

Shriram Chits (India) Pvt. Ltd. Earlier Known as Shriram Chits (K) Pvt. Ltd Vs. Raghachand Associates

Civil Appeal Nos._____ of 2024 @ SLP (Civil) No. 15290 of 2021 · Supreme Court of India · 2024-05-10 ·
Pamidighantam Sri Narasimha · Aravind Kumar · F2J-C-1492

Full judgment text

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[Civil Appeal Nos._____ of 2024 @ SLP (Civil) No. 15290 of 2021]

[Civil Appeal No._____ of 2024 @ SLP (Civil) No. 16430/2021]

[Civil Appeal No._____ of 2024 @ SLP (Civil) No. 16513/2021]

[Civil Appeal No._____ of 2024 @ SLP (Civil) No. 15827/2021]

[Civil Appeal No._____ of 2024 @ SLP (Civil) No. 16811/2021]

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[Civil Appeal No._____ of 2024 @ SLP (Civil) No. 16815/2021]

[Civil Appeal No._____ of 2024 @ SLP (Civil) No. 15489/2021]

Aravind Kumar, J.

1. Leave granted.

2. The appellant ('OP'/service provider', used interchangeably) has challenged the order dated 10.03.2021 of the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) in these appeals. The respondent (complainant) had successfully redressed its consumer grievance, originally, before the Principal Consumer Disputes Redressal for Bangalore Urban District, at Bangalore ('District Forum'). The service provider was unsuccessful in upsetting the order of the District Forum before the State Consumer Disputes Redressal Commission, Bangalore ('State Forum') as well as the NCDRC. That is how this matter has come before us.

3. The service provider is a registered Chit Fund company engaged in Chit business. Admittedly, the complainant had subscribed to certain chits in the said business. The subscription was made in the chit group 53005/Ticket No.9 for a chit value of Rs.1,00,000/- payable at the rate of Rs.2500/- per month for a period of 40 months.

4. It is the case of the complainant that the OP had illegally stopped the chit business in the year 1996. The complainant requested the OP to repay the chit amount deposited until stoppage of the business. The OP refused to re-pay the subscription amount since, according to it, the complainant owed certain dues to it and therefore, it adjusted the subscription amount against pending dues of the complainant.

5. Initially, the complainant sought to redress its grievance relating to non-refund of the subscription amount, before the authority constituted under the Chit Funds Act 1982.1 Thereafter, the OP filed WP No.22568/2012 with 9 other connected writ petitions against the order of the Additional Registrar. Whereas the Complainant also filed WP No.17045/2014 with 9 other connected writ petitions questioning the finding with regards to the maintainability under the Chit Funds Act. On 16.11.2015, the High Court directed the complainant to approach the Consumer Forum and held that said cases were not maintainable under the Chit Funds Act.

6. It is against this background that the complaint comes to be filed before the District Forum alleging that the illegal termination of the chit fund business and consequent non-refund of the subscription amount, resulted in deficiency of service. The prayer in the complaint was for a direction to be issued to the OP to refund Rs.18,750/- along with future interest at the rate of 18% p.a.

7. In the written version, the OP, apart from contesting the claim on merits, raised a preliminary objection that the complaint is not maintainable since the complainant does not qualify the definition

of a 'consumer'. According to the OP, the service obtained by the complainant was for a commercial purpose, and by that fact, the complainant would stand excluded from availing any remedy under the Consumer Protection Act, 1986. To demonstrate that the service was obtained for a commercial purpose, the OP relied on two circumstances:

(a) the statement in the complainant that there was an 'understanding between complainant and opposite party to promote chit business';

(b) findings² of an internal audit conducted by the OP.

8. Against the said pleadings available on record, the District Forum proceeded to frame the following issue:

I. Whether the Complainant has proved the alleged deficiency in service by the Opposite Party?

II. If so, to what relief the Complainant is entitled?

9. There was no specific issue framed on the preliminary question as to whether the complainant fell within the definition of consumer as understood under Section 2 (1) (d) of the Act of 1986. However, the District Forum did address itself, though incorrectly, to the objection of the OP that the complaint was not maintainable. Instead of examining whether the service availed on behalf of the complainant was for a commercial purpose, the District Forum determined whether the complainant fell within the definition of a "person" as defined in Section 2 (1)(m) of the Act. On merits, it found that there was, in fact, 'deficiency in service' and ordered for refund of the claimed amount with interest of 18% p.a.

10. In appeal, the State Forum has cursorily found that the District Forum was correct in concluding that there was deficiency in service, on merits. Nothing has been said, however, as regards the challenge to the maintainability of the complaint even though a specific ground was taken in the memorandum of appeal towards that end.

11. The NCDRC has agreed with the State Forum and District Forum on the merits of the issue and found no reason to interfere with the 'well appraised detailed order' of the District Forum. It noted that there was no necessity to reappreciate the evidence de novo since the forums below had properly appreciated the issue in dispute. On the maintainability issue, the NCDRC appears to have mirrored the approach of the District Forum.

Instead of examining whether the service obtained by the complainant was for a 'commercial purpose', it examined the question of whether the complainant falls within the definition of 'person'. Neither was such an objection raised by the OP in the version originally submitted before the District Forum nor was such a contention orally taken before the NCDRC. We fail to understand how the NCDRC failed to grasp the exact nature of the maintainability challenge. Be that as it may.

12. It is against the above backdrop that we are called upon to determine the present lis. Instead of remanding the matter back to the Consumer Forum we intend to decide the maintainability challenge here itself. The question that has eluded three judicial forums has now to be settled once and for all. That question simply is: Whether the service obtained by the complainant was for a commercial purpose?

13. Section 2 (7) of the Act defines a consumer to mean:

Section 2 (7) "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 service 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 service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Explanation.-For the purposes of this clause,-

(a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;

(b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

14. The provision as it stands now (as extracted above) was not how it appeared when it was grafted in the original Act. The definition of 'consumer' has undergone textual amendments in 1993 and in 2002. For ease of reference, the evolutionary history of the provision from its origin until the 2019 Act is captured in the table below:

Consumer Protection Act 1986 The Consumer Protection (Amendment) Act, 1993 The Consumer Protection (Amendment) Act, 2002 Consumer Protection Act 2019

"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 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 the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person "consumer" means any person who,-

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

Explanation.-For the purposes of subclause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of selfemployment; "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 and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose.

Explanation.-For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment; (7) "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 service 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 service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Explanation. -For the purposes of this clause, -

(a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;

(b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

15. Structurally, there are three parts to the definition of a consumer. We can deconstruct Section 2(7)(i) as a matter of illustration.³ The first part sets out the jurisdictional prerequisites for a person to qualify as a consumer - there must be purchase of goods, for consideration⁴. The second part is an 'exclusion clause' ['carve out'] which has the effect of excluding the person from the definition of a consumer.

The carve out applies if the person has obtained goods for the purpose of 'resale' or for a 'commercial purpose'. The third part is an exception to the exclusion clause - it relates to Explanation (a) to Section 2(7) which limits the scope of 'commercial purpose'. According to the said explanation, the expression, 'commercial purpose' does not include persons who bought goods 'exclusively for the purpose of earning his livelihood, by means of self-employment'. The significance of this structural break down will be discussed shortly.

16. The carve out existed as part of the original enactment. However, the Explanation to Section 2(7) was inserted by amendment in 1993.

17. Judicial experience has shown us that the service providers most often than not take up a plea in their written version that the service obtained/goods bought was for a commercial purpose. For, if they succeed in their plea, the complainant is excluded from availing any benefit under the Act. According to Section 11, the District Forum has jurisdiction to entertain complaints 'where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs'.

The expression 'complaint' is defined in Section 2(1)(7)(c) to mean any allegation made in writing by a complainant relating to certain enumerated subjects. A complainant is defined 2(1)(b) to mean a consumer, among other entities. Therefore, to file a complaint, one must be a complainant and for one to be a complainant, he must be a consumer. If a person fails to come within the definition of a consumer, he cannot be a complainant⁵ and therefore, such person cannot file a complaint under the Act.

18. In the facts of the instant case, the OP had raised a plea in its version that the complainant does not satisfy the definition of consumer since the service was obtained for a commercial purpose. Sri Shailesh Madiyal, learned Senior Advocate for the OP has argued vehemently that the complainant has not pleaded let alone prove that the services availed by it was for securing the livelihood of the complainant by means of selfemployment.

According to Sri Shailesh Madiyal, the onus to prove that services were availed for earning livelihood rests on the complainant. In support of his submission, he has relied on Laxmi Engineering Works - (1995) 3 SCC 583; Leelavathi Kirtilal Medical Trust v. Unique Shanti Developers - (2020) 2 SCC 265; Cheema Engineering Services (1997) 1 SCC 131 and; Paramount Digital Lab (2018) 14 SCC 81.

19. Before we deal with the contention of Sri Shailesh Madiyal, it would be necessary to set out the manner in which consumer forums must decide technical pleas raised by service providers to the effect that the services obtained/goods bought was for a commercial purpose and, therefore, the complaint filed on behalf of such persons are not maintainable.

The crucial step in deciding such pleas would turn on the manner in which the issues are framed. Unless the burden of proof is properly cast on the relevant party, the consumer forum would not be in a position to arrive at proper decision. Therefore, we proceed to provide some guidance on how the

issues must be framed and the manner in which the evidence must be appreciated.

20. As we have shown above, the definition of consumer has three parts. The significance of deconstructing the definition into three parts was for the purpose of explaining on whom lies the onus to prove each of the different parts. There can hardly be any dispute that the onus of proving the first part i.e. that the person had bought goods/availed services for a consideration, rests on the complainant himself.

The carve out clause, in the second part, is invoked by the service providers to exclude the complainants from availing benefits under the Act. The onus of proving that the person falls within the carve out must necessarily rest on the service provider and not the complainant. This is in sync with the general principle embodied in Section 101 and 102 of the Evidence Act that 'one who pleads must prove'.

Since it is always the service provider who pleads that the service was obtained for a commercial purpose, the onus of proving the same would have to be borne by it. Further, it cannot be forgotten that the Consumer Protection Act is a consumer-friendly and beneficial legislation intended to address grievances of consumers.⁶ Moreover, a negative burden cannot be placed on the complainant to show that the service available was not for a commercial purpose.

21. Having held that the onus to prove that the service was obtained for a commercial purpose is on the service provider, we may clarify the standard of proof that has to be met in order to discharge the onus. The standard of proof has to be measured against a 'preponderance of probabilities'. The test to determine whether service obtained qualified as a commercial purpose is no longer res integra in view of this Court's decision in *Lilavathi v. Kiritlal* (supra). Para 19 sets out the principles on which it must be determined whether the onus of proving 'commercial purpose' has been properly discharged by the service provider.

22. If and only if, the service provider discharges its onus of showing that the service was availed, in fact for a commercial purpose, does the onus shift back to the complainant to bring its case within the third part, i.e. the Explanation (a) to Section 2(7) - to show that the service was obtained exclusively for the purpose of earning its livelihood by means of self-employment.

23. In this background, we must consider the plea of Sri Shailesh Madiyal that the complainant has not pleaded nor proved that the service was obtained for earning his livelihood through the means of self¹⁴ employment. His argument relates to the third part of the definition of consumer.

The question of inquiring into the third part will only arise if the service provider succeeds in crossing the second part by discharging its onus and proving that the service obtained was for a commercial purpose. Unless the service provider discharges its onus, the onus does not shift back to the complainant to show that the service obtained was exclusively for earning its livelihood through the means of self-employment.

In the facts of this case, the OP has merely pleaded in its version that the service was obtained for a commercial purpose. No evidence has been led to probabalise its case other than merely restating its claim on affidavit. It is now well too settled that a plea without proof and proof without plea is no evidence in the eyes of law.

24. We do not wish to address ourselves to the merits of the issue since three Forums have concurred in their finding that there was proved deficiency of service.

25. Accordingly, we dismiss the appeals.

.....J. (Pamidighantam Sri Narasimha)

.....J. (Aravind Kumar)

New Delhi,

May 10, 2024

1 The complainant had filed 10 cases before the Assistant Registrar of Co-operative Societies i.e., Dispute No.1062/2004-05 to 1071/2004-05, for recovery of adjusted amount, whereunder the Assistant Registrar passed an award and directed the OP to pay the amount to complainant. Against the said order OP unsuccessfully challenged the orders in appeals before Additional Registrar of Co-operative Societies, Aliaskar Road, Bangalore, in appeal No.33/CAP/2009-10 to No.42/CAP/2009-10.

The Additional Registrar directed the opposite party to pay the award amount on the ground that said chit groups did not come under the Chit Fund Act.

2 As per the Internal Audit, the Complainant held 1023 prized chits, and 1043 non-prized chits. The report also mentions various correspondences between the complainant and OP with regards to the increasing disparity between the total liability of the fund, and the paid-up value of the non-prized chits. As per the audit report, the balance liability amounted to Rs. 1.86 crores. It was stated that owing non-payment of outstanding arrears, the foreman in accordance with Section 28 and Section 29 of the Chit Fund Act is bound to remove the defaulted non-prized subscriber to keep the chit running, hence the defaulted nonprized tickets maintained by Complainant were removed, and the paid amounts were adjusted against arrears in the prized chits.

3 The logic can be identically extended to Section 2(7)(ii)

4 The consideration may have been paid or partly paid or agreed to be paid in future.

5 Complainant is defined under Section 2 (1) (b) of the Act. A complainant means - (i) a consumer; or (ii) any voluntary consumer association registered under the Companies Act, 1956 or under any other law for the time being in force; or (iii) the Central Government or any State Government, who or which makes a complaint.

6 National Insurance Co. Ltd. v. Harsolia Motors and Ors. (2023) 8 SCC 362.

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