

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION  
MAHARASHTRA, MUMBAI**

**Complaint Case No. CC/18/609**

**TUSHAR SUBHAS  
BORADE**

**Vs.**

**SIROYA FM  
CONSTRUCTIONS PVT.  
LTD**

**BEFORE:**

**JUSTICE A.P. Bhangale PRESIDENT  
A.K.ZADE MEMBER**

**For the Complainant:**

**For the Opp. Party:**

**Dated : 10 Oct 2018**

**ORDER**

Advocate Shri.Uday Wavikar is present for complainant. Advocate Smt.Sapna Bhuptani is present for opponent. Heard submissions. By noting dated 08/10/2018 on the question as to whether fresh complaint can be filed after dismissal or withdrawal of earlier complaint, we had permitted the parties to bring to our attention ruling as to whether present complaint can be entertained. The question arose because of that order which was passed by the Bench of the State Commission presided over by Smt.Usha S.Thakare, Judicial Member who in complaint case No.83 of 2017 granted permission to withdraw the consumer complaint as to be disposed of as withdrawn. However, mentioned that as per request, permission can be granted to withdraw the complaint but liberty cannot be granted to file fresh complaint. While the same Bench in consumer complaint 1663 of 2017 by order dated 20/08/2018 expressed opinion while permitting withdrawal of consumer complaint as liberty is always there to file consumer complaint if tenable and complainant can avail that remedy. In our view, the question is no more res integra in the light of the ruling of Hon'ble Supreme Court of India in New India Assurance Co.Ltd. v/s. R.Srinivasan reported in I(2009) CPJ 19(SC) wherein it has been observed that the interest of Justice cannot be defeated by rule of technicality. In that case the case was dismissed in default and was not restored. Hon'ble Supreme Court of India held that the rules of procedure are intended to serve the ends of justice and not to defeat the dispensation of justice. Thus, it was concluded that the second complaint would lie though the earlier complaint was dismissed in default and was not restored. Following the same ruling we must conclude that it was open for the complainant to lodge the present complaint though earlier the permission was not granted to file fresh complaint despite that it was withdrawn. Looking

to the legal position expressed by the Hon'ble Supreme Court of India larger interest of justice shall always be served by deciding complaint on merits in accordance with law and not otherwise. We therefore decide to entertain this complaint and to decide it on merits. Since pleadings are completed parties shall tender their affidavit in evidence by next date and complaint shall be listed for hearing. Stand over to 17/12/2018.

**[ JUSTICE A.P. Bhangale]**  
**PRESIDENT**

**[ A.K.ZADE]**  
**MEMBER**