. The National Commission found that the Society had taken due care to renew the Insurance Policy well in time, and had also issued the premium cheque to New India well in time. It is on this basis that New India even issued the renewed policy on July 22, 2005. The National Commission held that New India failed to produce any evidence that the Thane Bank had communicated the purported shortage of funds in the Society's account. The National Commission held that New India had been unable to clarify as to why it would have appointed a surveyor namely Mr. Suratkar, if it had truly been of the view that the Insurance Policy had been rendered *void ab initio*, owing to non-receipt of insurance premium as claimed by New India.

17. The ad hoc assessment of cost of compensation of Rs.5 Lakhs and a cost estimation of Rs.50,000/- was not acceptable to the National

Commission. It held that the onus of appointing a surveyor and obtaining an estimate of the loss was squarely on New India and despite appointing a surveyor and even following up with the surveyor, New India had taken a stance that the policy stood repudiated on account of the purported non receipt of insurance premium on August 4, 2005 even before the claim was made on August 8, 2005.

18. It was noted that throughout the proceedings, neither was any Survey Report brought on record, nor did New India demonstrate how it had taken a view that insufficiency of funds in the Society's account had led to the cheque being dishonoured.

19. Aggrieved by the said analysis of the National Commission, New India has filed this Petition impugning the National Commission Order.

Contentions of the Parties:

20. Mr. Rushabh Vidyarthi, Learned Advocate on behalf of New India would attack the Impugned Order in the following terms:

(a) The complaint made by the Society with the State Commission was hopelessly barred by limitation in terms of the limitation period of two years under Section 24A of the

Consumer Protection Act, 1986. According to him, the Society had not filed its complaint with the State Commission within a period of two years from August 4, 2005 when the policy was repudiated by New India, citing non receipt of insurance premium and had not even sought condonation of delay, citing sufficient cause. Towards this end, he would rely on the decision of the Supreme Court in ***Kandimalla Raghavaiah***[1];

(b) Mr. Vidyarthi would contend that letter dated January 31, 2006 issued by New India to its Surveyor chasing down the survey report, threatening to report the Surveyor to the IRDA could not be treated as evidence of limitation being waived by New India, since this letter does not constitute an acknowledgment of debt, and is not even addressed to the Society;

(c) To deal with the fact that New India did not even file an appeal on this very ground of limitation, Mr. Vidyarthi would contend that it is the Court's duty to assess the facet of limitation on its own, even if the parties do not raise objections on the ground of limitation. New India did not need

[1] *Kandimalla Raghavaiah And Company v. National Insurance Company And Another – (2009) 7 Supreme Court Cases 768.*

to file an appeal or even raise the issue of limitation in its defence when framing issues, for the National Commission to be excused from dealing with the issue of limitation and returning findings on why it believes the State Commission was right in holding that the Society's claim was not barred by limitation. He would also rely on multiple other judgments including ***R. Nagaraj (Dead) through Lrs. And Another***[2] and ***S. Shivraj Reddy (Died) thr his Lrs. And Another***[3].

(d) Finally, New India would claim that under Section 64-VB of The Insurance Act, 1938, no insurer is permitted to assume any risk in India in respect of any insurance business, among others, when premium is not paid in such manner and within such time as prescribed in advance. Towards this end, Mr. Vidyarthi would submit that there was a failure of underlying consideration for the insurance policy, and therefore, New India cannot be called upon to shoulder the financial burden imposed in the National Commission Order. Towards this end, he would rely on the case of ***Yellamma***[4]

[2] *R. Nagaraj (Dead) through Lrs. And Another v. Rajmani and Others – 2025 SCC OnLine SC 762.*

[3] *S. Shivraj Reddy (Died) thr his Lrs. And Another v. S. Raghuraj Reddy and Others – 2024 SCC OnLine SC 963.*

[4] *National Insurance Company Limited v. Yellamma And Another – (2008) 7 Supreme Court Cases 526.*

(Paragraph Nos. 11, 12, 14 and 15) and ***Seema Malhotra***[5] (Paragraph No. 18).

21. In sharp contrast, Mr. Ashutosh Marathe, Learned Advocate on behalf of the Society would submit that there is nothing perverse in the National Commission Order, inasmuch as the objectives of the Consumer Protection Act, 1986 have been appropriately addressed by the National Commission. He would submit that New India did not even bother to challenge the State Commission's Order, even while participating in the appellate proceedings filed by the Thane Bank and the Society. Even while resisting these appeals, the issue of limitation was never pressed by New India before the National Commission, which led to the point of limitation not being framed for determination, in the absence of either an appeal, or an objection in resisting others' appeals, by New India. Therefore, it is late in the day for New India to raise the issue of limitation at this stage, in a Writ Petition, having given up any grievance it may have had with the State Commission's Order, in particular on the facet of limitation since even in the others' appeals, New India did not table its objection to the finding by the State Commission that the Society's claim was not barred by limitation.

[5] *National Insurance Company Limited v. Seema Malhotra* – *(2001) 3 SCC 151.*

22. As regards Section 64 VB of The Insurance Act, 1938, Mr. Marathe would submit that quite clearly, the cheque for policy premium had been issued by the Society well in advance of the scheduled expiry of the earlier policy. The amount had been paid under cover of the letter dated July 17, 2005, which was not only accepted by New India but also led to New India issuing the renewed Insurance Policy on July 22, 2005. The premium cheque ought to have been deposited by New India promptly, but it was New India's own failure to present the cheque well after the renewed policy commenced its coverage – the cheque had been presented only on July 30, 2005 after the floods of July 26, 2005. Such delay is what has led to the purported cancellation of the policy on August 4, 2005. Yet, that there was no cancellation is seen from the fact that New India had been following up with its Surveyor, and that apart, indeed, it is a matter of record that the Society had more than sufficient funds in its bank account. New India made another mistake by wrongly claiming that the cheque had been dishonoured owing to insufficient funds – a fact it has failed to prove in two rounds of litigation.

23. The Thane Bank has explained that State Bank of India, New India's bank, had been requested to present the cheque afresh and yet there is no explanation as to why this action had not been taken. In the result, Mr. Marathe would submit that there is abject failure on the part

of New India all along, which is an clear deficiency of service and operational negligence, for which the Society, as a consumer of insurance services, ought not to suffer.

24. In the result, Mr.Marathe would contend that the extraordinary writ jurisdiction of this Court ought not to be exercised to disturb what is an eminently reasonable exercise of jurisdiction by the National Commission.

Analysis and Findings:

25. Having heard Learned Advocates for the parties and having examined the record with their assistance, it is apparent that the Insurance Policy was not a brand new policy but was a pre-existing policy with the Society having been insured right from July 25, 2004.

Ground of Bar of Limitation:

26. The primary ground of challenge is that the Society's claim is barred by limitation, mooring the accrual of the cause of action to August 4, 2005.

27. Indeed, the torrential rains in Mumbai that took place on July 26, 2005 led to the filing of a claim in the sum of Rs.37.33 Lakhs. This

claim was filed on August 7, 2005. Since New India claims that on August 4, 2005 it had already cancelled the Insurance Policy on account of the premium cheque having been dishonoured owing to insufficient funds, there ought to have been some contemporaneous and collateral evidence to indicate this position in New India's conduct. In sharp contrast, the material on record points to the contrary – on January 31, 2006 i.e. five months later, New India was following up with its Surveyor on the survey report and was even threatening to report him to the IRDA. All of this leads to a reasonable preponderance of probability that New India's claim of repudiation having taken place on August 4, 2005 does not inspire confidence.

28. Limitation is a mixed question of fact and law. Two concurrent forums have analysed the attendant conduct of New India at the relevant time and have returned reasonable findings on the basis of the evidence in the form of the letter dated January 31, 2006. There is nothing unreasonable or arbitrary in the finding on the mixed question of fact and law. Section 24A of the Consumer Protection Act, 1986 provides for a two-year time limit for filing a complaint and a proviso for condonation of delay. One would need to seek condonation of delay if there had been delay. The Society had followed up throughout 2005 with New India, which did not lead to any rebuttal from New India,

leave alone a firm one. Worse, there is evidence as of January 31, 2006 that New India was processing the insurance claim.

29. It is not disputed that there is no response to the Society's letter dated August 7, 2005, expressing surprise that the Society could even raise such a claim. That apart, even if one treats the Society's letter issued through September 2005 and January 2006 as communication that would not led to unilateral extension of the limitation period, it is apparent from the letter dated January 31, 2006 issued by New India to its Surveyor, Mr. Suratkar asking him to urgently submit the Survey Report, that far from New India having been of the view that the Insurance Policy stood repudiated, it was in fact following up and processing the Society's claim since it wanted its surveyor to submit the Survey Report.

30. Therefore, I see no reasonable basis to interfere with the National Commission Order, which does not contain any infirmity on the ground of arbitrariness or perversity in its finding that as of January 31, 2006, New India had not repudiated the insurance policy. It is wholly unfair and inappropriate for New India to seek to base its Writ Petition on the premise of limitation and that too when it did not raise this issue before the National Commission, even while defending the

Society's claim. Worse, it is totally unfair to expect the National Commission to frame an issue on which there is no controversy presented by the conflict between the positions of the parties before the forum.

31. There ought to have been some indicia that this issue was at the fore, even if it was not squarely raised. I find that the National Commission Order indeed returns findings on the implications of the January 31, 2006 letter of New India, which is indeed copied to the Society. It is not right to claim that the letter was not addressed to the Society, because although it was addressed to the Surveyor, it was copied to the Society. Implicit in this analysis is the fact that the National Commission indeed found that as of January 31, 2006, New India could not have been found to have repudiated the claim.

32. The complaint by the Society before the State Commission has been verified and filed on August 31, 2007. If one takes the date of January 31, 2006 as the date of accrual of the cause of action, at which time, New India is seen as having acted in a manner that the claim was not repudiated (and it was in fact following up on the claim), the complaint to the State Commission was filed well within limitation. The State Commission's findings of a mixed question of fact in law that the

claim was not barred by Section 24-A of the Consumer Protection Act, 1986 cannot be faulted as being arbitrary or unreasonable.

33. I am not persuaded by Mr. Vidyarthi's best efforts to contend that the date of accrual of the cause of action was August 4, 2005, for the reasons analysed above. It is quite evident that New India never asserted this position throughout 2005 and even as late as January 2006, when New India was threatening its own Surveyor with regulatory action before the IRDA if the Survey Report was not forwarded. The National Commission too has noticed this facet and reasonably held that the claim of repudiation as of August 4, 2005 does not lend itself to acceptance. Implicit in this finding is an assessment that the Society's claim was not barred by limitation.

Kandimalla and Hindustan Safety Glass:

34. In my opinion, the reliance on ***Kandimalla Raghavaiah*** is wholly inappropriate in the facts of this case. Mr. Marathe's reliance on two decisions of the Supreme Court that noticed ***Kandimalla Raghavaiah*** and differentiated it, bear strong resonance in the instant case. Paragraph Nos. 16, 17 and 18 in ***Hindustan Safety Glass Works Limited***[6] are worthy of extraction – they too reflect a case of floods and

[6] *National Insurance Company Limited v. Hindustan Safety Glass Works Limited – (2017) 5 Supreme Court Cases 776.*

differentiate the facts from ***Kandimalla Raghavaiah*** in the following terms:

> *16.* ***Similarly, reliance on Kandimalla Raghavaiah & Co. v. National Insurance Co. is misplaced****. In this case, a* ***fire broke out*** *in the premises of the insured* ***on 23-3-1988*** *and* ***the appellant therein sought a claim*** *from the insurance company* ***on 6-11-1992*** *while the* ***complaint was filed*** *with the National Commission* ***on 24-10-1997****.* ***Under these circumstances, it was held that the complaint was barred by limitation****.*
>
> *17. Strictly speaking,* ***the event that caused the loss or damage to the insured occurred on 6-8-1992*** *when due to heavy incessant rain in Calcutta, the raw materials, stocks and goods, furniture etc. of the insured were damaged.* ***On the very next day, the insured lodged a claim with National Insurance****. In response,* ***National Insurance first appointed N.T. Kothari & Co. to assess the loss suffered*** *by the insured and a* ***report was given by this surveyor after more than one year****. Thereafter, for reasons that are not at all clear,* ***National Insurance appointed a second surveyor which also took about one year to submit its report and eventually gave an addendum to that report thereby crossing one year in completion of its report along with the addendum****. In other words,* ***National Insurance itself took more than two years in surveying or causing a survey of the loss or damage suffered*** *by the insured. Surely,* ***this entire delay is attributable to National Insurance and cannot prejudice the claim of the insured, more particularly when the insured had lodged a claim well within time****. To make matters worse,* ***National Insurance actually repudiated the claim of the***

> ***insured only on 22-5-2001 which is well after the complaint was filed with the National Commission***.
>
> *18.* ***In our opinion, in a dispute concerning a consumer, it is necessary for the courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-à-vis the supplier of services or goods. It is to overcome this disadvantage that a beneficent legislation in the form of the Consumer Protection Act, 1986 was enacted by Parliament***. *The provision of limitation in the Act cannot be strictly construed to disadvantage a consumer in a case where a supplier of goods or services itself is instrumental in causing a delay in the settlement of the consumer's claim. That being so, we have no hesitation in coming to the conclusion that the National Commission was quite right in rejecting the contention of National Insurance in this regard.*
>
> ***[Emphasis Supplied]***

35. In the matter at hand too, the Society made its claim on August 7, 2005, within two weeks of the floods of July 26, 2005. There was no repudiatory response throughout the rest of 2005 when the Society was following up. There is a follow up on the survey in January 2006. By no stretch could the analysis of the provocative facts of ***Kandimalla Raghavaiah*** become routinely available to support New India's case in such a factual matrix.

36. Likewise, the reliance on ***R. Nagaraj*** to submit that where the pleadings are silent it is the duty of the Court to ascertain from the

evidence and overall facts to render a finding on limitation, where the question of limitation is treated as a question of law, is also misplaced, which is already analysed above.

37. Indeed a question of law can be raised at any time. However, when a question has in fact been raised and has been answered and that answer is neither challenged nor questioned in the appellate challenge, it cannot be expected that the Court should imagine a grievance that may be raised at a later stage and proceed to answer it on its own. Instead, as stated above, the declaration of the position in law in ***Hindustan Safety Glass Works Limited*** is most appropriate, based on which, in my opinion, the facts of the matter in hand do not lend themselves to any interference with the Impugned Order.

38. Likewise, the following extracts from the decision of the Supreme Court in ***Hareshwar Enterprises (P) Ltd. and Others***[7] are also noteworthy:

> *6. Having noted the contention, on the provision as contained, there is no ambiguity whatsoever. However,* ***what is required to be taken note is that the provision indicates that the complaint is required to be filed within two years from the date on which the 'cause of action' has arisen.*** *In that context, another decision relied on by the*

[7] *National Insurance Company Ltd. v. M/s. Hareshwar Enterprises (P) Ltd. and Others – 2021 0 Supreme (SC) 461.*

learned counsel for the appellant in the case, Kandimalla Raghavaiah and Company vs. National Insurance Company and Another (2009) 7 SCC 768 with specific reference to para 18 would indicate that ***the term 'cause of action' though not defined in the Act, but it is of wide import and it would have different meaning in different context while considering limitation****. It has been held therein that* ***pithily stated 'cause of action' means, cause of action for which the suit is brought and which gives occasion for and forms the foundation of the suit.*** *Reliance is placed on this case by the learned counsel since in the said case, which was also in respect of a fire incident it was held that the date of accrual of cause of action has to be a date on which the fire breaks out. However, what cannot be lost sight is that, such conclusion was reached in the cited case since the fire in tobacco godown took place 22/23.03.1988 and the bank in whose favour the stocks had been hypothecated was informed about it by the appellant on 23.03.1988 itself, but insofar as the claim, the matter had rested there till 06.11.1992 when for the first time the appellant addressed the letter to the insurance company and sought for claim form. The facts therein, if noted would indicate the reason for which this court had indicated that the date on which the fire broke out is the date of accrual of cause of action since it did not move forward in any other manner. It has not been laid in strait jacket. The cause of action will remain flexible to be gathered from the bundle of facts arising in each case.*

7. ***In contradistinction, in the instant case as noted the fire incident had occurred on 06.11.1999. The appellant had informed the insurer on 07.11.1999, where after the joint surveyors were appointed and on verification had submitted their final report on 13.03.2001. Despite said report, the insurer through their letter***

dated 22.06.2001 had appointed an investigator but did not proceed to either accept the claim or repudiate the same. *In that background, a perusal of the complaint filed by the respondent No.1 before the NCDRC would indicate that the cause of action has been mentioned in para 21 as follows:-*

> ***"21. CAUSE OF ACTION***
>
> ***The cause of Action arose for the first time when property belonging to the Complainant was destroyed in the fire on 6.11.1999. Then it continued from time to time when the survey was complete and the Complainant was not paid the claim amount. It arose when the legal notice on behalf of Complaint was issued and same was replied by advocate on behalf of the Opponent No. 1. Hence the present Original Petition is in limitation***. *The Advocate for the complainant issued legal notice on 5.1.2003 demanding money from opposite party No. The copy of the said letter is annexed hereto and marked as Annexure P/13."*

Further, in the reply filed on behalf of the insurer before the NCDRC reference is contained that correspondence was exchanged between the investigator appointed by the insurer and the respondent No.1 *through the letters dated 07.03.2002, 05.04.2002, 03.05.2002, 03.06.2002 and 13.07.2002.*

8. ***If in the above context the fact situation herein is noticed, though the fire incident occurred on 06.11.1999, the same merely provided the cause of action for the first time to make the claim but the same did not remain static at that point***. *On the other hand,* ***the process of joint survey though had concluded with its final report on 13.03.2001, the letter dated 22.06.2001 addressed by***

> ***the insurer to the respondent No.1 regarding appointment of the investigator had created a fresh cause of action and kept the matter oscillating.*** *Thereafter, the matter did not rest at that but there was repeated action being taken by the investigators seeking for details.* ***When the same did not conclude in an appropriate manner, the respondent No.1 (Insured) got issued a legal notice dated 05.01.2003 to which reply was issued, when in fact the repudiation was gathered and the complaint was filed. Even if the date on which the process of intimation of appointment of the investigator through the letter dated 22.06.2001, received by the respondent No.1 is taken into consideration, from that date also the complaint filed on 26.03.2003 is within time.*** *There was* ***no need for the NCDRC to pass any separate order at the outset to hold the claim to be within limitation and then proceed when it is clear on the fact of it****. As such the consideration of the complaint on merits by the NCDRC was justified. The contention therefore urged by Mr. Vishnu Mehra, learned counsel on that ground is accordingly rejected.*
>
> ***[Emphasis Supplied]***

39. The aforesaid analysis would squarely apply to the instant case too.

Purported Failure of Consideration of Insurance Premium:

40. The Insurance Policy was schedule to expire on July 24, 2005 and in engagement with the Insurance Agent, the renewal premium had been paid by cheque as early as July 17, 2005, which even led to New India issuing the renewed policy on July 22, 2005 to take effect on July

25, 2005. It is inexplicable that a party that claims that insurance premium has to be received in advance of the insurance cover taking effect, would bank the cheque nearly a week after the insurance cover took effect. The ground on which the cheque was said to have been dishonoured is also hotly contested and in my opinion, there is an evident deficiency of service by both New India and the Thane Bank, for which the Society ought not to suffer.

41. The provisions of Section 64VB of the Insurance Act, 1938 are extracted below:-

> *"64VB.* ***No risk to be assumed unless premium is received in advance*** *- (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed* ***or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner****.*
>
> *(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance,* ***the risk may be assumed not earlier than the date on which the premium has been paid*** *in* ***cash or by cheque*** *to the insurer.*
>
> *Explanation. -* ***Where the premium is tendered*** *by postal money order or* ***cheque sent by post, the risk may be assumed on the date on which*** *the money order is booked or* ***the cheque is posted****,*

as the case may be."

[Emphasis Supplied]

42. A plain reading of the foregoing would show that the import of the advance receipt of funds before assuming the risk in the context of payment by cheque is that the cheque must have been received before assuming the risk. In this case, it was indeed received. New India had time between July 17, 2005 and July 24, 2005 to bank the cheque. However, it had no reason to believe that the princely sum of just about Rs. 18,000 would not be honoured. New India, in compliance with Section 64VB assumed the risk with effect from July 25, 2005 and issued the policy on July 22, 2005.

43. It is its case that the cheque was dishonoured and the cause of the dishonour was hotly disputed with collateral evidence from the Thane Bank that the dishonour was not due to insufficiency of funds but due to technical problems in the aftermath of the very same floods. The National Commission has returned plausible findings on an assessment of evidence that New India failed to prove its case on the real cause for dishonour of the cheque and its own failure to present the cheque afresh particularly when evidence was led by the Thane Bank that cheque was asked to be presented afresh. This was not challenged and confronted,

and the findings returned are reasonable. If an insurer's manner of handling the premium cheque is negligent, it would be self-serving for the insurer to seek to exploit the same to repudiate the claim.

44. Therefore, reliance on Section 64VB of the of The Insurance Act, 1938 claiming non-receipt of insurance premium is also of no assistance to New India. Indeed, receipt of amount by cheque is subject to realization but if the realization was delayed owing to New India's own deficiency in its own operational conduct, the consequence of the same cannot be visited upon the innocent Society which had in fact received the Insurance Policy and even made a claim, which claim was processed by New India as explained above. The attempt to rely upon the letter dated August 4, 2005 purporting to have cancelled a Policy is an afterthought which is evidently a stratagem to raise the issue of limitation at a belated stage with a view to pick holes in the Impugned Order passed by the National Commission.

45. At the least, New India ought to have had a back-up to demonstrate dishonour of a cheque owing to insufficiency of funds. New India ought to have been able to explain why the cheque had not been deposited afresh. If New India truly believed in its contentions being made today, at the least, it ought to have challenged the State

Commission Order – in contrast, it neither filed an appeal nor raised an objection on limitation before the National Commission. In my opinion, such conduct does not lend itself to endorsement by way of interference with the National Commission Order in exercise of the extraordinary and equitable writ jurisdiction of this Court.

46. Mr. Vidyarthi would rely on ***Yellamma***, and in particular, the following extracts:

> *11.* ***A contract of insurance like any other contract, is a contract between the insured and the insurer. The amount of premium is required to be paid as a consideration for arriving at a concluded contract****. If the insurer insists that a cheque should be issued only by the insured and not by a third party, no exception thereto can be taken.* ***The fact remains that the cheque was not encashed. Concededly, the insured did not make any payment.***
>
> *14.* ***In today's world payment by cheque is ordinarily accepted as valid tender but the same would be subject to its encashment****. A distinction, however, exists between the statutory liability of the insurance company vis-a-vis the third party in terms of Sections 147 and 149 of the Motor Vehicles Act and its liability in other cases but* ***it is clear that if the contract of insurance had been cancelled and all concerned had been intimated thereabout, the insurance company would not be liable to satisfy the claim.***
>
> *18. Thus, when the insured fails to pay the premium promised, or* ***when the cheque issued by him towards the premium is returned***

> ***dishonoured by the bank concerned the insurer need not perform his part of the promise***. *The corollary is that the insured cannot claim performance from the insurer in such a situation.*
>
> ***[Emphasis Supplied]***

47. In the analysis set out above before the aforesaid extraction, it is clear that the cause of the dishonour and New India's role in the handling of the purported dishonour lies at the heart of the controversy in the assessment of deficiency of service by New India. As explained above, New India has failed on a reasonable assessment to prove its case of a dishonour on the ground of insufficiency of funds. The timing of New India's own deposit of the cheque and its inability to deal with evidence that its banker had been asked to present the cheque afresh, was assessed and adjudicated. Therefore, the aforesaid discussion in ***Yellamma*** cannot be applied as if it were a provision of a legislation, with no regard to the adjudication and assessment of evidence in the facts of the case.

Conclusion and Order:

48. For the aforesaid reasons, in my opinion, no case for intervention in exercise of the writ jurisdiction has been made out on any of the grounds pressed into service on behalf of New India. Neither is there any arbitrariness on account of limitation nor is there a failure

of consideration as claimed on behalf of New India. On the contrary, it is New India's deficiency of service and operational negligence that led to the situation on hand. Since despite appointment of a surveyor, New India refrained from providing the survey report, the National Commission has adopted a reasonable approach to assessing the compensation that may be granted.

49. The Consumer Protection Act, 1986 is devised precisely to provide a quasi-judicial approach to award of compensation. The National Commission has applied its mind to the evidence and examined the report filed by a Court-empanelled valuer and discounted it by what it felt was reasonable. This was not an arbitrary approach but was a reasonable method of dealing with complete denial of objective information by New India, which was found to have had a string of untenable actions right from the time of issuance of the insurance policy.

50. The very objective of the Consumer Protection Act, 1986 is to protect consumers from such conduct. Insurance companies are institutions in the financial sector, which, by design are meant to hold out a higher intensity of promise in their obligations to their constituents, and this is what backs the doctrine of utmost good faith

being owed to the insurance companies by the rest of society. When the law protects insurers by expecting utmost good faith, the corollary is that the insurance companies are expected to conform to highest standards of transparency, propriety and diligence in their interaction with its stakeholders and policyholders.

51. In these circumstances, the Petition is ***dismissed***. Rule is discharged in the aforesaid terms.

52. Considering the further time spent in this round of litigation, costs in a token sum of Rs.25,000 payable to the Society within a period of one week of the expiry of four weeks from today, would meet the ends of justice.

53. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]