

Shrikant G. Mantri Vs. Punjab National Bank

Civil Appeal No. 11397 of 2016
2022-02-22 | L. NAGESWARA RAO · B.R. GAVAI
Repository ID: F2J-C-1695

Full judgment text

Shrikant G. Mantri Vs. Punjab National Bank

[Civil Appeal No. 11397 of 2016]

B.R. Gavai, J.

1. The present appeal filed by the appellant-complainant challenges the judgment and order dated 1st June, 2016, passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as "the Commission") in Consumer Complaint No.55 of 2006, thereby holding that the appellant-complainant was not a consumer as envisaged under Section 2(1)(d) of The Consumer Protection Act, 1986 (hereinafter referred to as "the said Act"). As such, by the impugned judgment and order, the complaint of the appellant has been dismissed being not maintainable.

2. The facts in the present case are not in dispute. The bare necessary facts for adjudication of the present appeal are as under:

3. The appellant-complainant had opened an account with erstwhile Nedungadi Bank Limited (hereinafter referred to as "the erstwhile Bank") in the year 1998. The appellant is a stockbroker by profession. The appellant had applied for an overdraft facility on 25th April, 1998, in connection with his day-to-day share and stock transactions.

It is not in dispute that the said overdraft facility was sanctioned by the erstwhile Bank to the appellant-complainant initially for an amount of Rs.1 crore, for which the appellant-complainant had pledged certain shares worth more than Rs.1 crore, as security as per the margin requirements specified by the erstwhile Bank. Subsequently, in the year 1999, the appellant-complainant applied for enhancement of the said overdraft facility. The said overdraft facility was enhanced by the erstwhile Bank from Rs.1 crore to Rs. 5 crore, vide its letter dated 13th December, 1999.

4. Again, in March 2001, the appellant-complainant approached the erstwhile Bank for temporary increase in the overdraft limit. The erstwhile Bank, vide its letter dated 17th March, 2001, granted the request of the appellant and temporarily enhanced the overdraft facility from Rs.5 crore to Rs.6 crore, for a period of one week.

5. It appears that due to steep fall in the share market, the erstwhile Bank, vide its letters dated 16th and 17th March, 2001, called upon the appellant-complainant to pledge additional shares to regularize the overdraft account. As an additional security, the appellant-complainant pledged 37,50,000 equity shares of face value of Rs.10/of unlisted company Ansal Hotels Ltd. (hereinafter referred to as "the said shares") towards the dues of the Bank, vide his letter dated 30th March, 2001. It is not in dispute that subsequently, consequent to the merger of Ansal Hotels Ltd. with ITC Ltd., and the bonus and splitting of ITC shares, the aforesaid 37,50,000 equity shares of Ansal Hotels Ltd. became equivalent to 3,75,000 shares of ITC Ltd.

6. It appears that during 2001, the overdraft account of the appellant-complainant became irregular and as such, the erstwhile Bank called upon the appellant-complainant to regularise the overdraft account. As the appellant-complainant was unable to regularise the overdraft account, the erstwhile Bank, vide letter dated 14th September, 2001, called upon the appellant-complainant to pay a sum of Rs.600.61 lakhs along with interest thereon.

7. It is the case of the appellant-complainant that though he had advised the erstwhile Bank to sell the pledged shares in December, 2001, so as to close overdraft account, the erstwhile Bank chose not to sell the said shares at that point of time. It is the case of the appellant-complainant that the said shares were sold by the erstwhile Bank in November 2002, when the market value of the said pledged shares was at the lowest, which resulted in huge loss to the appellant-complainant.

8. After selling a part of the pledged shares for a sum of Rs.2,69,66,215.79, the respondent Bank, the successor-in-interest of the erstwhile Bank, filed a Recovery Petition before the Debts Recovery Tribunal, Mumbai against the appellant-complainant for recovery of the balance amount due as on 26th December, 2002. The said petition was decreed by the Debts Recovery Tribunal, Mumbai, vide order dated 26th May, 2004.

However, the matter was settled between the parties and a 'One Time Settlement' ("OTS" for short) was reached between them on payment of Rs. 2 crore. As such, the respondent-Bank issued a 'No Dues Certificate' dated 14th May, 2005, certifying that no dues were left outstanding against the overdraft account of the appellant. After the OTS, the respondent-Bank withdrew the recovery proceedings filed against the appellant.

9. It is the case of the appellant that since the respondent-Bank failed to return the said shares to the appellant, he sent a notice on 14th June, 2005 to the respondent-Bank, seeking release of the said shares.

10. It appears that the appellant was also working as a stockbroker of the respondent-Bank. With regard to the transactions with the appellant in the capacity as a stockbroker, the respondent-Bank had initiated arbitration proceedings against the appellant before the Arbitration forum of the Bombay Stock Exchange ('BSE" for short). According to the appellant, the respondent-Bank failed in the said arbitration proceedings, which have attained finality.

11. In this background, the appellant filed a complaint before the Commission, alleging deficiency in services on the part of the respondent-Bank. The main relief claimed in the said complaint was for a direction to the respondent-Bank to return 3,75,000 shares of ITC Ltd. (earlier 37,50,000 shares of Ansal Hotel Ltd.) along with dividend and all accretions thereon.

12. In the said proceedings, on being served with the notice, the respondent-Bank raised a preliminary objection with regard to maintainability of the said complaint, on the ground that the appellant-complainant was not a consumer as envisaged under Section 2(1)(d) of the said Act. The Commission, by the impugned order, held that the appellant had availed the services of the respondent-Bank for 'commercial purpose' and as such, he was not a consumer as envisaged under Section 2(1)(d) of the said Act.

13. Being aggrieved thereby, the appellant-complainant has approached this Court by way of the present appeal.

14. We have heard Shri Shyam Divan, learned Senior Counsel appearing on behalf of the appellant and Shri Dushyant Dave, learned Senior Counsel appearing on behalf of the respondent.

15. Shri Shyam Divan, learned Senior Counsel appearing on behalf of the appellant-complainant, submitted that the appellant had a dual relationship with the respondent-Bank. In the first capacity, as a consumer, he had taken the overdraft facility from the respondent-Bank for the purposes of his self-employment. In the second capacity, he was working as the stockbroker for the respondent-Bank. The learned Senior Counsel submitted that with regard to the said relationship, though there were certain disputes, the claim of the respondent-Bank before the Arbitration Forum of BSE has been rejected by the BSE Arbitral Tribunal, which has attained finality.

16. Shri Divan further submits that it is undisputed that the said shares were pledged with the respondent-Bank only as a security towards the overdraft facility. He submits that from the letter of the respondent-Bank dated 14th May, 2005, it is clear that there were no dues outstanding in the overdraft account of the appellant-complainant, which stood fully and finally settled through compromise/OTS.

He submitted that once the dues of the respondent-Bank towards the said overdraft facility stood cleared, there was no reason for the respondent-Bank to have withheld the said shares. He submitted that though the arbitration proceedings between the parties had reached finality, the respondent-Bank had illegally withheld the said shares of the appellant. He submitted that in spite of repeated requests for return of the said shares, the same were not returned and as such, the appellant had no option but to file the complaint under the said Act.

17. Shri Divan submitted that though Section 2(1)(d)(ii) of the said Act, excludes a person who avails of such services for 'any commercial purpose', the Explanation thereto, which could be construed as proviso to proviso, would include even such a person if it is shown that the services availed by him were exclusively for the purposes of earning his livelihood by means of self-employment. He submitted that the services of

the overdraft facility were taken by the appellant from the respondent-Bank for the purposes of his business as a stockbroker.

He submitted that since the appellant was engaged in the profession of stockbroker and since the services of the said overdraft facility were taken for the appellant's profession as a stockbroker, the services rendered by the respondent-Bank were exclusively for the purposes of earning his livelihood. Learned Senior Counsel submits that the appellant was self-employed as a stockbroker and as such, the services availed were exclusively for the purpose of earning his livelihood by means of self-employment. He relies on the dictionary meaning of the word 'livelihood' as provided in Black's Law Dictionary, Ninth Edition.

He submits that the Commission has grossly erred in giving restricted meaning to the term 'earning his livelihood by means of self-employment'. Learned Senior Counsel submits that merely because a person has availed the services of the Bank for expanding his business, that cannot be a ground to give a restricted meaning to the said term. Relying on the judgment of this Court in the case of Internet and Mobile Association of India vs. Reserve Bank of India¹, he submits that the services of the Bank provide lifeline for any business, trade or profession. He submits that in the present era, it is unable for any person to survive without availing the services of a Bank.

Learned Senior Counsel submits that the Commission has erred in holding that the appellant is not a consumer within the meaning of Section 2(1)(d)(ii) of the said Act. In support of his submissions, he relied on the following judgments of this Court: (i) Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers and others²; (ii) Paramount Digital Colour Lab and others vs. AGFA India Private Limited and others³; (iii) Sunil Kohli and another vs. Purearth Infrastructure Limited⁴; (iv) CBI, AHD, Patna vs. Braj Bhushan Prasad and others⁵.

18. Shri Dushyant Dave, learned Senior Counsel appearing on behalf of the respondent-Bank, on the contrary, submits that the said Act is a special statute enacted with the purpose of providing a speedy and simple redressal to consumer disputes. Shri Dave submits that the said Act provides a summary procedure so that the consumer disputes are settled without undue delay. He submitted that if the definition of the word 'consumer' is expanded, so as to include in it a person who avails of such services for any commercial purpose, the very purpose of the said Act would be defeated.

He submits that if any commercial dispute between the service provider and the availer/recipient of the service is included in the definition of the word 'consumer', it will give rise to floodgates of complaints. It is submitted that if such an interpretation is accepted, apart from the same being inconsistent with the provisions of Section 2(1)(d)(ii) of the said Act, it will defeat the very purpose of providing speedy justice to the consumers. He, therefore, submits that no interference is warranted in the finding of the Commission and the appeal deserves to be dismissed.

19. For appreciating the rival submissions, it will be necessary to refer to Section 2(1)(d) of the said Act, as it exists today, which is as follows:

"2. Definition. (1) In this Act, unless the context otherwise requires,

(a).....

(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 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;"

20. The short question, therefore, that would have to be answered in the present case is, as to whether the services availed by the appellant from the respondent-Bank would fall within the term 'commercial purpose'. The other question that would also have to be answered is, as to whether such services are exclusively availed by the appellant for the purposes of earning his livelihood by means of self-employment.

21. For considering the said issues, we will also have to examine the object while enacting the said Act as well as the legislative history as to how Section 2(1)(d) has come in its present form. The legislature found that though there were various provisions contained in various enactments to protect the consumers and provide relief to them, yet it became necessary to protect the consumers from the exploitation and to save them from adulterated and substandard goods and services and to safe guard the interests of the consumers. In order to provide for better protection of the interests of the consumer, the Consumer Protection Bill was introduced in the Parliament.

22. Perusal of the 'Statement of Objects and Reasons' of the said Act would show that the said Act seeks to provide for better protection of the interests of consumers and for that purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith. One of the objects for enacting the said Act was the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums.

To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery was sought to be set up at the district, State and Central levels. It will be apposite to refer to the preamble of the said Act, which reads thus: "An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith."

23. The definition of the term 'consumer' as contained in Section 2(1)

(d) of the said Act, as it existed in the original enactment of 1986, reads 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 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"

24. It could thus be seen that Section 2(1)(d) of the said Act is in two parts. Section 2(1)(d)(i) of the said Act deals with buying of goods. A person 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 would be a consumer within the meaning of Section 2(1)(d)(i) of the said Act.

It also includes any user of such goods other than the person who buys such goods for a consideration, which has been 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. However, Section 2(1)(d)(i) of the said Act excludes a person who obtains such goods for resale or for any commercial purpose.

25. Section 2(1)(d)(ii) of the said Act is with respect to hiring of services. According to it, the term 'consumer' means any person who 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. It also included any beneficiary of such services other than the person who hires the services as is provided under Section 2(1)(d)(i) of the said Act.

26. It could thus be seen that as per the definition of the term 'consumer', under Section 2(1)(d)(ii) of the said Act, as enacted originally, even if a person who hires any services for any commercial purpose, he

could still be included in the definition of the term 'consumer'. It is relevant to note that Section 2(1)(d)(i) of the said Act clearly kept a person who obtains such goods for resale or for any commercial purpose, out of the ambit of definition of the term 'consumer'. However, insofar as hiring of services is concerned, no such provision was made in the original enactment.

27. The legislature noticed various deficiencies and inadequacies in the said Act. Therefore, in order to plug these loopholes and enlarge the scope of areas covered, the legislature brought certain amendments to the said Act by the Consumer Protection (Amendment) Act, 1993 (hereinafter referred to as "1993 Amendment Act"). One of the objects of the said Act was to enable the consumers, who are selfemployed, to file complaints before the redressal agencies, where goods bought by them exclusively for earning their livelihood, suffer from any defect. By subsection (5) of Section 2 of the 1993 Amendment Act, the following amendments were effected to the definition of the term 'consumer':

"(5) in clause (d),

(A) in sub-clause (ii), for the word "hires", in both the places where it occurs, the words "hires or avails of" shall be substituted;

(B) after sub-clause (ii), the following Explanation shall be inserted at the end, namely:

' Explanation.-For the purposes of sub-clause (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 self-employment';"

28. It could thus be seen that by the 1993 Amendment Act, insofar as services are concerned, wherever the word "hires" was used, the same was substituted by the words "hires or avails of". By the said 1993 Amendment Act, insofar as Section 2(1)(d)(i) is concerned, an Explanation was provided to the effect that '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 self-employment.

It could thus be seen that though the original Act of 1986 excluded a person from the ambit of definition of the term 'consumer' whenever such purchases were made for commercial purpose; by the Explanation, which is an exception to an exception, even if a person made purchases for 'commercial purpose', he was included in the definition of the term 'consumer', if such a person bought and used such goods exclusively for earning his livelihood by means of self-employment. The legislative intent is clear, that though the purchases for commercial purposes are out of the ambit of the definition of the term 'consumer' in the said Act, if a person buys and uses such goods exclusively for earning his livelihood by way of self-employment; he would still be entitled to protection under the said Act.

29. The legislature further noticed several bottlenecks and shortcomings in the implementation of various provisions of the said Act and with a view to achieve quicker disposal of consumer complaints, and to make the said Act more effective by removing various lacunae, the legislature amended the said Act by the Consumer Protection (Amendment) Act, 2002 (hereinafter referred to as "the 2002 Amendment Act"). One of the objects for bringing out the 2002 Amendment Act was "exclusion of services availed for commercial purposes from the purview of the consumer disputes redressal agencies".

It could thus be seen that the legislature noticed the mischief, that though Section 2(1)(d)(i) of the said Act kept out of its purview the goods purchased for commercial purpose, the said restriction was not found in Section 2(1)(d)(ii) of the said Act. As such, in order to bring Section 2(1)(d)(ii) at par with Section 2(1)(d)(i), the following amendment was effected to in clause (d): "(c) in clause (d), (i) in sub-clause (ii), the following words shall be inserted at the end, namely:" but does not include a person who avails of such services for any commercial purpose"; (ii) for the Explanation, the following Explanation shall be substituted, namely:

'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';"

30. It could thus be seen that by the 2002 Amendment Act, the legislature clearly provided that a person, who avails of such services for any commercial purpose would be beyond the ambit of definition of the term 'consumer'. The Explanation, which is an exception to an exception, which earlier excluded a person from the term 'commercial purpose', if goods were purchased by such a person for the purposes of earning his livelihood by means of self-employment, was substituted and the Explanation was made applicable to both

clauses (i) and (ii).

It can thus clearly be seen that by the 2002 Amendment Act, though the legislature provided that whenever a person avails of services for commercial purposes, he would not be a consumer; it further clarified that the '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.

31. It is thus clear that by the 2002 Amendment Act, the legislature has done two things. Firstly, it has kept the commercial transactions, insofar as the services are concerned, beyond the ambit of the term 'consumer' and brought it in parity with Section 2(1)(d)(i), wherein a person, who bought such goods for resale or for any commercial purpose, was already out of the ambit of the term 'consumer'. The second thing that the legislature did was that even if a person availed of the commercial services, if the services availed by him were exclusively for the purposes of earning his livelihood by means of self-employment, he would still be a 'consumer' for the purposes of the said Act.

Thus, a person who availed of services for commercial purpose exclusively for the purposes of earning his livelihood by means of self-employment was kept out of the term 'commercial purpose' and brought into the ambit of 'consumer', by bringing him on par with similarly circumstanced person, who bought and used goods exclusively for the purposes of earning his livelihood by means of self-employment. It could thus be seen that the legislature's intent is clear.

If a person buys goods for commercial purpose or avails services for commercial purpose, though ordinarily, he would have been out of the ambit of the term 'consumer', by virtue of Explanation, which is now common to both Sections 2(1)(d)(i) and 2(1)(d)(ii), he would still come within the ambit of the term 'consumer', if purchase of such goods or availing of such services was exclusively for the purposes of earning his livelihood by means of self-employment. With this legislative history in background, we will have to consider the present case.

32. The purpose of the said Act has been succinctly described by this Court in the case of *Laxmi Engineering Works vs. P.S.G. Industrial Institute*⁶, which is as under:

"10. A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/ agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these forums/ commissions were not supposed to supplant but supplement the existing judicial system.

The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. The forum so created is uninhibited by the requirement of court fee or the formal procedures of a court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the complainant himself; any recognized consumers' association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Governments can act on his/their behalf.

The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for "business-to-consumer" disputes and not for "business-to-business" disputes. This scheme of the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal."

33. It could thus be seen that this Court has clearly held that the idea of enacting the said Act was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. It has been held that the entire Act revolves round the consumer and is designed to protect his interest.

It provides for "business-to-consumer" disputes and not for "business-to-business" disputes. It has been held that forums/commissions provided by the said Act are not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services.

34. In the case of *Laxmi Engineering Works (supra)*, this Court, while considering the scope of the definition of the expression 'consumer' with relation to Section 2(1)(d)(i) of the said Act and the Explanation added by

1993 Amendment Act, observed thus:

"11. Now coming back to the definition of the expression 'consumer' in Section 2(d), a consumer means insofar 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 "commercial 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 "pertaining to commerce" (Chamber's Twentieth Century Dictionary); it means "connected with, or engaged in commerce; mercantile; having profit as the main aim" (Collins English Dictionary) whereas the word 'commerce' means "financial transactions especially buying and selling of merchandise, on a large scale" (Concise Oxford Dictionary).

The National Commission appears to have been taking 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(d)(i) 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 '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 a 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 the 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."

35. It can thus be seen that this Court observed that the National Commission was taking 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. This Court observed that in order to obviate any confusion that the expression "large scale" was not a very precise expression, the Parliament stepped in and added the explanation to Section 2(d)(i) by Ordinance/Amendment Act, 1993. It has been held that the explanation excludes certain purposes from the purview of the expression "commercial purpose". Various examples have been given by this Court as to what would come within the term of 'self-employment'.

36. One instance given is that a person who purchases a typewriter and works on the typewriter himself, the purchase would be for the purposes of earning his livelihood by means of self-employment and he would not cease to be a 'consumer' for the purposes of the said Act. Another example given is that, if a person who purchases an auto-rickshaw to ply it himself on hire for earning his livelihood, he would still be a consumer too.

This Court held that the question as to whether the transaction is for the 'commercial purpose' or for 'earning his livelihood by means of self-employment' is a question of fact that has to be decided in the facts of each case. It has been held that it is not the value of the goods that matters but the purpose to which the goods so bought, are put to. It has been held that several words used 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 the Parliament abundantly clear, that the goods bought must be used by the buyer himself, for earning his livelihood.

37. In the case of *Cheema Engineering Services vs. Rajan Singh*⁷, this Court held that the manufacture and sale of bricks in a commercial way may also be to earn livelihood. As such, the question as to whether the complainant used the machinery for the manufacture of bricks alone or with members of his family and as to whether the same was for earning his livelihood, were the questions of fact to be decided on the basis of evidence.

38. In the case of *Kalpavruksha Charitable Trust vs. Toshniwal Brothers (Bombay) Pvt. Ltd. and another*⁸, this Court considered the question as to whether the machines purchased by the Charitable Trust for use in the Diagnostic Centre were meant for 'commercial purpose' or not. It was sought to be urged on behalf of the Trust that the Trust was not carrying out a profitmaking activity and as such, the purchase of diagnostic machines would not come within the ambit of the term 'commercial purpose'. It was, therefore, sought to be urged that it would fall within the definition of the term 'consumer'. This Court held that the finding of the National Commission that the machinery was installed for commercial purpose and as such, the Trust was not a 'consumer' within the meaning of the said Act, required no interference.

39. In the case of *Paramount Digital Colour Lab (supra)*, this Court was considering the case of unemployed graduates, who had started a business of photography in partnership for self-employment and for their livelihood. For the said purpose, they had purchased an advanced photo processing, developing and printing machine. It was the case of the appellants therein that the respondents, despite having the knowledge that the machine was not working properly, had unfairly and carelessly sold the same to the appellants.

As such, the appellants were required to file a complaint under the said Act. The State Commission had allowed the complaint. In appeal, the National Commission held that the appellants were not the consumers as envisaged under Section 2(1)(d) of the said Act, since the purchase of the machine was for commercial purpose. Reversing the view taken by the National Commission and upholding the view taken by the State Commission, this Court observed thus:

"12. In this case, since the appellants have purchased the machine, Section 2(1)(d) of the Act is applicable. "Consumer" as defined under Section 2(1)(d) of the Act does not include a person who obtains goods for a "commercial purpose". The Explanation supplied to Section 2(1)(d) clarifies that "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".

If both these provisions are read together, it leads to the conclusion that if a person purchased the goods for consideration not for any commercial purpose, but exclusively for the purposes of earning his livelihood by means of "self-employment", such purchaser will come within the definition of "consumer". If a person purchases the goods for a "commercial purpose" and not for the purposes of earning his livelihood by means of "self-employment", such purchaser will not come within the definition of "consumer". It is therefore clear, that despite "commercial activity", whether a person would fall within the definition of "consumer" or not would be a question of fact in every case. Such question of fact ought to be decided in

the facts and circumstances of each case.

13. "Self-employment" necessarily includes earning for self. Without earning generally there cannot be "self-employment". Thus, if a person buys and uses the machine exclusively for the purposes of earning his livelihood by means of "self-employment", he definitely comes within the definition of "consumer". In the matter on hand, the quality of ultimate production by the user of the machine would depend upon the skill of the person who uses the machine. In case of exigencies, if a person trains another person to operate the machine so as to produce the final product based on skill and effort in the matter of photography and development, the same cannot take such person out of the definition of "consumer".

40. This Court, on facts in the said case, found that the appellants therein were unemployed graduates and had bought the said machine for their own utility, personal handling and for their small venture, which they had embarked upon to make a livelihood. This Court further found that this was distinct from large-scale manufacturing or processing activity carried on for huge profits. It was, therefore, held that the appellants therein would be consumers within the meaning of Section 2(1)(d) of the said Act.

41. Shri Shyam Divan, learned Senior Counsel appearing on behalf of the appellant, strongly relied on the judgment of this Court in the case of Lilavati Kirtilal Mehta Medical Trust (supra), wherein this Court after considering the earlier judgments held thus:

"19. To summarise from the above discussion, though a strait jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is "for a commercial purpose":

19.1. The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, "commercial purpose" is understood to include manufacturing/ industrial activity or business-to-business transactions between commercial entities.

19.2. The purchase of the good or service should have a close and direct nexus with a profit-generating activity.

19.3. The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.

19.4. If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of "generating livelihood by means of self-employment" need not be looked into."

42. It is thus clear, that this Court has held that the question, as to whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, "commercial purpose" is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities; that the purchase of the good or service should have a close and direct nexus with a profit-generating activity; that the identity of the person making the purchase or the value of the transaction is not conclusive for determining the question as to whether it is for a commercial purpose or not.

What is relevant is the dominant intention or dominant purpose for the transaction and as to whether the same was to facilitate some kind of profit generation for the purchaser and/or their beneficiary. It has further been held that if the dominant purpose behind purchasing the good or service was for the personal use and the consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, then the question of whether such a purchase was for the purpose of "generating livelihood by means of self-employment" need not be looked into.

43. On facts, it was held that the purchase of flats by the appellant therein had no direct nexus with the profit generating activities. The flats were not occupied for undertaking any medical/diagnostic facilities within the hospital but for accommodating the nurses employed by the hospital. It was further held that the flats are being provided to the nurses without any rent and that the appellant therein was not generating any surplus from occupying the flats or engaging in buying and selling of flats.

44. Insofar as the judgment of this Court in the case of Sunil Kohli (supra), relied upon by the appellant, is concerned, this Court on the basis of the evidence, clearly found that the complainants wanted to dispose of property in Denmark and wanted to come down to Delhi to start a business. It has further been found that for this purpose, the premises in question were booked.

As such, the said case was a case wherein the commercial premises were booked by the appellants therein, who had left their employment in Denmark and purchased the premises only for the purposes of starting their business for earning their livelihood by way of self-employment. Therefore, the said case was a case wherein the appellants therein had availed of the services exclusively for earning their livelihood by means of self-employment.

45. It could thus be seen, that when a person avails a service for a commercial purpose, to come within the meaning of 'consumer' as defined in the said Act, he will have to establish that the services were availed exclusively for the purposes of earning his livelihood by means of self-employment. There cannot be any straitjacket formula and such a question will have to be decided in the facts of each case, depending upon the evidence placed on record.

46. In the present matter, it is not in dispute that the appellant was already engaged in the profession of stockbroker, much before he availed of service of the overdraft facility from the respondent-Bank. It is also not in dispute that he was also acting as a stockbroker for the respondent-Bank. It is also not in dispute that the appellant took the overdraft facility and also sought enhancement of the same from time to time in furtherance of his business as a stockbroker and for the purpose of enhancing the profits therein.

As already held by this Court in the case of Laxmi Engineering Works (supra), the terms "services availed by him", "exclusively for the purpose of earning his livelihood" and "by means of self-employment" will have to be given its meaning, as intended by the legislature. The said terms will have to be construed in context with the purpose for which the said Act is enacted. We have elaborately discussed the legislative history as to how Section 2(1)(d) of the said Act has come in its present form from the original form.

The amendments incorporated by the 1993 Amendment Act as well as by the 2002 Amendment Act would clearly show that the legislative intent is to keep the commercial transactions out of the purview of the said Act and at the same time, to give benefit of the said Act to a person who enters into such commercial transactions, when he uses such goods or avails such services exclusively for the purposes of earning his livelihood by means of self-employment.

47. In the present case, the Commission has come to a finding that the appellant had opened an account with the respondent-Bank, took overdraft facility to expand his business profits, and subsequently from time to time the overdraft facility was enhanced so as to further expand his business and increase his profits. The relations between the appellant and the respondent is purely "business to business" relationship.

As such, the transactions would clearly come within the ambit of 'commercial purpose'. It cannot be said that the services were availed "exclusively for the purposes of earning his livelihood" "by means of self-employment". If the interpretation as sought to be placed by the appellant is to be accepted, then the 'business to business' disputes would also have to be construed as consumer disputes, thereby defeating the very purpose of providing speedy and simple redressal to consumer disputes.

48. We, therefore, find no error with the findings of the Commission. In any case, the Commission has already granted liberty to the appellant to avail of his remedy by approaching the appropriate forum, having jurisdiction.

49. In the result, the appeal is dismissed. There shall be no order as to costs. All pending applications, if any, shall stand disposed of.

1 (2020) 10 SCC 274

2 (2020) 2 SCC 265

3 (2018) 14 SCC 81

4 (2020) 12 SCC 235

5 (2001) 9 SCC 432

6 (1995) 3 SCC 583

7 (1997) 1 SCC 131

8 (2000) 1 SCC 512

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

Disclaimer: This material is for general information and legal research. It is not legal advice. Verify current law, the operative order and later history, and consult a qualified professional before acting.