NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

FIRST APPEAL NO [redacted] OF 2017
(Against the Order dated 01/02/2017 in Complaint No [redacted] 2006 of the State Commission Delhi)

[redacted]

.....Appellant(s)

Versus

[redacted]

.....Respondent(s)

FIRST APPEAL NO [redacted] OF 2017
(Against the Order dated 01/02/2017 in Complaint No [redacted] 2007 of the State Commission Delhi)

[redacted]

.....Appellant(s)

Versus

[redacted]

.....Respondent(s)



BEFORE:

HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING MEMBER

FOR THE APPELLANT :	FOR THE APPELLANT : MR. NARENDER BHANDARI, ADV. (VC)
FOR THE RESPONDENT :	FOR THE RESPONDENTS: MR. SAMEER NANDWANI, ADV. FOR R1-3(VC) MR. LAVISH SHARMA, ADV. FOR R4-5 R- 6 IS DISCHARGED VIDE ORDER DATED 13.10.2023

Dated : 26 November 2024

ORDER

1. The two Appeals, FA. No. [redacted] of 2017 and FA. No [redacted] of 2017 were filed by M/s. [redacted] (the "Appellant"/ "Complainant") against [redacted] & Ors. ("Respondents"/"OPs"). These appeals challenge the Order dated 01.02.2017 in CC/21/2006 and CC/193/2007 respectively passed by the learned State Consumer Dispute Redressal Commission, Delhi (the "State Commission"), which dismissed both the Complaints.

2. As per the report of Registry there was 4 days delay in filing FA. No [redacted] of 2017. In the facts and circumstances of the case, the delay is condoned.

3. Since the facts and questions of law involved in both Appeals are substantially similar, except for minor variations in dates and events, these Appeals are being disposed of by this common Order. For ease of reference, **FA No [redacted] of 2017** shall be considered as the lead case, and the facts outlined below are derived from ***Consumer Complaint No.*** 21/2006.

4. Brief facts of the case, as per the complainant, are that they had purchased two digital mini lab frontier machines No. 570, along with scanner/image processor/laser units (PLP SP-3000 and LP-5700), designed for various printing functions, including negative print, media print, and mobile colour print. These machines were imported by OP-1, from Japan and were manufactured by OP-4. The complainant got the machines financed through OP-6 Bank. It was agreed between the parties that if the machines were found defective, OP-6 would take over the machines and recover the dues from OP-1. As per the complainant the machines became defective about two months after their purchase, leading to frequent complaints from clients. Despite reporting the issues to OP-1, and the deputation of mechanics and engineers for rectification, the defects persisted. The gear of the machines was found malfunctioning, and the dryer belt had to be replaced ten times without resolving the defect. Additionally, the CP-49-EPC unit was found to lack proper chemistry. The complainant lodged multiple complaints with the OPs, all of which proved futile.

5. Being aggrieved, the Complainant filed a Consumer Complaint no. [redacted], before the State Commission, Delhi praying as under: -

> ***i. To direct the respondents no. 1 to 5 to either repair defects in unit/machine no. SP-31317935, IP-3135197 ore replace the same or in the alternative pay the value of the unit/machine in question together with tax paid by the complainant at the time of purchase of the same to the tune of Rs. 74,00,000/-.***
>
> ***ii. To direct the respondent no. 1 to 5 to pay loss/ compensation to the tune of Rs. 25 lac as well as loss of papers used in unit to the tune of Rs. 1 lac.***
>
> ***iii. To direct the respondent no. 6 to take possession of the unit/machine in question from the complainant and recover the value and cost thereof from the respondent no. 1.***
>
> ***iv. To award cost to complainant against respondents 1 to 5.***
>
> ***v. Any other relief which is deems fit and proper.***

6. The Appellants/OPs filed their written versions wherein OP-1 contended that the machines were purchased for commercial use with the intention of earning profits, thereby excluding the complainant from the definition of a "consumer" under the Act. The complaint involved disputed questions of fact that could not be adjudicated in a summary manner and, therefore, ought to be determined by a civil court. OP-1 contended that the machines were stored in dusty conditions and were not maintained at proper room temperature, thus attributed negligence to the complainant. It was also denied that any arrangement existed between OP-1 and OP-6 Bank regarding financing of the machines. OPs 5 and 6 contended that they were improperly impleaded in the case, as the allegations pertained solely to the purported deficiency in service by OP-1. They argued that they were neither necessary parties to the complaint nor had any privity of contract with the Complainant. The inclusion of OPs 5 and 6 was intended to harass them.

7. After hearing all parties and appreciating the facts of the case, the State Commission on 01.02.2017 passed the following Order:

"6) With the aforesaid spectrum of facts, we are confronted with a question whether the consumer complaints survive after the subject material i.e. the machines having been sold by the complainant. In the case of Rajeev Gulati v. Tata Engineering & Locomotive Co. Ltd., III (2013) CPJ 273 (NC), National Commission held that since the vehicle in the said case had been sold during the pendency of the proceedings before the consumer fora, the complainant was not entitled to any compensation. In the absence of material evidence of manufacturing defect in the goods, directions for return of the goods cannot be executed because in such cases goods are no more in possession of the complainant. Factum of any manufacturing defect existing or not, can also not be ascertained by any expert. Following case law also supports the aforesaid legal position:

A. Honda Cars India Ltd. V. Jitender Singh Madan IV 2013 CPJ 258

B. Pasha V. TATA Motors & Ors. IV 2011 CPJ 107

C. TATA Motors V. Huzoor Maharaj Baba Desh Raj & Anr. in Revision Petition No. 2562/2012 decided on 25.09.2013

D. TATA Motors V. Manoj Gadi & Anr. II 2014 CPJ 665.)

7) In view of the legal position discussed above, I am of the considered opinion that both the consumer complaints i.e. CC No. 21/2006 and CC No. 193/2007 cannot subsist in the eyes of law. The same are hence dismissed."

8. Aggrieved by the State Commission order, the Complainant/ Appellant filed Appeal No. [redacted] / 2017 before this Commission seeking:

"a) Accept the appeal of the appellant and set aside/ quash the impugned order dated 02.03.2017 and please to call for the recover of complaint case bearing No. 21/2006 titled as M/s Nitesh Colour Lab Vs. Jindal Photo Ltd. & Ors., and after considering the record set aside the impugned order dated 02.03.2017.

b) to award the cost of the appeal in favour of the appellant and against the respondents."

9. The Appellant in its Appeal mainly raised the following grounds:

A. The State Commission erroneously dismissed the complaint on the ground that the machine was sold by the complainant under Debt Recovery Tribunal order and it precluded the determination of manufacturing defects and failed to adjust their claim after deducting the amount received from the sale of the machine.
B. The State Commission failed to address defects in the machine supplied by the OPs, which were not as per specifications and remained non-functional despite repeated rectification attempts, causing undue hardship to the complainant.
C. The State Commission failed to interpret and apply the Act regarding unfair and restrictive trade practices, ignored their pleadings and evidence, and hastily dismissed the complaint without proper examination, violating principles of natural justice
D. The State Commission improperly relied on inapplicable judgments concerning vehicles, such as *Rajeev Gulati v. Tata Engineering & Locomotive Co. Ltd.*, which were irrelevant to the facts of the present complaint involving a machine.

10. The learned counsel for the complainant reiterated the facts of the complaint and averred that it was due to the machine's defects, that the complainant was unable to pay the loan instalments to OP-6, who initiated recovery proceedings before the Debt Recovery Tribunal (DRT), Delhi. He argued that the machine was purchased for earning a livelihood through self-employment, and compensation of Rs. 25,00,000/- was justifiable. The State Commission erroneously dismissed the complaint solely on the ground that the machine was no longer in the Complainant's possession, thereby rendering it impossible to ascertain any manufacturing defect. He relied upon the judgment in ***Laxmi Engineering Works v. P.S.G. Industrial Institute*** (1995 SCC (3) 583), asserting that the Commission failed to consider both oral and documentary evidence. In view of these submissions, he prayed for the impugned order to be set aside, and appropriate relief granted in favour of the Complainant.

11. The learned counsel for OPs 1-3 argued that the operational issues raised by the complainant resulted from mishandling, non-compliance with prescribed guidelines and unsuitable storage conditions, including dust and inadequate cooling. Despite these deficiencies, OP-1 attended to the complaints. It was further submitted that the machines were financed by OP-6 Bank, and the complainant's failure to repay the loan led to recovery proceedings before the Debt Recovery Tribunal, during which the machines were sold under a settlement. The sale of the machines rendered it impossible to establish any manufacturing defect, a burden that rested on the complainant. Citing ***Rajeev Gulati v. Tata Engineering*** (III (2013) CPJ 273) and ***Tata Motors Ltd. v. Hazoor Maharaj Baba Des Raj & Anr.*** (Revision Petition No. 2562 of 2012), he argued that having sold the machines, the complainant is no longer qualified as a "consumer" under the Consumer Protection Act. Accordingly, the appeal was without merit.

12. The learned counsel for OPs 4-5 contended that the State Commission rightly dismissed the complaint, as the complainant sold the machinery during the pendency of proceedings, thereby ceasing to qualify as a consumer under the Act. He cited ***Rajeev Gulati v. Tata Engineering***, 2013 SCC OnLine NCDRC 1129, ***Honda Cars India Ltd. v. Jitender Singh Madan***, 2013 SCC OnLine NCDRC 934, ***Anser Pasha v. Tata Motors***, 2011 SCC OnLine NCDRC 712, ***Tata Motors v. Huzoor Maharaj Baba Desh*** Raj, 2013 SCC OnLine NCDRC 883 and ***Tata Motors v Manoj Gadi***, 2014 SCC OnLine NCDRC 160, and argued that the

absence of possession made it impossible to prove any manufacturing defect. He further asserted that the machinery was purchased for commercial use in the complainant's photo development business, disqualifying them as a consumer. In support of this contention, he relied on **Shrikant G. Mantri v. Punjab National Bank**, (2022) S SCC 42, **Cheema Engineering Services v. Rajan Singh**, (1997) 1 SCC 131, ***Kalpavruksha Charitable Trust v, Toshniwal Bros***., (Bombay) (P) Ltd., (2000) 1 SCC 512, which defined commercial purpose as profit-driven activities involving hired workers. Learned counsel for OPs 4-5 contended that they were merely the machine manufacturers, with OP 1 being the authorized distributor responsible for after-sales services. He asserted that there was neither any privity of contract between OPs 4-5 nor did the complainant allege any manufacturing defect. Thus, the complainant's dissatisfaction with repairs did not implicate OPs 4-5. The complaint stemmed from their inability to repay a loan and misuse of the machine. He sought the dismissal of the appeal.

13. We have heard the learned Counsels for both the parties and carefully perused the material available on record.

14. The primary issue to be determined before proceeding is whether the complainant is a consumer or not. The Hon'ble Supreme Court in CA NO(S).5352-5353 of 2007 ***in National Insurance Co. Ltd. v. Harsolia Motors and Ors.,*** decided on 13.04.2023 reiterated the two-fold test to determine whether the goods or services were purchased or availed for commercial purposes or not in the following words:

> ***"39. Applying the aforesaid test, two things are culled out; (i) whether the goods are purchased for resale or for commercial purpose; or (ii) whether the services are availed for any commercial purpose. The two-fold classification is commercial purpose and non-commercial purpose. If the goods are purchased for resale or for commercial purpose, then such consumer would be excluded from the coverage of the Act, 1986. For example, if a manufacturer who is producing product A, for such production he may be required to purchase articles which may be raw material, then purchase of such articles would be for commercial purpose. As against this, if the same manufacturer purchases a refrigerator, television or air-conditioner for his use at his residence or even for his office has no direct or indirect nexus to generate profits, it cannot be held to be for commercial purpose and for afore-stated reason he is qualified to approach the Consumer Forum under the Act, 1986.***
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> ***40. Similarly, a hospital which hires services of a medical practitioner, it would be a commercial purpose, but if a person avails such services for his ailment, it would be held to be a noncommercial purpose. Taking a wide meaning of the words "for any commercial purpose", it would mean that the goods purchased or services hired should be used in any activity directly intended to generate profit. Profit is the main aim of commercial purpose, but in a case where goods purchased or services hired is an activity, which is not directly intended to generate profit, it would not be a commercial purpose."***

15. The OPs claim is that the complainant is not a consumer and used the said machines for 'commercial purpose' and not for 'self-employment'. Hon'ble Supreme Court in ***Laxmi Engineering Works v. P.S.G. Industrial Institute***, 1995 SCC (3) 583, discussed these two phrases in detail in the following words:

> "***11. ... 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 selfemployment" in the explanation. The ambiguity in the meaning of the words "for***

the purpose of earning his livelihood" is explained and clarified by the other two sets of words."

16. It is an undisputed fact that the Complainant was engaged in a partnership arrangement, as evidenced by the Partnership Deed dated 01.04.2005. Under established principles of law, a partnership is constituted when two or more individuals collaborate for a business venture with shared responsibility to generate profit. OPs 4-5 brought to our notice that the machine purchased from OP-1 had a significant operational capacity of printing 1,700 photographic units per hour and was installed in a facility spanning approximately 1,200 sq. ft., employing ten individuals to manage the photo-processing activities. These facts establish a clear and direct nexus between the machinery and the complainant's commercial business operations. Further, the complainant admitted, through an application, that the machine in question was sold as part of a settlement with OP-6 before the Debt Recovery Tribunal. This admission, coupled with the complainant's acknowledgment of business losses, unequivocally confirms that the machinery was purchased and used for commercial purposes. Thus, the Complainant does not qualify as a "consumer" under the Consumer Protection Act, rendering the appeal devoid of merit. Also, there is no expert evaluation of the machine under Section 13 of the Act on record to corroborate the contention of the defects in the machine as alleged by the complainant.

17. In view of the foregoing, I find no reason to interfere with the State Commission's finding that, in the absence of any tangible evidence of a manufacturing defect, no directions for the return of the machine could be issued. As the machine was no longer in the Complainant's possession, an expert examination to determine a manufacturing defect was impossible. ***In Rajeev Gulati v. Tata Engineering***, III (2013) CPJ 273, and ***Tata Motors Ltd. v. Hazoor Maharaj Baba Des Raj & Anr.***, RP No. 2562 of 2012, this Commission held that a complainant who disposed of the subject goods during the pendency of proceedings ceased to qualify as a "consumer" under the Act and is thus, not entitled to any relief. In view of the foregoing deliberations and precedents, the First Appeal No. [redacted] of 2017 and [redacted] of 2017 are dismissed.

18. The Complainant has liberty to approach appropriate legal fora to seek relief in respect of the grievances against the OP. He may also seek benefit of the provisions of Section 14 of the Limitation Act, 1963 in doing so with respect to the time spent in prosecuting this litigation.

19. Considering the circumstances of the case, there shall be no order as to costs.

20. Pending applications, if any, are disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER