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Consumer complaints filed under the Consumer Protection Act shall not be transferred to the High Court under Article 226 – Transfer petition dismissed as infructuous.¹

YES BANK LIMITED

VS.

63 MOONS TECHNOLOGIES LTD. & ORS.

[2022 SCC ONLINE SC 762]

The Supreme Court of India

Coram: Hemant Gupta and V. Ramasubramanian, JJ.

Date of Judgment: 01.02.222

HELD:

3. We have heard the learned counsel appearing for the parties at some length and find that the consumer complaints are filed under the Consumer Protection Act, therefore, such consumer complaints cannot be transferred to the High Court exercising the jurisdiction under Article 226 of the Constitution of India. Consequently, the request for transfer of the consumer complaints is declined. The Transfer Petitions and the Interlocutory Applications are, accordingly, dismissed.

7. The Transfer Petition is dismissed as infructuous in terms of the signed order.

¹ Yes Bank Limited vs. 63 Moons Technologies Ltd. & Ors., [2022 SCC OnLine SC 762].

Arbitral Remedy available under the Telegraph Act of 1885 – statutory in nature – will not oust the jurisdiction of the consumer forum under Consumer Protection Act, 1986 – complaint against telecom companies maintainable.²

VODAFONE IDEA CELLULAR LIMITED

VS.

AJAY KUMAR AGARWAL

[(2022) 6 SUPREME COURT CASES 496]

The Supreme Court of India

Coram: D.Y. Chandrachud, Surya Kant and Vikram Nath, JJ.

Date of Judgment: 16.02.2022

HELD:

5. The principal issue which arises for determination is whether the existence of a remedy under Section 7B of the Act of 1885 ousts the jurisdiction of the consumer forum under the Consumer Protection Act 1986 [“Act of 1986”].

16. (.....) The fact that the remedy of an arbitration under the Act 1885 is of a statutory nature, would not oust the jurisdiction of the consumer forum. The Act of 1986 and its successor, the Act of 2019 are subsequent enactments which have been enacted by Parliament to protect the interest of consumers. Hence, an ouster of jurisdiction cannot be lightly assumed unless express words are used or such a consequence follows by necessary implication.

18. We are unable to subscribe to the view which has been adopted in the above decision in M Krishnan (supra). The decision is incorrect on two grounds. First, it failed to recognize that the Act of 1986 is not a general law but a special law that has been enacted by Parliament specifically to protect the interest of consumers. Second, even if it is assumed that the Act of 1986 is a general law, it is a settled position of law that if there is any inconsistency between two legislations, the later law, even if general in nature, would override an earlier special law.

19. In any event, the decision in M Krishnan (supra) also fails to note that the Act of 1986 is a special law providing protection to consumers. Crucially, M Krishnan (supra) fails to notice

² Vodafone Idea Cellular Limited vs. Ajay Kumar Agarwal, [(2022) 6 Supreme Court Cases 496].

that Section 3 of the Act of 1986 clearly provides that the remedies available under the Act are in addition to the remedies available in other statutes and the availability of additional remedies would not bar a consumer from filing a complaint under the Act of 1986. Section 100 of the Act of 2019 corresponds to Section 3 of the Act of 1986. In Emaar MGF Land Ltd. (supra), this Court held that the complaint under the Act of 1986 is a special remedy provided to a consumer in addition to the remedies that can be availed of by them, including arbitration. In Imperia Structures Ltd. v Anil Patni, (2020) 10 SCC 783³ this Court held that the remedies available under the Act of 1986 are in addition to the remedies available under other statutes, including special statutes like the Real Estate (Regulation and Development) Act 2016 [“RERA”].

20. The above position was reiterated in IREO Grace Realtech (P) Ltd. v. Abhishek Khanna, 2021 SCC OnLine SC 277⁴ by a three-judge Bench of this Court, of which one of us (Justice DY Chandrachud) was a part. Justice Indu Malhotra, speaking for the Bench invoked the doctrine of election, which provides that when two remedies are available for the same relief, the party at whose disposal such remedies are available, can make the choice to elect either of the remedies as long as the ambit and scope of the two remedies is not essentially different. (.....) In the present case, the existence of an arbitral remedy will not, therefore, oust the jurisdiction of the consumer forum. It would be open to a consumer to opt for the remedy of arbitration, but there is no compulsion in law to do so and it would be open to a consumer to seek recourse to the remedies which are provided under the Act of 1986, now replaced by the Act of 2019. The insertion of the expression ‘telecom services’ in the definition which is contained in Section 2(42) of the Act of 2019 cannot, for the reasons which we have indicated be construed to mean that telecom services were excluded from the jurisdiction of the consumer forum under the Act of 1986. On the contrary, the definition of the expression ‘service’ in Section 2(o) of the Act of 1986 was wide enough to comprehend services of every description including telecom services.

³ Imperia Structures Ltd. v Anil Patni, [(2020) 10 SCC 783].

⁴ IREO Grace Realtech (P) Ltd. v. Abhishek Khanna, [2021 SCC OnLine SC 277].

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- **Cases referred to:** Emaar MGF Land Ltd. v. Aftab Singh, [(2019) 12 SCC 751]; Ajoy Kumar Banerjee v. Union of India, [(1984) 3 SCC 127]; Idea Cellular Ltd vs Ajay Kumar Agarwal [(Civil Appeal No 923 of 2017)].
 - **Cases overruled:** General Manager, Telecom v. M Krishnan and Another, [(2009) 8 SCC 481].

Ex-parte order of the District Commission challenged by the petitioner – contrary to the principles of natural justice – set aside by the SCDRC under Order 9 Rule 7 of Cr.P.C. – petitioner allowed to file their reply and produce evidence.⁵

TATA CAPITAL HOUSING FINANCE LTD.

VS.

SANJEEV BALA & OTHERS

[REVISION PETITION NO.42 OF 2021]

State Consumer Disputes Redressal Commission, Punjab, Chandigarh

Coram: Daya Chaudhary, Urvashi Agnihotri, JJ.

Date of Judgment: 08.03.2022

HELD:

16. For imparting just and proper justice, it is necessary to provide one more opportunity to the petitioner to join the proceedings of the complaint pending before the District Commission and file reply/evidence if any. In the present case also, the case came up for hearing during the period of pandemic of COVID-19 and even the Courts were closed partially and the notice issued by the District Commission was allegedly mixed in papers of some other borrower in the office of the petitioner. The discretion was vested with the District Commission to serve the ends of justice and to achieve the object of speedy disposal of case by considering the principles of natural justice. It is necessary to prevent the miscarriage of justice and to meet the ends of justice, which is possible only by giving one more opportunity to the petitioner to put up its case after setting aside the impugned order only qua it, by allowing it an opportunity of filing reply/evidence in support of its contentions. Otherwise also, the natural justice demands that no one should be left unheard and adequate opportunity should be given to the parties to the case. The order passed by the District Commission is not only unlawful but also contrary to provisions and the same is liable to be set aside only qua the petitioner/opposite party No.3.

⁵ Tata Capital Housing Finance Ltd. vs. Sanjeev Bala & Others, Revision Petition No.42 of 2021

• **Cases referred to:** Arjun Singh v. Mohinder Kumar & Ors. [AIR 1964 Supreme Court 993]; Smt. Sahib Kaur v. Sukhbir Singh & Ors. [Civil Revision No.1700 of 2004 decided on 25.05.2016]; Vivek Khajuria & Anr. v. Wachaspati [Pet. u/s 104 No.23 of 2015 and MP No.1 of 2015, decided on 18.04.2016].

18. The District Commission is directed to allow the petitioner to join the proceedings in the complaint and to give adequate opportunity to the petitioner not only to plead its case by filing reply but also to lead evidence in support of its defence. The case, which is still pending before the District Commission, be decided on merits in accordance with law, by giving adequate opportunity of hearing to the contesting parties.

NCDRC is a Tribunal within the meaning of Article 227 and/or Article 136 of the Constitution of India – Writ Petition filed under Article 227 is maintainable when an alternate remedy may be available in approaching the High Court.⁶

IBRAT FAIZAN

VS.

OMAXE BUILDHOME PRIVATE LIMITED

[2022 SCC OnLine SC 730]

The Supreme Court of India

Coram: M.R. Shah & B.V. Nagarathna, JJ.

Date of Judgment: 21.03.2022

HELD:

12. (.....) Therefore, the National Commission can be said to be a ‘Tribunal’ which is vested by Statute the powers to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them. Therefore, as observed hereinabove in the aforesaid decision, it satisfies the test of an authority vested with the judicial powers of the State and therefore may be regarded as a ‘Tribunal’ within the meaning of Article 227 and/or 136 of the Constitution of India. Also, in a given case, this Court may not exercise its powers under Article 136 of the Constitution of India, in view of the remedy which may be available to the aggrieved party before the concerned High Court under Article 227 of the Constitution of India, as it is appropriate that aggrieved party approaches the concerned High Court by way of writ petition under Article 227 of the Constitution of India.

16. In view of the above discussion and for the reasons stated above and subject to the observations made hereinabove, it cannot be said that a writ petition under Article 227 of the Constitution of India before the concerned High Court against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) of the 2019 Act was not maintainable.

⁶ Ibrat Faizan vs.Omaxe Buildhome Private Limited, [2022 SCC OnLine SC 730].

• **Cases referred to:** L. Chandra Kumar v. Union of India, [(1997) 3 SCC 261]; Estralla Rubber v. Dass Estate (P) Ltd., [(2001) 8 SCC 97]; Garment Craft v. Prakash Chand Goel, [2022 SCC Online SC 29].

Onerous condition requiring payment of 50% amount for challenging NCDRC order will not be applicable to the complaints filed prior to the commencement of the 2019 Act – I.A. allowed.⁷

ECGC LIMITED

VS.

MOKUL SHRIRAM EPC JV

[(2022) 6 SUPREME COURT CASES 704]

Supreme Court of India

Coram: Hemant Gupta & V. Ramasubramaniam, JJ.

Date of Judgment: 15.02.2022

HELD:

32. The Division Bench of the Madras High Court in M/s. Dream Castle & Anr. v. Union of India & Ors., W.P. No. 13431 of 2015 etc. decided on 18.4.2016 dealing with amended Section 35 of the Central Excise Act by Finance Act No. 2 of 2014 held that when the unamended condition gave only a chance or hope for an assessee to get a total waiver at the discretion of the Appellate Authority, the same cannot be equated to a vested right or stated to be retrospective, unless it is definitely shown that the amended condition is more onerous than the unamended condition. (.....)

33. There is another line of judgments taking a view that right of appeal is a creation of statute and the legislature is competent to determine the conditions on which an appeal would lie. These are not the cases of amending or repeal of a statute, therefore, such judgments are not applicable to the questions arising in the present application.

34. In view of the binding precedents of the Constitution Bench judgments referred to above, we hold that onerous condition of payment of 50% of the amount awarded will not be applicable to the complaints filed prior to the commencement of the 2019 Act. Therefore, the I.A. is allowed.

⁷ ECGC Limited vs. Mokul Shriram EPC JV, [(2022) 6 Supreme Court Cases 704].

Investment in the share market not done exclusively for earning livelihood would not be covered under the ambit of the definition of Consumer under Section 2(1)(d), Consumer Protection Act, 1986.⁸

BAIDYANATH MONDAL

VS.

KANAHAYA LAL RATHI AND OTHERS

[2022 SCC OnLine NCDRC 62]

National Consumer Disputes Redressal Commission

Coram: C. Viswanath, Presiding Member

Date of Judgment: 20.04.2022

HELD:

13. Reading of the above makes it clear that a consumer is a person who buys goods or hires or avails of services for a consideration. The section, however, carves out an exception by providing that the person who purchases goods or hires/avails services for commercial purpose, shall not be included in the definition of Consumer. Explanation to Section 2(1)(d), however, provides that if such services are availed exclusively for earning livelihood, he will be considered as a “Consumer.” It is not the case of the Complainant that he had invested the money in share market exclusively for earning his livelihood. In this regard the State Commission observed as follows:—

“The above facts and circumstances clearly indicate that the transactions involved in the case on hand are commercial activities and such commercial activities are not exclusively for the purpose of self-employment of the Appellant/Complainant and thus the Appellant/Complainant is not covered by inclusive explanation appended to Section 2(1)(d) of the Consumer Protection Act, 1986 and hence, the Appellant/Complainant does not fall within the definition of “Consumer” as defined u/s 2(1)(d) of the Consumer Protection Act, 1986.”

⁸ Baidyanath Mondal vs. Kanahaya Lal Rathi and Others, [2022 SCC OnLine NCDRC 62].

14. The State Commission relied on the judgment of this Commission in *Steel City and Securities Ltd. v. G.P. Ramesh* Revision Petition No. 3060 of 2011⁹ dated 03.2.2014 dismissed the Complaint with the observation that the transaction was commercial in nature and the Complainant was not a “Consumer.” Hon'ble Supreme Court in *Morgan Stanley Mutual* held as follows : - *Fund v. Kartick Das*, (1994) 4 SCC 225¹⁰

“33. Certainly, clauses (iii) and (iv) of Section 2(1)(c) of the Act do not arise in this case. Therefore, what requires to be examined is, whether any unfair trade practice has been adopted. The expression ‘unfair trade practice’ as per rules shall have the same meaning as defined under Section 36-A of Monopolies and Restrictive Trade Practices Act, 1969. That again cannot apply because the company is not trading in shares. The share means a share in the capital. The object of issuing the same is for building up capital. To raise capital, means making arrangements for carrying on the trade. It is not a practice relating to the carrying of any trade. Creation of share capital without allotment of shares does not bring shares into existence. Therefore, our answer is that a prospective investor like the respondent or the association is not a consumer under the Act. Q. 2 : Whether the appellant company trades in shares?”

15. Law laid down by Hon'ble Supreme Court in (supra) still *Morgan Stanley Mutual Fund* holds good. Petitioner has not produced any case law contrary to the above. In view of the aforesaid discussion and the law laid down by the Hon'ble Supreme Court, I find that the Complainant is not a Consumer.

⁹ *Steel City and Securities Ltd. v. G.P. Ramesh*, [Revision Petition No. 3060 of 2011 dated 03.2.2014].

¹⁰ *Morgan Stanley Fund v. Kartick Das*, [(1994) 4 SCC 225].

The context and meaning of the term “interest” when it is involved in the formula for calculating compensation under section 14(1)(d) of the Consumer Protection Act, 1986 is distinctly different from that used in section 194A of the Income Tax Act, 1961 – Hence, tax not be deducted at source for compensations calculated using “interest” levied on the deposited amount.¹¹

RITA BAKSHI

VS.

M3M INDIA LIMITED AND ORS.,

[2022 SCC ONLINE NCDRC 40]

National Consumer Disputes Redressal Commission

Coram: Dinesh Singh, Presiding Member & Karuna Nand Bajpayee, Member

Date of Judgment: 02.03.2022

HELD:

12. (.....) The way and manner of computing “compensation” may differ with case to case. It may be in the form of a lumpsum amount, as may be deemed just and equitable in a particular case, without even making any reference to the term “interest”. Or it may be based on some other formula or yardstick, as may be deemed apt and suitable in a particular case. And the formula or yardstick may also, in some cases, have a reference to the term “interest”. Certainly tax is not deducted at source if the compensation is awarded in the form of a lumpsum amount, or when the formula or yardstick, if and as any adopted for the purposes of computation, does not involve or refer to the term “interest”. It will therefore be erroneous to deduct tax at source just because in a particular case the formula or yardstick adopted for computation alludes to the term “interest”.

17. We have amply clarified already hereinabove that the “compensation” awarded under the Consumer Protection Act is for the “loss or injury suffered” and is universally applicable to both ‘goods’ and ‘services’ inclusive of the ‘service’ relating to ‘housing construction’. Thus in the ‘service’ of ‘housing construction’, if, in a particular case, “compensation” is computed “by way of interest” on the deposited amount it shall not be differently treated than the other

¹¹ Rita Bakshi vs. M3M India Limited and Ors., [2022 SCC OnLine NCDRC 40].

cases in which the term “interest” may not at all be used in computing the compensation. The context and meaning of the term “interest” if used in the mode of calculation or a formula or yardstick adopted for computing compensation under section 2(1)(d) of the Consumer Protection Act is identifiably different from the context and meaning as used in section 194A of the Income Tax Act.

Absence of President of the State Commission or District Forum – Not sufficient to declare Section 29A of the Consumer Protection Act, 1986 as unconstitutional, especially when the provision has been specifically created for accommodating such contingency.¹²

APARNA AMITABH CHATTERJEE

VS.

UNION OF INDIA

[(2022) 2 AIR BOM R (CRI) 336]

High Court of Bombay

Coram: V.M. Deshpande & Amit B. Bokkar, JJ.)

Date of Judgment: 24.03.2022

HELD:

20. In our opinion, the language of Section 29A of the Act is intended to provide for a situation where a President of State Commission or District Forum is non-functional, either having not been appointed in time or is on leave due to reasons beyond his control. The scheme of appointment and adjudication of consumer disputes is laid down under the Act to make the District Forum or State Commission continuously functional, allowing the Members in the absence of the President to function in a situation beyond the control of the Members of the Forum. Though we expect it is more appropriate and desirable to function with the President of the District Forum or State Commission while adjudicating complaints under the Act, the provisions of the said Act are required to be interpreted as broadly as possible. The mere absence of the President for reasons beyond control alone is not sufficient for striking down Section 29A of the Act as unconstitutional, particularly when such provision has been made to render the District Forum or State Commission functional in the absence of the President. The provisions of the said Act need to be construed harmoniously to promote the object and spirit of the Act.

¹² Aparna Amitabh Chatterjee vs. Union of India, [(2022) 2 AIR Bom R (Cri) 336].

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- **Cases referred to:** Joint Secretary Political Department, State of Meghalaya Vs. High Court of Meghalaya [(2016) 11 SCC 245]; Ram Krishna Dalmia v. Justice Tendolkar, [A.I.R. 1958 S.C. 538]; Gulzari Lal Agrawal vs. Accounts Officer [(1996) 10 SCC 590]; State of Karnataka v. Vishwabharathi House Building Coop. Society [(2003) 2 SCC 412].

Interpretation of activities categorised under “business-to-business” within the ambit of “commercial purpose”- Use of dominant intention or dominant purpose test, i.e., establishing close nexus between the intention of generating profitability and the activities thus conducted.¹³

SHRIKANT G. MANTRI

VS.

PUNJAB NATIONAL BANK

[(2022) 5 SUPREME COURT CASES 42]

The Supreme Court of India

Coram: L. Nageswara Rao; B.R. Gavai, JJ.

Date of Judgment: 22.02.2022

HELD:

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

¹³ Shrikant G. Mantri vs. Punjab National Bank, [(2022) 5 Supreme Court Cases 42].

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- **Cases referred to:** Laxmi Engineering Works vs. P.S.G. Industrial Institute, [(1995) 3 SCC 583]; Cheema Engineering Services vs. Rajan Singh, [(1997) 1 SCC 131]; Kalpavruksha Charitable Trust vs. Toshniwal Brothers (Bombay) Pvt. Ltd, [(2000) 1 SCC 512].; Paramount Digital Colour Lab VS. Agfa India (P) Ltd., [2015 SCC OnLine NCDRC 972]; Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers, [(2020) 2 SCC 265]; Sunil Kohli vs. Purearth Infrastructure Ltd., [(2020) 12 SCC (Cri.) 576].

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.

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.

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.
