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Court : Chhattisgarh State Consumer Disputes Redressal Commission SCDRC Raipur

Decided On : Apr-25-2014

Judge : R.S. Sharma, President & the Honourable Ms. Heena Thakkar, Member

Appeal No. : Appeal No. FA/2014 of 06

Appellant : Mohammad Momid Khan

Respondent : Magma Leasing Limited, Through: Managing Director and Another

Judgement :

R.S. Sharma, President:

1. This appeal is directed against order dated 26.12.2013, passed by District Consumer Disputes Redressal Forum, Bilaspur (C.G.) (henceforth District Forum") in Complaint Case No.186/2009. By the impugned order, the learned District Forum, has dismissed the complaint filed by the appellant/complainant holding that the appellant/complainant does not come in the category of "consumer" as defined in Section 2(1)(d) of the Consumer Protection Act, 1986.

2. Briefly stated, the facts of the complaint of the appellant /complainant before the District Forum are : that the appellant/complainant purchased a second hand JCB

vehicle bearing registration No.W.B.26-C-4225 at the price of Rs.4,00,000/- with the help of respondent No.1/O.P.No.1 and the installments of the loan were being deposited by him with the respondent No.2/O.P.No.2, who is branch office of the respondent No.1/O.P.No.1. The appellant/complainant was to pay a sum of Rs.4,58,850/- against the amount of loan, but he had paid a sum of Rs.4,65,100/-. Even then respondent No.1/O.P.No.1 had not provided the documents relating to vehicle in question and No Objection Certificate by saying that the appellant/complainant had not paid the installments regularly therefore some amount is due against him. Due to this act of the respondents/OPs, the appellant/complainant could not ply the vehicle and due to its stationary condition, the vehicle suffered some problems. The appellant / complainant also suffered loss of Rs.50,000/- to Rs.70,000/- per month. The appellant /complainant filed consumer complaint before the District Forum seeking appropriate compensation from the respondents/OPs.

3. The respondents / OPs filed joint reply before the District Forum and resisted the complaint. The respondents/OPs averred that the vehicle in question was financed by the appellant/complainant for commercial purpose, therefore, the purpose of the vehicle which was financed is commercial, hence, the appellant/complainant does not come in the category of "consumer". It has been further averred that the loan was granted to the appellant/complainant under Hire Purchase Agreement, but the installments of the loan in time, had not been paid by the appellant/complainant, on account of which the respondents/OPs have to receive some amount as delayed payment and rental. It has been further averred that actually the dispute between the parties is in respect of account, which can be adjudicated as per arbitration clause of Hire Purchase Finance Agreement, instead of Consumer Protection Act. The complaint of the appellant/complainant, be dismissed with cost.

4. Learned District Forum, after appreciation of the materials available before it, dismissed the complaint.

5. Shri Kishore Bharat, learned counsel appearing for the appellant/complainant argued that the complaint of the appellant/complainant is not on the basis of the

vehicle but the appellant/complainant has filed complaint regarding the damages suffered by him for not providing the documents of the vehicle by the respondents/OPs and due to not providing the documents by the respondents/OPs, the vehicle could not be plied by the appellant/complainant. He further argued that the statement of account supplied to the appellant/complainant and the statement of account filed by the respondents/OPs are contradictory to each other. According to the statement of account filed by the respondent/OPs the amount to be received is mentioned as Rs.4,58,850.00 whereas in the statement of account supplied to the appellant/complainant amount to be received is mentioned as Rs.5,20,200.00., therefore, the respondents/OPs committed deficiency in service and the appellant/complainant is "consumer" of the respondents/OPs under Consumer Protection Act, 1986. He placed reliance on Madan Kumar Singh (D) Thr. LR. Vs. Distt. Magistrate, Sultanpur and Ors. IV (2009) CPJ 3 (SC); Kanwaljit Singh vs. Citicorp Maruti Finance Ltd., I (2006) CPJ 393 decided by Union Territory Consumer Disputes Redressal Commission, Chandigarh.

6. Shri Sunil Otwani, learned counsel appearing for the respondents/OPs argued that the appellant/complainant sought relief that the documents of the vehicle be provided to him. He further submitted that the appellant/complainant purchased the vehicle in question for commercial purpose. The appellant/complainant did not plead whether he purchased the vehicle in question for his earning livelihood by means of self-employment. The pleading in this regard is necessary and for want of such pleading, it cannot be said that the appellant/complainant purchased the vehicle for his livelihood/personal use. He further argued that the appellant/complainant purchased the JCB vehicle and used it for excavation. It appears that the vehicle was purchased by the appellant/complainant for the commercial purpose. He supported the impugned order. He placed reliance on Vishal Roadways vs. Economic Traders (Gujarat) Ltd., 1998 (3) CPR 28 (NC); Cheema Engineering Services vs. Rajan Singh, 1996 STPL (LE) 21154 SC; Ram Deshlahara vs. Magma Leasing Ltd. III (2006) CPJ 247 (NC); Madan Kumar Singh (D) Thr. LR. vs. Distt. Magistrate, Sultanpur and Ors. 2009 STPL (LE) 42496 SC).

7. We have heard learned counsel for the parties and have also perused the record of the District Forum.

8. The appellant/complainant filed documents i.e. receipts issued by Magma Leasing Limited, receipt dated 21.07.2008 in original, statement of account, certificate of registration certificate number, tax certificate of the vehicle, affidavit of one Rameshwar Prasad Soni, quotation of Tyre Centre, Bilaspur dated 24.06.2011, cash/credit memo dated 23.06.2011 of Uttara Body Works, cash / credit memo dated 24.06.2011 of Ansari Auto Electricals, Bilaspur (C.G.), quotation dated 24.06.2011 of Sandeep Automobiles, Bilaspur, photographs of the JCB machine.

9. The respondents/OPs have also filed documents i.e. Hire Purchase Finance Agreement dated 6th September 2006, Schedule I, certificate of registration certificate number (Annexure 1), Tax Certificate regarding the vehicle bearing No.W.B.26-C-4225 (Annexure “ 2), cash receipt dated 12.12.2006 (Annexure 3), statement of account, legal notice dated 24.04.2009 sent to the respondents/OPs.

10. In Birla Technologies Limited v. Neutral Glass and Allied Industries Limited., (2011) 1 Supreme Court Cases 525, Honble Supreme Court observed thus :

œ7. By its order dated 4.3.2004, the State Commission accepted the appellants preliminary objection and dismissed the complaint. The respondent complainant, therefore filed First Appeal No.218 of 2004 before the National Commission. By its order dated 17.12.2009, which is impugned here, the National Commission reversed the order of the State Commission and held that the œgoods? purchased by the respondent from the appellant were being used by the respondent for a commercial purpose and, therefore, the respondent was not a œconsumer? within the meaning of Section 2(1)(d)(i) of the Act. However, the National Commission further held that notwithstanding such findings, the respondent was entitled to maintain a complaint under the Act with respect to the deficiency in service during one-year warranty period with respect to the said goods relying on Section 2(1)(d)(ii) of the Act.

12. It seems that the whole error has crept in because of the wrong factual observation that the complaint was filed on 1.8.2000. In that view it has to be held that the complaint itself was not maintainable, firstly, on the count that under Section 2(1)(d)(i), the goods have been purchased for commercial purposes and on the second count that the services were hired or availed of for commercial purposes. The matter does not come even under the Explanation which was introduced on the same day i.e. on 15-3-2003 by way of the amendment by the same Amendment Act, as it is nobody's case that the goods bought and used by the respondent herein and the services availed by the respondent were exclusively for the purpose of earning the respondent's livelihood by means of self-employment. In that view, it will have to be held that the complaint itself was not maintainable in toto.?

11. In *Rajeev Metal Works and Others v. Mineral and Metal Trading Corporation of India Ltd.*, (1996) 9 Supreme Court Cases 422, Hon'ble Supreme Court observed thus :-

"6. Having given our anxious and very careful consideration to the respective contentions, the question emerges whether the appellant firm is a consumer. The word 'consumer' has been defined under Section 2(1)(d)(i) and (ii) thus :

"(d) 'consumer' means any person who, -

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid or

partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person."

7. Clause (i) provides that one who buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promise, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose, is a consumer. The admitted case is that this does not apply. The question, therefore, is whether the service of the respondent availed by the appellants is covered under Section 2(1)(d)(ii)? Whether the transaction in the nature of buying the goods for a consideration which has been paid or promised? Whether the transaction in question excludes the person who obtains such goods for resale or for any commercial purpose from the purview of the Act? It is true as contended for the appellants that the definition requires to be interpreted broadly so as to give effect to the legislative intention envisaged under the Act. But when the legislature having defined the term 'consumer' in broader terms, sought to exclude certain transactions from the purview of the Act what could be the meaning that would be assigned to the exclusionary clause, viz., "but does not include a person who obtains such goods for resale or for any commercial purpose". The intention appears to be that when the goods are exchanged between a buyer and the seller for commercial purpose or for resale, the object of the Act appears to be to exclude such commercial transactions from the purview of the Act. Instead, legislature intended to confine the redressal to the services contracted or undertaken between the seller and the 'consumer' defined under the Act. It is seen that the appellants admittedly entered their letters of credit with the respondent. The respondent is a statutory authority to act as canalised agency on behalf of the industries to procure required goods on their behalf from the foreign seller and acts in that behalf in terms of the letter of credit and conditions enumerated thereunder. It is seen that the respondent did not undertake any direct responsibility for supply or liability for non-supply of the goods. On the other hand, the appellants had solicited to have the goods supplied to it through the respondent and opened letter of credit in favour of the respondent.

After collecting requirement from various industries in the country admittedly a consolidated demand for supply of the required quantity of the G.P. Sheets was indented with foreign sellers so as to procure the required goods for onward supply to the appellant and others. The goods supplied were required for commercial purpose, i.e., for manufacture and resale as finished goods during the course of their commercial business. Under the circumstances, the appellants intended to purchase these goods for commercial purpose, namely to manufacture the tin sheets for resale. It is true that the word 'resale' used in the exclusionary clause of Section 2(1)(d) (i) was used in connection with the purchase of goods defined in the Sale of Goods Act for commercial purpose. The ultimate object of the supply of the goods, namely, G.P. sheets to the appellants was manufacture of finished goods for resale. The goods were intended to be used for commercial purpose. Thus, considered, we are of the opinion that the appellants are not consumers by virtue of the exclusionary clause under Section 2(1)(d)(ii). Therefore, they would not come under Section 2(1)(d)(ii) of the Act. Since the object of the supply and purchase of the goods was commercial purpose, it would certainly come within the exclusionary clause of Section 2(1)(d)(ii). Otherwise, if the construction sought to be put up by Mr. Sanghi is given effect to, while foreign sellers are not liable under the Act within the definition of Section 2(1)(d) as they get excluded from the purview of the Act, the canalising agency would be fastened with the liability. Thereby, the definition of the word 'consumer' under Section 2(1)(d)(ii) is not attracted.

8. Consequentially, clause (ii) of Section 2(1)(d) does not apply. Considered from this perspective, we are of the opinion that the appellants are not consumer under Section 2(1)(d)(ii) of the Act. Thereby the complaint would not lie under Section 21 of the Act."

12. In JCB India Ltd. Vs. Mallappa Sangappa Mantri and Anr., IV (2012) CPJ 220 (NC), Honble National Commission held thus :-

œ6. We have no manner of doubt in holding that the aforesaid observations of the State Commission based on which the impugned order was passed were not only contrary to the facts on record but against the settled law in this regard and hence

the impugned order cannot be sustained. The reliance of the State Commission on the decision rendered by the National Commission in the case of Dr. Vijay Prakash Goyal v. The Network Ltd., IV (2005) CPJ 206 (NC) = 2006 (1) CPR 164 (NC), is ill-placed since the present dispute has arisen after the amendment of Section 2(1)(d)(i) containing definition of a consumer w.e.f. 15.3.2003. Keeping in view the admitted position emanating from the complaint itself and other aspects of this case, we are convinced that the machine was being used by the complainant for earning profits and hence for commercial purposes by employing a number of people and we do not find any denial to these facts by the complainant anywhere on record. In the circumstances, as already held by this Commission in the cases cited by the Counsel, we are of the considered view that when a customer buys goods for commercial purposes and avails of services attached to the goods in the nature of warranty, he cannot be considered to be consumer even for the purpose of services during the warranty period in view of the amendment to Section 2(1)(d)(i) of the Act which came into force w.e.f. 15.3.2003. In view of this, the complainant / respondent No.1 cannot be held to be a consumer and hence the complaint in question is not maintainable before any Consumer Forum. Consequently, the revision petition stands allowed and the impugned order is set aside and complaint is dismissed with no order as to costs. Liberty, however, is granted to the respondent No.1/complainant to approach appropriate Forum for redressal of his grievance and in case he chooses to do so, he can claim the benefit of Section 14 of the Limitation for the time spent before the Consumer Forum in accordance with the ruling given by the Apex Court in the case of Laxmi Engineering Works v. P.S.G. Industrial Institute, (1995) 3 SCC 583.?

13. In Kishore Ramchandra Bhide v. Habibat India Agro Development Pvt. Ltd. and Ors., IV (2012) CPJ 706 (NC), Honble National Commission, observed thus :-

œ7. The Supreme Court has discussed the term consumer in the celebrated authority reported in Laxmi Engineering Works v PSG Industrial Institute, II (1995) CPJ 1 (SC) = 1995 3 SCC 583, wherein it was held :

œThe National Commission appears to have been taken a consistent view that where a person purchases goods with a view to using such goods for carrying on

any activity on a large scale for the purpose of earning profit, he will not be a consumer within the meaning of Section 2(d)(i) of the Act. Broadly affirming the said view and more particularly, with a view to obviate any confusion “ the expression large scale is not a very precise expression “ Parliament stepped in and added the explanation to Section 2(1)(d) by Ordinance / Amendment Act, 1993. The explanation excludes certain purposes from the purview of the expression commercial purpose “ a case of exception to an exception. Let us elaborate : a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others work, for consideration or for plying the car as a taxi, can be said to be using the typewriter / car for a commercial purpose. The explanation however clarifies that in certain situations, purchase of goods for commercial purpose would not yet take the purchaser out of the definition of expression of expression consumer. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self employment, such purchaser of goods is yet a consumer. In the illustration given above, if the purchaser himself works on typewriter or plies the car as a taxi himself, , he does not cease to be a consumer. In other words, if the buyer of goods uses them himself, i.e. by self-employment, for earning his livelihood, it would not be treated as a commercial purpose and he does not cease to be a consumer for the purposes of the Act. The explanation reduces the question, what is a commercial purpose, to a question of fact to be decided in the facts of each case. It is not the value of the goods that matters but the purpose to which the goods bought are put to. The several words employed in the explanation, viz., uses them by himself , exclusively for the purpose of earning his livelihood and by means of self-employment make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself by employing himself for earning his livelihood. A few more illustrations would serve to emphasise what we say. A person who purchases an auto-rickshaw to ply it himself on hire for earning his livelihood would be a consumer. Similarly, a purchaser of a truck who purchases it for plying it as a public carrier by himself would be a consumer. A person who purchases a lathe machine or other machine to operate it himself for earning his livelihood would be a consumer. (In the above illustrations, if such buyer takes the assistance of one or two persons to assist /

help him in operating the vehicle or machinery, he does not cease to be consumer). As against this, a person who purchases an auto-rickshaw, a car or a lathe machine or other machine to be plied or operated exclusively by another person, would not be a consumer.

A person cannot be said to be consumer if he purchases the second house."

14. In *Biilagi Sugar Mill Ltd. v. Kessels Engineering Works (P) Ltd.*, II (2010) CPJ 242 (NC) Honble National Commission observed thus :-

œ3. From the facts narrated in the complaint, it is clear that the Turbine (T.G. Set) in question had been purchased by the complainant for commercial purpose and, purchase for commercial purpose is excluded under Section 2(1)(d)(i) of the C.P. Act. Likewise, the services of the warranty for commercial purpose are also excluded for commercial purpose under Section 2(1)(d)(ii) w.e.f. 15.3.2003. A Division Bench of this Commission to which one of us (R.K. Batta, J) was a party has after scrutiny of a large number of judgments, which actually pertain to the pre-amendment period i.e. before 15.3.2003, in *Meera Industries v. Modern Constructions*, R.P. No.1765 of 2007 decided on 22.5.2009, wherein it was held :

œIn view of the above, we are of the opinion that whether a customer buys goods for commercial purpose and avails of services attached to the goods in the nature of warranty, he cannot be considered to be a consumer even for the purpose of services during the warranty period in view of the amendment to Section 2(d)(ii) of the Act, which came into force w.e.f. 15.3.2003. In view of this, the complainant cannot be held to be a consumer with reference to the services attached to the warranty and the complaint is not maintainable?.

15. In *M/s Rohit Chemical and Allied Industries Pvt. Ltd. National Research Development Corporation*, IV (2013) CPJ 87 (NC), Honble National Commission observed thus :

œ22. In *Laxmi Engineering Works v. P.S.G. Industrial Institute*, AIR 1995 SC 1428, it was held :-

œ12. Now coming back to the definition of the expression consumer in Section 2(d), a consumer means in so far as is relevant for the purpose of this appeal, (i) a person who buys any goods for consideration; it is immaterial whether the consideration is paid or promised, or partly paid and partly promised, or whether the payment of consideration is deferred; (ii) a person who uses such goods with the approval of the person who buys such goods for consideration; (iii) but does not include a person who buys such goods for resale or for any commercial purpose. The expression resale is clear enough. Controversy has, however, arisen with respect to meaning of the expression œcommercial purpose?. It is also not defined in the Act. In the absence of a definition, we have to go by its ordinary meaning. Commercial denotes œpertaining to commerce? (Chambers Twentieth Century); it means œconnected with, or engaged in commerce; mercantile; having profit as the main aim? (Collins English Dictionary) whereas the word commerce means œfinancial transactions especially buying and selling of merchandise, on a large scale? (Concise Oxford Dictionary). The National Commission appears to have been taken a consistent view that where a person purchases goods with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit, he will not be a consumer within the meaning of Section 2(d)(i) of the Act. Broadly affirming the said view and more particularly, with a view to obviate any confusion “ the expression large scale is not a very precise expression “ Parliament stepped in and added the explanation to Section 2(1)(d) by Ordinance / Amendment Act, 1993. The explanation excludes certain purposes from the purview of the expression commercial purpose “ a case of exception to an exception. Let us elaborate : a person who buys a typewriter or a car and uses them for his personal use is certainly a consumer but a person who buys a typewriter or a car for typing others work, for consideration or for plying the car as a taxi, can be said to be using the typewriter / car for a commercial purpose. The explanation however clarifies that in certain situations, purchase of goods for commercial purpose would not yet take the purchaser out of the definition of expression of expression consumer. If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self employment, such purchaser of goods is yet a consumer. In the illustration given above, if the purchaser himself works on typewriter or plies the car as a taxi himself, , he does

not cease to be a consumer. In other words, if the buyer of goods uses them himself, i.e. by self-employment, for earning his livelihood, it would not be treated as a commercial purpose and he does not cease to be a consumer for the purposes of the Act. The explanation reduces the question, what is a commercial purpose, to a question of fact to be decided in the facts of each case. It is not the value of the goods that matters but the purpose to which the goods bought are put to. The several words employed in the explanation, viz., uses them by himself, exclusively for the purpose of earning his livelihood and by means of self-employment make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself by employing himself for earning his livelihood. A few more illustrations would serve to emphasise what we say. A person who purchases an auto-rickshaw to ply it himself on hire for earning his livelihood would be a consumer. Similarly, a purchaser of a truck who purchases it for plying it as a public carrier by himself would be a consumer. A person who purchases a lathe machine or other machine to operate it himself for earning his livelihood would be a consumer. (In the above illustrations, if such buyer takes the assistance of one or two persons to assist / help him in operating the vehicle or machinery, he does not cease to be consumer). As against this, a person who purchases an auto-rickshaw, a car or a lathe machine or other machine to be plied or operated exclusively by another person, would not be a consumer. This is necessary limitation flowing from the expressions *used by him?* and *by means of self-employment* in the explanation. The ambiguity in the meaning of the words *for the purpose of earning his livelihood?* is explained and clarified by the other two sets of words?

16. In the instant case the appellant/complainant has simply pleaded that he had purchased the JCB vehicle on 15.08.2006 with the help of finance provided by the respondent No.1/O.P.No.1, but he did not plead that he purchased the vehicle for earning his livelihood by means of self employment. It is essential for the appellant/complainant to plead that the goods or vehicles has been purchased for him for personal use or earning his livelihood by means of self employment, but in the instant case, the appellant/complainant has not pleaded the above facts.

17. In the case of Cheema Engineering Services vs. Rajan Singh (1997) 1 Supreme Court Cases 131, Hon'ble Supreme Court observed thus :-

"6. In other words, the Explanation excludes from the ambit of commercial purpose in sub-clause (1) of Section 2(1)(d), any goods purchased by a consumer and used by him exclusively for the purpose of earning his livelihood by means of self employment. Such purchase of goods is not a commercial purpose. The question, therefore, is whether the respondent has been using the aforesaid machine for self-employment? The word "self-employment" is not defined. Therefore, it is a matter of evidence. Unless there is evidence and on consideration thereof it is concluded that the machine was used only for self-employment to earn his livelihood without a sense of commercial purpose by employing on regular basis the employee or workmen for trade in the manufacture and sale of bricks, it would be for self-employment. Manufacture and sale of bricks in a commercial way may also be to earn livelihood, but "merely earning livelihood in commercial business", does not mean that it is not for commercial purpose. Self-employment connotes altogether a different concept, namely, he alone uses the machinery purchased for the purpose of manufacture by employing himself in working out or producing the goods for earning his livelihood. 'He' includes the members of his family. Whether the respondent is using the machine exclusively by himself and the members of his family for preparation, manufacture and sale of bricks or whether he employed any workmen and if so, how many, are matters of evidence. The burden is on the respondent to prove them. Therefore, the Tribunals were not right in concluding that the respondent is using the machine only for self-employment and that, therefore, it is not a commercial purpose. The orders of all Tribunals stand set aside. The matter is remitted back to the District Forum. The District Forum is directed to record the evidence of the parties and dispose of it in accordance with law within a period of six months from the date of the receipt of this order."

18. The appellant/complainant has not been able to prove that said JCB vehicle was purchased by him for his personal use . The said JCB vehicle was used for excavation Therefore, it cannot be said that the appellant/complainant purchased the JCB vehicle for his personal use or for earning his livelihood by means of self employment, hence the learned District Forum, has rightly held that that vehicle in

question was purchased by the appellant/complainant for commercial purpose and the appellant/complainant has not been able to prove that the vehicle in question was purchased by him for the purpose of earning his livelihood by means of self-employment. Therefore, the impugned order dated 26.12.2013, does not suffer from any jurisdictional error, illegality or irregularity and does not call any interference by this Commission.

19. Hence, the appeal filed by the appellant/complainant being devoid of any merits, deserves to be and is hereby dismissed. No order as to the cost of this appeal.

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