(2012) 08 NCDRC CK 0081

In the National Consumer Disputes Redressal Commission

Gangar Opticians Pvt Ltd APPELLANT

Vs

HDFC BANK LTD RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 445

Hon'ble Judges : Anupam Dasgupta , Suresh Chandra J.

Advocate : S.K.Sharma

Judgement

1. THIS revision petition is against the order dated 27.06.2011 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (in short, ''the State Commission'') in First Appeal no. A - 10/1079. By this order, the State Commission dismissed the appeal filed by the petitioner against the order dated 25.05.2010 of the District Consumer Disputes Redressal Commission, Central Mumbai District, Mumbai (in short, ''the District Forum'') in complaint case no. 101 of 2009.

2. THE complaint was filed by Mr. Jayantilal Gangar in his capacity as Director of Gangar Opticians Pvt. Ltd., Mumbai. The allegation was that the HDFC Bank Ltd. (opposite party - OP), from which Gangar Opticians had obtained merchant overdraft facility, committed deficiency in service by charging fee to renew the aforesaid facility contrary to the agreement between the parties in that respect. The complaint was contested by the OPs. After hearing the parties and considering the evidence, the District Forum dismissed the complaint on the ground that the complainant, a business entity, had availed of the services of the OP Bank for a "commercial" purpose and hence it could not be termed a "consumer" under the provisions of section 2(1)(d)(ii) of the Consumer Protection Act, 1986 (in short, ''the Act'').

3. THE appeal filed by the complainant was dismissed by the State Commission on the same ground. The State Commission also observed that the complaint had been filed by Mr. Jayantilal Gangar who was purportedly the Director of the Company whereas the appeal had been filed by Gangar Opticians Pvt. Ltd., i.e.,

the company, which was not permissible in law.

4. WE have heard Mr. S. K. Sharma and Mr. Uday B. Wavikar, learned counsel for the petitioner. The short point involved in this case is whether the petitioner/ complainant could claim the status of a "consumer" under the provisions of the Act. Mr. Sharma has argued that on the basis of the judgment of the Apex Court in the case of Vimal Chandra Grover v Bank of India [AIR 2000 Supreme Court 2181] and of this Commission in Harsolia Motors v National Insurance Co. Ltd. [I (2005) CPJ 27 (NC)] availing of merchant overdraft facility by the petitioner/ complainant from the respondent/OP Bank was not for "commercial" purpose because, the overdraft facility was not directly related to earning of profit, which was the basic criterion for judging the nature of an activity.

5. IN the first place it needs to be noted that the judgment of the Apex Court cited by Mr. Sharma was prior to the amendment to the Act that became effective from 15.03.2003. After that amendment, a person availing of services for any "commercial" purpose was excluded from the definition of "consumer" under section 2(1)(d)(ii) like the situation was, prior to that date, only in respect of a buyer of goods for "commercial" purpose. Secondly, the decision of this Commission in Harsolia Motors related to whether a company operating for commercial purpose and availing of insurance for indemnification of loss in connection with its business activity could be termed a "consumer" within the meaning under section 2(1)(d)(ii) of the Act. The view taken by this Commission was that even a commercial entity availing of insurance facility would be a "consumer" of the service of insurance under the Act because availing of insurance service/policy did not per se lead to generation of profit/loss, insurance being always for only indemnification of a permissible loss due to specified perils and "indemnification" by definition excluded any profit. In this case, it is quite clear that the merchant overdraft facility was directly related to the business of the complainant''s company. It will be far-fetched to argue that the overdraft facility per se was not meant to earn any profit even though the business carried out with the money that was provided under the overdraft facility was admittedly "commercial", i.e., for earning profit.

6. IN view of the foregoing discussion, we dismiss the revision petition in limine as it is totally devoid of merits.

