

Vikrant Singh Malik Vs. Supertech Ltd

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Court : Supreme Court of India

Decided On : Aug-24-2020

Judge : Hon'Ble Dr. Justice D.Y. Chandrachud, Hon'Ble Mr. Justice K.M. Joseph

Appeal No. : 9490 / 2016

Appellant : Vikrant Singh Malik

Respondent : Supertech Ltd

Advocate for Pet/Ap. : Shailesh Madiyal

Judgement :

REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION Civil Appeal No.3526 of 2016 Vikrant Singh Malik and Others ...Appellant(s) Versus Supertech Limited and Others ...Respondent(s)

JUDGMENT

Dr Dhananjaya Y Chandrachud, J1This appeal arises from a judgment and order of the National Consumer Disputes Redressal Commission¹ dated 19 February 2016. Declining permission to the complainants to file a composite complaint under the provisions of Section 1 NCDRC 1 12(1)(c) of the Consumer Protection Act, 1986², the NCDRC dismissed the consumer complaint³ which was filed before it by twenty-six flat buyers, on the ground that: 13. there is nothing common between the aforesaid complainants, so no permission can be granted to the

above complainants in view of Section 12(1)(c) of the Act. file one complaint to However, the complainants were granted the liberty to institute individual complaints before the appropriate forum. 2 The complaint before the NCDRC was instituted by twenty-six flat buyers, who had booked flats in a residential project (named Oxford Square) of the first respondent at Sector GH-06, 16B, Greater Noida, Uttar Pradesh (also known as Noida Extension). The following reliefs were sought in the complaint:

"a) Direct the Opposite Party No.1 to withdraw its offer of possession which has been made in absence of a valid Occupancy Certificate/Completion Certificate and to offer the possession after obtaining a proper occupancy/completion certificate within a fixed time; b) Withdraw demand raised and refund if already paid, money which has been demanded/collected in the name of sale of open as well as covered car parking charges as no covered car parking has been created/built by the Opposite Party No.1 in the said project and the sale of open car parking 2 Act 3 Consumer Complaint No.1290 of 2015 2 slots are illegal, for each of the complainants, as per the claim sheet; c) Direct the Opposite Party No.1 to charge/refund money under various heads as per the actual super area declared under the sanctioned building plans by Opposite Party No.1 to the appropriate authorities; d) Direct the Opposite Party No.1 to withdraw cost escalation charges as captured in the demands raised with the Offer of Possession letters of various complainants; e) Direct the Opposite Party No.1 to withdraw demand raised under the head "Farmer's compensation charges"; f) Direct the Opposite Party No.1 to withdraw/refund any demand raised/collected in the name of club charges as no club has been constructed in this society, individually for all the complainants as per the claim sheet; g) Direct the Opposite Party No.1 to withdraw the interest levied on all the complainants now at the stage of final payments while making an offer of possession; h) Direct Opposite Party No.2 to cancel/withdraw the licence granted to the Opposite Party No.1 and takeover the project and further complete the said project and handover the possession of the flats/floors to the complainants; i) Direct the Opposite Party No.1 to withdraw the demand raised in the name of Labour Welfare charges from all the complainants; j) Direct the Opposite Party No.1 to withdraw the demand raised in the name of water connection charges and further not to take any undertaking for levy of any charges

under this head at a later date; k) Direct Opposite Party No.1 to withdraw the demand on account of EDC charges/refund the amount collected in the 3 name of EDC charges as no such charges have been levied by the appropriate authorities; l) Direct the Opposite Party No.1 to charge and collect maintenance charges from all the complainants only upon delivery of possession of their respective flats with proper occupancy certificate(s) in place and after execution of a maintenance agreement in this regard; m) Direct the Opposite Party No.1 to pay delayed possession penalty on a monthly basis with effect from the date the possession was to be delivered individually to all the complainants, till such time the possession is actually delivered the complainants with proper occupancy certificate(s) in place; to n) Direct the Opposite Party No.1 to pay a Compensation of Rs.4,00,30,070/- (Rupees Four Crores Thirty Thousand and Seventy only) to the Complainants, as per the claim sheet;"

3. An application⁴ under Section 12(1)(c) read with Section 2(1)(b)(iv) of the Act was filed on behalf of the complainants to enable them to pursue the complaint jointly. The title of the application is reproduced below: APPLICATION ON BEHALF OF THE COMPLAINANTS U/S12(1) (c) READ WITH2(1)(b)(IV) OF THE CONSUMER PROTECTION ACT, 1986, SEEKING LEAVE OF THIS HON'BLE COMMISSION TO INSTITUTE THE PRESENT COMPLAINT JOINTLY 4 I.A. No.7574 of 2015 4 4 The pleadings in support of the application were contained in paragraphs 3, 4 and 5 of the application, which are extracted below: 3. That the deficiencies of services, unfair trade practices and irregularities adopted by the Opposite Parties against the Complainants are identical in nature in and the complainants shall rely on common evidence and the issues raised and the relief sought is also common to all the complainants . It is submitted that under these facts and circumstances the Complainants have made the present application seeking permission for instituting the present complaint jointly, having commonality of interest.

4. That no prejudice shall be caused to the Opposite Party if the Complainants are allowed the present complaint jointly however, grave loss and injury shall be caused to the Complainants if the present application is not allowed. institute to 5. That the balance of convenience also lies in favour of the Complainants who have

been suffering in the hands of the Opposite Party who has offered the possession of their respective flats with delay and in the garb of offering possession is now demanding illegal charges to the tune of seven to eight lacs per flat and is further resorting to illegal acts of giving possession of the respective flats to the complainants in absence of an occupancy certificate. (emphasis supplied) 5 The relief sought in the application was in the following terms: a) Allow present application and admit the present complaint of the Applicants which has been filed jointly with commonality of interest The title of the application, the pleadings in support and the relief sought indicate that the twenty-six complainants claimed a commonality of interest between them on 5 the basis of their grievances against the first respondent, which formed the subject matter of the complaint. 6 The NCDRC came to the conclusion that the application was not maintainable under Section 12(1)(c) of the Act on the grounds that: (i) The agreements under which flats were booked by each of the complainants were separate; (ii) The agreements were executed between the first respondent and the complainants on different dates, between August 2010 to January 2014; (iii) The flats booked by the complainants were of different sizes; (iv) The total cost of each flat was different; (v) The offers of possession to the complainants by the first respondent were made on different dates, between January 2015 to April 2015; and (vi) Each of the complainants claimed a different amount in compensation, ranging between Rs 7.31 lakhs and Rs 26.70 lakhs. 6 7 Noting these differences, the NCDRC held that there was nothing common between the complainants in terms of the date of the agreement, cost and size of the flats, and the compensation claimed. It was on this basis that the consumer complaint was held not to be maintainable. While dismissing the complaint, liberty was granted to each of the complainants to file individual complaints before the consumer forum having jurisdiction to entertain the complaint. The judgment of the NCDRC has given rise to the present appeal. 8 Assailing the judgment of the NCDRC, Mr Shailesh Madiyal and Mr Kamal Mehta, learned counsel appearing on behalf of the appellants, submitted that the view taken by the NCDRC is contrary to a later decision which has been rendered by its Full Bench in *Ambrish Kumar Shukla v Ferrous Infrastructure Pvt. Ltd*⁵. Among the questions framed for decision by the Full Bench was the following: (iv) Whether a complaint under Section 12(1)(c) of the Consumer Protection Act is maintainable,

in a case of allotment of several flats in a project/building, where the allotments/bookings/purchases are made on different dates and/or the agreed cost of the flat and/or the area of the flat is not identical in all the bookings/allotments/purchases. 9 Answering the above question, the Full Bench held: 13. As noted earlier, what is required for the applicability of Section 12(1)(c) of the Consumer Protection Act read with 5 (2017) 1 CPJ1(NC):

2016. SCC OnLine NCDRC11177 the flat/plot and Order I Rule 8 of the Code of Civil Procedure is the sameness of the interest i.e. a common grievance of numerous persons which is sought to get redressed through a representative action. Therefore, so long as the grievance of the consumers is common and identical relief is claimed for all of them, the cost, size, area of the date of booking/allotment/purchase, would be wholly immaterial. For instance, if a builder/developer has sold 100 flats in a project out of which 25 are three-bed room flats, 25 are two-bed room flats and 50 are one-bed room flats and he has failed to deliver timely possession of those flats, all the allottees irrespective of size of their respective flats/plots, the date of their respective purchase and the cost agreed to be paid by them have a common grievance i.e. the failure of the builder/developer to deliver possession of the flat/plot sold to them and a complaint filed for the benefit of or on behalf of all such consumers and claiming same relief for all of them, would be maintainable under Section 12(1)(c) of the Consumer Protection Act. The relief claimed will be the same/identical if for instance, in a case of failure of the builder to deliver timely possession, refund, or possession or in the alternative refund with or without compensation is claimed for all of them. Different reliefs for one or more of the consumers on whose behalf or for whose benefit the complaint is filed cannot be claimed in such a complaint. 10 By the Full Bench decision in Ambrish Kumar Shukla (supra), the position of law was set at rest for the NCDRC on 7 October 2016. The judgment impugned in the present appeal was rendered earlier on 19 February 2016. The submission is that the impugned judgment is contrary to the principles enunciated in Ambrish Kumar Shukla and does not lay down the correct position of law. Mr Madiyal has also adverted to a decision rendered by a two-judge Bench of this Court in Anjum Hussain v Intellicity Business Park Pvt. Ltd.⁶, which has taken note of the 6 (2019) 6 SCC5198 judgment delivered by the Full Bench of the NCDRC in Ambrish

Kumar Shukla. Hence, it was urged that it would be appropriate for this Court to remit the proceedings back to the NCDRC by allowing the complaint to proceed under the provisions of Section 12(1)(c). In this context, reliance was also placed on the provisions contained in Section 13(6) read with Section 2(1)(b)(iv) of the Act. 11 Opposing these submissions, Mr Keshav Mohan, learned counsel appearing on behalf of the first respondent, submitted that the NCDRC was justified in coming to the conclusion that the complaint as instituted was not maintainable with reference to the provisions of Section 12(1)(c). Learned counsel submitted that though originally the complaint was filed by twenty-six complainants, after the decision of the NCDRC, only twenty-one appellants have remained in the fray in the Civil Appeal which has been filed before this Court. Moreover, it was submitted that even amongst the remaining twenty-one appellants, only six have not taken possession, meaning thereby that the others have resolved their grievances by taking possession from the first respondent. 12 Apart from the above objection, Mr Keshav Mohan also submitted that simultaneously with the consumer complaint before the NCDRC, writ proceedings under Article 226 of the Constitution were also instituted by the complainants before the Allahabad High Court, titled Subodh Pandey and others v State of U P and 9 others⁷. It was submitted that both, the consumer complaint before the NCDRC and the writ proceedings before the Allahabad High Court, pertain to the same project of the first respondent at Sector GH-06, 16B, Greater Noida, Uttar Pradesh. The reliefs sought in the writ proceedings before the Allahabad High Court, inter alia, were in the following terms:

"(I) Issue a writ, order or direction quashing the amended sanction plan dated 09.04.2014 (Annexure-1) for Plot No.GH-06, Sector 16-B, NOIDA sanctioned by respondent-2. (II) (III) Issue a writ, order or direction to respondent 2 to ensure that no further construction being carried on Oxford Square with regard to High rise tower (G1 to G8) (G+22). (IV) Issue a writ, order or direction to respondent 2 to demolish the illegal construction that has already been carried out by respondent 3 in respect of High rise tower (G1 to G8) (G+22) as per the cancellation letter dated 22.12.2014 and cancelled map dated 08.09.2014. (V) Issue a writ, order or direction to respondent No.2 to ensure that any further construction done in the Oxford Square should be done according to Original Plan approved on

01/03/2011. (VI) Issue a writ, order or direction quashing the (VII) possession letter issued by respondent 3 as being illegal and 7 Civil Miscellaneous Writ Petition No.37876 of 2015 10 in violation of [Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010].."

13 It was urged that two of the prayers in the consumer complaint before the NCDRC namely, prayers (a) and (h), specifically deal with the aspects which were sought to be canvassed before the Allahabad High Court. In the writ proceedings, the Allahabad High Court by an order dated 7 July 2017 directed the Chief Executive Officer of Greater Noida Industrial Development Authority to take a decision on the representation submitted by the complainants. 14 On these grounds, learned counsel for the first respondent submitted that there is no surviving basis for the appellants to urge that the complaint before the NCDRC is of a representative character under Section 12(1)(c), since even among the appellants several have resolved their grievance by taking possession of their respective flats. 15 We must note, at the outset, that the NCDRC, while rejecting the complaint, has found that the provisions of Section 12(1)(c) were not attracted on the grounds that there were separate agreements with the flat buyers, each agreement was entered into on a different date, the flat sizes and costs were different and the amount of compensation claimed by each buyer was different. In forming this view, the NCDRC did not have the benefit of the adjudication rendered subsequently by the Full Bench in Ambrish Kumar Shukla (*supra*). The decision of the Full Bench has been cited with approval in the decision of a two-judge Bench of this Court in 11 Anjum Hussain (*supra*). At this stage, the basic issue which falls for consideration in the present appeal is whether the application that was filed on behalf of the appellants fulfils the requirements of Section 12(1)(c). Section 12(1) of the Act reads as follows: 12. Manner in which complaint shall be made.-(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by- (a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided; (b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed is a member of such association or not; to be provided (c) one

or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or the Central Government or (d) the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general. (emphasis supplied) 16 Under clause (a) of Section 12(1), a complaint can be filed by a consumer to whom goods are sold or agreed to be sold or delivered or a service is provided or agreed to be provided. Under clause (b), any recognised consumer association can 12 institute a complaint. Under clause (d), the Central or the State Government can also institute complaints in their individual capacity or as representatives of the consumers in general. However, under clause (c), a complaint can only be filed with the permission of the District Forum by one or more consumers on behalf of or for the benefit of all consumers so interested, where there are numerous consumers having the same interest. Hence, the requirements for a complaint under Section 12(1)(c) are that: (i) it can be filed by one or more consumers; (ii) it is filed for or on behalf of numerous consumers who have the same interest; and (iii) it requires the permission of the District Forum. 17 The expression complainant is defined in Section 2(1)(b) of the Act thus: (b) complainant means- (i) a consumer; or any voluntary (ii) association registered under the Companies Act, 1956 (1 of 1956), or under any other law for the time being in force; or consumer the Central Government or any State (iii) Government, who or which makes a complaint; one or more consumers, where there are (iv) numerous consumers having the same interest; in case of death of a consumer, his legal heir (v) or representative; (emphasis supplied) 13 Clause (iv) of Section 2(1)(b) contemplates that the expression complainant means inter alia, one or more consumers, where there are numerous consumers having the same interest. 18 Under Section 13(6) of the Act, the provisions of Order I Rule 8 of the Code of Civil Procedure, 1908 are made applicable where a complainant is a consumer referred to in Section 2(1)(b)(iv). Section 13(6) provides as follows: (6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of Section 2, the provisions of Rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as

a reference to a complaint or the order of the District Forum thereon. 19 Order I Rule 8 of the CPC deals with a situation where there are numerous persons having the same interest in one suit. Order I Rule 8(1) provides as follows: 8. One person may sue or defend on behalf of all in same interest.- (1) Where there are numerous persons having the same interest in one suit,- (a) one or more of such persons may, with the permission of the court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested; 8 "CPC 14 the Court may direct that one or more of such (b) persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested. Under sub-rule (3) of Order I Rule 8, any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the court to be made a party to such suit. Further, sub-rule (6) of Order 1 Rule 8 stipulates that a decree passed in a suit under the Rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted or defended, as the case may be. The Explanation to the provision (which was introduced by the Amending Act of 1976) reads as follows: Explanation.-For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be. 20 In *Rameshwar Prasad Shrivastava v Dwarkadhis Projects Private Limited*¹⁰, a two judge Bench of this Court described the relationship between Section 2(1)(b)(iv), Section 12(1)(c) and Section 13(6) of the Act in the following terms:

9. Act 104 of 1976 10 (2019) 2 SCC41715 The language used and the text in Section 13(6) is 14. clear that wherever a complaint is filed by a complainant in the category referred to in Section 2(1)(b)(iv), the provisions of Order 1 Rule 8 CPC shall apply with the modification that reference to suit or decree shall be construed as reference to a complaint or order of the District Forum. The expression with the permission of the District Forum as appearing in Section 12(1)(c) must be read along with Section 13(6) which provides the context and effect to said expression. In our view Sections 12(1)(c) and 13(6) are not independent but are to be read together and they form part of the same machinery. Therefore, a complaint under Section 12(1)(c) can be filed only with the permission of the District Forum. The

procedural requirements under Order I Rule 8 of the CPC are attracted as a consequence of the provisions of Section 13(6) of the Act. 21 Section 12(1)(c) of the Act applies to a situation where there are numerous consumers having the same interest. In that case, a complaint may be filed by one or more consumers with the permission of the District Forum on behalf of, or for the benefit of, all consumers so interested. The test under Section 12(1)(c) is of the sameness of the interest. The complaint is filed in a representative capacity, on behalf of or for the benefit of all the consumers who are interested. Similarly, under Section 2(1)(b)(iv), in defining the expression complainant, the statute incorporates the identical test of the sameness of interest, where there are numerous consumers. In such a situation, the expression complainant has been defined, inter alia, to include one or more consumers, each of whom has the same interest where there are numerous consumers involved in the dispute. 16 22 The Full Bench of the NCDRC dealt with the provisions of Section 12(1)(c) in its decision in Ambrish Kumar Shukla (supra). Adverting to the judgment of this Court in T N Housing Board v T N Ganapathy¹¹, the Full Bench held: them filing an to each of 11. The primary object behind permitting a class action such as a complaint under Section 12(1)(c) of the Consumer Protection Act being to facilitate the decision of a consumer dispute in which a large number of consumers are interested, without recourse individual complaint, it is necessary that such a complaint is filed on behalf of or for the benefit of all the persons having such a community of interest. A complaint on behalf of only some of them therefore will not be maintainable. If for instance, 100 flat buyers/plot buyers in a project have a common grievance against the Builder/Developer and a complaint under Section 12(1)(c) of the Consumer Protection Act is filed on behalf of or for the benefit of say 10 of them, the primary purpose behind permitting a class action will not be achieved, since the remaining 90 aggrieved persons will be compelled either to file individual complaints or to file complaints on behalf of or for the benefit of the different group of purchasers in the same project. This, in our view, could not have been the Legislative intent. The term persons so interested and persons having the same interest used in Section 12(1)(c) mean, the persons having a common grievance against the same service provider. The use of the words all consumers so interested and on behalf of or for the benefit of all consumers so interested, in

Section 12(1)(c) leaves no doubt that such a complaint must necessarily be filed on behalf of or for the benefit of all the persons having a common grievance, seeking a common relief and consequently having a community of interest against the same service provider. 23 This judgment of the Full Bench of the NCDRC was cited by the two-judge Bench of this Court in Anjum Hussain (supra). This Court also cited its earlier 11 (1990) 1 SCC60817 decision in T N Housing Board (supra), noting that the provisions of Order I Rule 8 have to be interpreted in a manner which would subserve the object of the enactment. This Court held that: 14. it is in this light that the Full Bench of the National Commission held that oneness of the interest is akin to a common grievance against the same person. 24 It is in this background, that we must now deal with the factual situation as it is merges before this Court in the present appeal. The complaint that has been filed by the appellants does not indicate that the grievances which have been addressed before the NCDRC are on behalf of numerous consumers, including the appellants. The reliefs in several prayer clauses are confined to the twenty-six complainants, on whose behalf the complaint has been instituted. For instance, prayer (b) in regard to the parking charges, prayer (d) in regard to the escalation charges, prayer (f) in regard to the club charges, prayer (h) in regard to the licence granted to the developer, prayer (i) in regard to the labour welfare charges, prayer (m) in regard to the delayed possession penalty and prayer (n) in regard to the payment of compensation are all specifically in relation to the complainants only. The pleadings in the complaint also indicate that they have been framed and drawn up to highlight the specific grievances of only the complainants. They contain no averment that the reliefs were sought on behalf or for the benefit all the consumers having the same interest. 18 25 Similarly, the application which was filed before the NCDRC was styled as an application on behalf of the complainants under Section 12(1)(c) read with Section 2(1)(b)(iv), seeking leave to institute the complaint jointly. Paragraphs 3, 4 and 5 of the application also indicate that the case of the complainants was that the reliefs which were sought were common to all of them. Contrasted with the present case, the complaint in Anjum Hussain (supra) had been instituted for the benefit of the entire class of buyers who had booked shops/offices in a real estate project consisting of residential units, shops and offices at Greater Noida. The complaint contained an averment that its scope

was not restricted to the complainants and that an application seeking permission under Section 12(1)(c) was accordingly being instituted. The distinction in the present case lies in the fact that the pleadings in the complaint and application do not evince any intent to present the complaint for or on behalf of the numerous consumers who share the same interest. The complaint and application only seek to highlight the grievance of twenty-six complainants. They do not profess to possess a representative character, which is an essential element of Section 12(1)(c) and of the provisions of Order 1 Rule 8 of the CPC which find a reference in Section 13(6) of the Act. In this context, the application though styled as one under Section 12(1)(c) was not referable to that provision. The essential ingredients of an application under Section 12(1)(c) were not pleaded or established in the application before the NCDRC. The application could not, in these circumstances, have been treated as one referable to Section 12(1)(c). 19

26 For the above reasons, we hold that the application that was filed on behalf of the appellants purportedly under Section 12(1)(c) of the Act was not maintainable having regard to the frame of the complaint, the nature of the pleadings and the reliefs that were sought. 27 However, the NCDRC has not only dismissed the application under Section 12(1)(c) but also the complaint in its entirety with liberty being granted to the complainants to file individual complaints before the appropriate forum. On this aspect, we are inclined to restore the proceedings back to the NCDRC for reconsideration based on the reasons which we will presently indicate. Though we have come to the conclusion that the application was not maintainable under Section 12(1)(c), the reasons which weighed with the NCDRC have been disapproved by us, as indicated earlier, since the NCDRC had arrived its decision without the benefit of the decision of the Full Bench which was delivered subsequently in *Ambrish Kumar Shukla* (supra). Therefore, flat purchasers with distinct apartment-buyer agreements, distinct dates of execution of the agreements, different prices and areas of flats may yet have a commonality of interest. The test that has to be applied is of the sameness of interest, and their interests in securing the redressal of common grievances against a developer may coincide. 28 As we have noted earlier, the provisions of Order I Rule 8 of the CPC have been incorporated in the provisions of Section 13(6) of the Act, subject to incidental changes. Hence, where a complainant is a consumer under Section

2(1)(b)(iv), the 20 provisions of Order I Rule 8 shall apply. In that context, the Explanation to Order I Rule 8 assumes significance. The Explanation, which was introduced by way of an amendment in 1976, indicates that for the purpose of determining whether the persons who sue or are sued or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be. The provisions of the Explanation stand attracted in a situation where the complaint is governed by the provisions of Section 13(6) of the Act. In other words, it is where the provisions of Section 2(1)(b)(iv) are attracted that the provisions of Section 13(6) apply and that, consequently, the Explanation to Order I Rule 8 would stand attracted. Admittedly, the present case is not of that description on the basis of the pleadings as they stand in the complaint before the NCDRC. 29 Having said this, we are of the view that bearing in mind the object and purpose of the Act, it would be appropriate if the NCDRC reconsiders its decision to dismiss the complaint in its entirety by considering as to whether some or all the prayers which were urged before it in the complaint would fall within the description of a sameness of interest. Whether this is so should, in our view, be examined by the NCDRC. Since this is not the point which was canvassed before the NCDRC nor was it considered in the judgment of the NCDRC, we are inclined to restore the complaint for reconsideration of the above aspect before the NCDRC. The NCDRC would be at liberty to consider whether the complaint which was filed on behalf of 21 the twenty-six consumers claiming a commonality of interest would be maintainable, having regard to the provisions of the Act. Since an objection has been raised on behalf of the first respondent that even out of the twenty-six consumers who had initially filed proceedings, several have settled and resolved their grievances, we leave that aspect open to be addressed before and considered by the NCDRC. The first respondent would be at liberty to place on the record relevant material in support of the above plea. Moreover, the NCDRC is at liberty to consider the objection raised by the first respondent on the ground that some of the reliefs in the complaint before it were also the subject of the writ proceedings before the Allahabad High Court. We may also note at this stage that Mr Madiyal appearing for the appellants had sought liberty of this Court to move an application before the

NCDRC for amendment of the complaint and to plead the essential requirements of Section 12(1)(c). We need not consider a request of an anticipatory nature of this kind at the present stage since no such application has been made. This will not preclude the appellants from adopting such remedies as are available within the parameters of law. 30 For the above reasons, we hold and conclude that: (i) The application filed by the appellants, styled as one under Section 12(1)(c) read with Section 2(1)(b)(iv) of the Act, was not maintainable; 22 (ii) The above application was liable to be rejected and would stand rejected; (iii) The order of the NCDRC rejecting the consumer complaint shall be set aside and the consumer complaint shall stand restored before the NCDRC; and (iv) All objections in regard to the maintainability of the complaint are kept open to be addressed before and decided by the NCDRC. 31 The appeal is accordingly disposed of in the above terms. There shall be no order as to costs. 32 Pending application(s), if any, shall stand disposed of. [Dr Dhananjaya Y Chandrachud].J.

.....J.

[K M Joseph]. New Delhi; August 27, 2020. 23

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