

(2009) 05 DEL CK 0025

In the Delhi High Court

Case No : L.P.A. No. 204 of 2009 and CM No. 6638 of 2009

Hindustan Motors Ltd.

APPELLANT

Vs

Amardeep Singh Wirk and Others

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Arbitration Act, 1940 — Section 34, 34(3)
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2, 151, 9
Consumer Protection Act, 1986 — Section 11, 14(1), 3

Citation : AIR 2009 Delhi 122 : (2009) 161 DLT 88 : (2010) 8 RCR(Civil) 1914

Hon'ble Judges : A.P. Shah, C.J.; Neeraj Kishan Kaul, J

Bench : Division Bench

Advocate : Lalit Bhasin, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Neeraj Kishan Kaul, J.—The issue which arises for our consideration in the present appeal is whether the proceedings before the Consumer Forum should remain stayed and await the decision of the outcome of the proceedings involving similar issues pending before this High Court. The present appeal arises out of the order dated 5th March, 2009 passed by the learned Single Judge. The appellant (original petitioner in the writ petition) claimed a direction to set aside an order dated 6th November, 2007 passed by the State Consumer Disputes Redressal Commission, in a complaint preferred by the respondent No. 1 (original respondent in the writ petition). The basis of the writ petition was that substantially similar, if not identical issues are pending trial in this Court in Civil Suit No. 1700 of 2005 (Jatinder Kaur Wirk v. Mitsubishi Motor Corporation and Ors.). The respondent No. 1 claimed to have purchased a Mitsubishi Pajero, manufactured by the appellant. The vehicle met with an accident while being driven by respondent No. 1's brother who sustained fatal injuries and died. As per the respondent No. 1, the vehicle had manufacturing defects and on the ground of those and other allegations, he claimed compensation. The wife of respondent No. 1's brother, Mrs. Jatinder Wirk filed a suit before this Court,

claiming inter alia, damages for negligence against the appellant.

2. As per the appellant, the issues which concern the respondent No. 1 are common to the suit pending in this Court which was at an advanced stage. As per the appellant, continuation of both the proceedings, would have a deritorious effect and could result in conflicting orders. As per the appellant, despite this being pointed out, the State Commission had proceeded with the complaint and he contended that the impugned order of the State Commission recorded that merely because a plea had been raised before the High Court alleging manufacturing defect, there would be no bar against the owner of the car to seek release as prescribed u/s 14(1) of The Consumer Protection Act, 1986 (hereinafter referred to as the "Act"). As per the appellant, identical issues with regard to alleged manufacturing defect of some parts of the said vehicle have been raised which require a trial and in these circumstances, it would be appropriate that the authority under the Consumer Protection Act should have stayed its proceedings in the interest of justice and awaited the order and decree of the High Court as that would have been binding on the appellant.

3. The case of the respondent No. 1 in the writ petition was that the parties in the two proceedings are different. The respondent No. 1 was asserting an alleged deficiency in the service, based on its contractual relationship by having purchased the vehicle, whereas the plaintiff in the suit before this Court had claimed damages on the basis of alleged tortuous liability of the appellant. Both being independent causes of action and the parties claiming such reliefs being different, it was urged on behalf of respondent No. 1 that there was no question of the State Commission having acted illegally in refusing the appellant's request.

4. The learned Single Judge has rightly held that Section 3 of the Act cannot imply that the rights created under the Act could be curtailed on the ground of pendency of other proceedings. It was also correctly held relying on judgments of the Supreme Court, by the learned Single Judge that existence of parallel or other adjudicatory Forums cannot take away or exclude jurisdiction created under the Consumer Protection Act.

5. At this stage, it would be relevant to refer to some decisions of the Supreme Court. In the case of *Sat Pal Mohindra Vs. Surindra Timber Stores*, , the Hon''ble Supreme Court in para-5 has held as under:

5. After perusing the record, we find that whereas the appellant had filed the complaint on 21-5-1994 seeking damages, the suit was filed by the respondent much later in the civil court claiming the price of the material supplied by it. Under these circumstances, the State Forum was not justified in dismissing the appeal filed by the appellant without recording any finding on the merits of the appeal because the filing of the suit by the respondent during the pendency of the proceedings before the Consumer Forum for a different type of relief could not oust the jurisdiction of the Consumer Forum. The order of the State Forum dated 14-10-1996 is completely erroneous. It cannot be sustained. We,

accordingly accept this appeal and set aside the order of the State Forum dated 14-10-1996 as well as that of the National Forum dated 21-7-1998. We remand the appeal to the State Forum for its disposal on merits in accordance with law. The State Forum shall dispose of the appeal expeditiously. No costs.

6. In that case, the appellant had filed a complaint before the District Consumer Disputes Redressal Forum, Ambala, alleging deficiency of service by use of sub-standard material by the respondent, with whom an order had been placed by him for fabricating of doors and windows. The appellant sought suitable compensation from the respondent. The complaint of the appellant was dismissed and the appellant took the matter in appeal to the State Consumer Forum. However, the State Consumer Forum, without going into the merits of the appeal, non-suited the appellant on the ground that the matter was subjudice before a Civil Court. As per the State Consumer Forum, the appellant would have an opportunity to file a counter-claim there and that as the matter would be decided on merits by the Civil Court, there was no scope for any further action in the Consumer jurisdiction. The revision petition of the appellant before the National Consumer Disputes Redressal Commission was also dismissed holding that the appellant could raise all the points before the Civil Court in the pending suit. It was in this background that the appellant approached the Supreme Court by way of a Special Leave Petition, wherein the above observations and findings were given by the Supreme Court.

7. The Supreme Court in the case of *The Secretary, Thirumurugan Co-operative Agricultural Credit Society Vs. M. Lalitha (Dead) through Lrs. and Others*, held that having due regard to the scheme of the Consumer Protection Act and the purpose sought to be achieved to protect the interest of the consumers better, its provisions are to be interpreted broadly, positively and purposefully to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar. Some of the relevant findings of the Supreme Court in that matter are reproduced hereinbelow:

11. From the statement of objects and reasons and the scheme of 1986 Act, it is apparent that the main objective of the Act is to provide for better protection of the interest of the consumer and for that purpose to provide for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. To serve the purpose of the Act, various quasi judicial forums are set up at the district, State and National level with wide range of powers vested in them. These quasi judicial forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers and to impose penalties for non-compliance of their orders.

12. As per Section 3 of the Act, as already stated above, the provisions of the Act shall be in addition to and not in derogation to any other provisions of any other law for the time being in force. Having due regard to the scheme of the Act and

purpose sought to be achieved to protect the interest of the consumers, better the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is clear bar.

13. The view we are taking is supported by the earlier decisions of this Court. In Lucknow Development Authority Vs. M.K. Gupta, , this Court observed, thus:

We therefore come straight away to the legal issue involved in these appeals. But before doing so and examining the question of jurisdiction of the District Forum or State or National Commission to entertain a complaint under the Act, it, appears, appropriate to ascertain the purpose of the Act, the objective it seeks to achieve and the nature of social purpose it seeks to promote as it shall facilitate in comprehending the issue involved and assist in construing various provisions of the Act effectively. To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, to provide for the protection of the interest of consumers. Use of the word "protection" furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful, business, described as, "a network of rackets" or a society in which, "producers have secured power" to "rop the rest" and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot.

14. In M/s. Fair Air Engineers Pvt. Ltd. and another Vs. N.K. Modi, , this Court, after referring to Lucknow Development Authority case (supra), held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It went on to say that "It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any

other law in force. It is true, as rightly contended by Shri Suri, that the words "in derogation of the provisions, of any other, law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the, provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available u/s 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy." Further, dealing with the jurisdiction of the forums under the 1986 Act in paragraph 16 this Court has stated, thus:

16. It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the - Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that, these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act.

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16. A Bench of three learned Judges of this Court in a recent decision in *State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others*, , expressed the view that the 1986 Act was brought into force in view of the long-felt necessity of protecting the common man from wrongs where for the ordinary law for all intent and purport had become illusory and that in terms of the said Act, a consumer (sic) entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of. Referring to the *Fair Air Engineers (P) Ltd. Case* (aforementioned), the Court stated that the provisions of the said Act are required to be interpreted as broadly as possible. On the question of jurisdiction it is stated that the forums under the Act have jurisdiction to entertain a complaint despite the fact that other forums/courts would also have jurisdiction to adjudicate upon the lis. It is

also noticed that the Act provides for a further safeguard to the effect that in the event a complaint involves complicated issues requiring recording of evidence of experts, the complainant would be at liberty to approach the civil court for appropriate relief.

8. In *Secretary, Thirumurugan Co-operative Agricultural Credit Society v. M. Lalitha and Ors.* (supra) case, the respondents being members of the appellant-society, had pledged paddy bags for obtaining loan. The appellant-society had issued notices to the respondents demanding payment of loan amount with interest thereon. The respondents filed petitions in the District Consumer Forum, seeking direction to the appellant to release the paddy bags pledged on receipt of the loan amount or in the alternative to direct the appellant to pay the market values of the paddy bags with interest thereon. The appellant contested the claims of the respondents before the District Forum raising a preliminary objection that Consumer Forum had no jurisdiction to decide the dispute between the members and cooperative society in view of Section 90 of the Tamil Nadu Cooperative Societies Act, 1983. One of the issues framed by the District Forum was whether it had jurisdiction to entertain the complaints of this nature? The District Forum decided in favour of the respondents. The appellant took the matter in appeal to the State Consumer Commission. The State Commission allowed the appeal filed by the appellant and dismissed the appeal filed by the respondents. The State Commission held that the complaints filed by the respondents were themselves not maintainable having regard to Section 90 of the Act. The respondents approached the National Consumer Disputes Redressal Commission by way of a revision petition. The National Commission allowed the revision petition and set aside the order of the State Commission. It would be material to reproduce relevant provisions of the Tamilnadu Cooperative Societies Act, 1983, hereinbelow:

Section 90. Disputes - (1) If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the competent authority constituted under Sub-section (3) of Section 75 or the Registrar or the Society or its board against a paid servant of the society) arises:

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its board or any officer, agent or servant of the society, or

(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society, or

(d) between the society and any other registered society, such disputes shall be

rendered to the Registrar for decision.

Explanation - For the purpose of this section, a dispute shall include:

(i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of the deceased member whether such debt or demand be admitted or not.

(ii) A claim by a registered society against a member, past member or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property, and

(iii) a decision by the board under Sub-section (3) of Section 34:

Provided that no dispute relating to, or in connection with, any election shall be referred under this sub-section till the date of the declaration of the result of such election.

Section 156 - "Bar of jurisdiction of civil courts - Notwithstanding anything contained in any other law for the time being in force no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorized or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done by or under this Act.

9. The Supreme Court in Secretary, Thirumurugan Co-operative Agricultural Credit Society v. M. Lalitha and Ors. (supra) case upheld the decision of the National Commission. The Supreme Court held that remedies that are available to an aggrieved party under the Consumer Protection Act, 1986 are wider. Though there was a special statute to deal with the disputes between the parties, in that case, the Supreme Court held that merely because the rights and liabilities were created between the members and the Management of the society under the Tamilnadu Act and Forums were provided, it could not take away or exclude the jurisdiction conferred on the Forums under the Consumer Protection Act, expressly and intentionally to serve a definite cause in terms of the objects and reasons of the Act.

10. Further in the case of Ghaziabad Development Authority Vs. Balbir Singh, , the Supreme Court observed that Consumer Protection Act, 1986, had a wide reach and the Commission had jurisdiction even in cases of service rendered by statutory and public authorities. Such authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. It was held that it was open to the Commission to determine the amount for which the authority is liable to compensate the consumer for his sufferance due to misfeasance in public office by the officers.

11. Reliance was placed by the learned Counsel for the appellant on a decision of the Hon''ble Supreme Court in *India Household and Healthcare Ltd. Vs. LG Household and Healthcare Ltd.*, . In that case, an application u/s 11 of the Act had been filed for appointing an Arbitrator on the respondent's purported failure to do so despite a notice. The reliance was placed on an arbitration clause contained in the agreement entered into between the parties. The respondent, however, contended that the said agreement was preceded by a Memorandum of Understanding and that the said purported Memorandum of Understanding and Licence Agreement were vitiated by fraud. The respondents had also filed a suit in the Madras High Court, wherein the Madras High Court by way of an interim injunction had restrained the appellant from directly or indirectly acting on the so called Memorandum of Understanding and Licence Agreement. The allegations in the said matter were of fraud and the very existence of the agreement containing the arbitration clause. The Supreme Court took note of the fact that fraud vitiates all solemn acts and observed in paragraph-16 as follows:

16. The said issue is pending consideration before the Madras High Court. Not only the parties to the agreement but also those officers who have negotiated on behalf of the respective companies are also parties therein. LG Corporation which is the owner of the LG logo is also a party therein. Therein, an order of injunction had been passed. In terms of the said order of injunction, the applicant herein was prohibited from taking any action in terms of the said agreement which would include the arbitration clause also. The order dated 21.01.2006 has become final. No appeal has been preferred thereagainst. The applicant could have filed an appropriate application for modification of the order of injunction which it did not choose to do. The doctrine of comity or amity required a court not to pass an order which would be in conflict with another order passed by a competent court of law. The courts have jurisdiction to pass an order of injunction not only under Order XXXIX, Rule 2 of the CPC but also u/s 151 thereof.

12. The Supreme Court was of the view that the Court while exercising its judicial function would ordinarily not pass an order which would make one of the parties to the lis violate a lawful order passed by another court. The Supreme Court, accordingly, declined to entertain the application for appointment of an Arbitrator at this stage. This decision of the Supreme Court in *India Household & Healthcare Ltd. v. LG Household & Healthcare Ltd.* (supra) case has no application to the facts of the present case. Nowhere was the issue of ouster of the jurisdiction of the Consumer Forum while a matter involving similar issue is pending in the Civil Court, considered. Moreover, the Supreme Court declined to entertain the application u/s 11 of the Act as the very existence of an arbitration agreement was under challenge in a separate proceedings where allegations of fraud had been made and interim orders passed by the High Court. The said judgment is, thus, of no assistance to the appellant. The appellants also placed reliance on the decision of the National Consumer Dispute Redressal Commission in *Dinesh Premji Shah v. S.N. Pathak II* (2006) CPJ 200 (NC). All that was

observed in the said case was that Consumer Forum cannot go against the order passed by the Civil Court and that Consumer Protection Act, 1986 provides only an additional remedy but does not confer jurisdiction on a Consumer Forum to act as an Appellate body or exercise powers which do not emanate from the Act Constituting it. This proposition is well settled. However, it in no way advances the case of the appellant. Nor does it suggest that the proceedings in the Consumer Forum must be stayed merely because the issues are substantially similar in proceedings pending in a Civil Court.

13. The appellant also relied on an order of the Supreme Court in *Proprietor, Jabalpur Tractors Vs. Sedmal Jainarain and Another*, . It is well settled that a judgment is good law for the facts on which it is decided and an order or a judgment cannot be cited out of context. It is evident from a bare perusal of the said short order passed by the Supreme Court in the matter that it was an order made in the facts of the case and does not lay down any legal principle that where proceedings are pending in a Civil Court involving similar issues, the Consumer Courts cannot exercise their jurisdiction and entertain a validly instituted complaint under the Consumer Protection Act.

14. As held by the Supreme Court in *State of Orissa and Others Vs. Md. Illiyas*, , a decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a judge while giving judgment that constitutes a precedent. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein, nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. A case is a precedent and binding for what it explicitly decides and no more. It was also observed by the Supreme Court in *Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and Another*, , that a decision of a court is a precedent if it lays down some principle of law supported by reasons. Mere casual observations or directions, without laying down any principle of law and without giving reasons does not amount to a precedent. Further the Supreme Court in the case *Union of India (UOI) and Others Vs. Dhanwanti Devi and Others*, , held that it is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason, it is important to analyse a decision and isolate from it the ratio decidendi. A decision is only an authority for what it actually decides. Further in another case *Union of India (UOI) and Another Vs. Major Bahadur Singh*, , the Supreme Court observed that courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. Judges interpret statutes, they do not interpret

judgments. They interpret words of statutes; their words are not to be interpreted as statutes. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

None of the judgments cited by the appellant in the present case lay down the legal principle that where proceedings are pending in a Civil Court involving similar issues, the Consumer Court should not exercise its jurisdiction and entertain a validly instituted complaint under the Consumer Protection Act, 1986 or that it should stay its proceedings and await the decision of the Civil Court. Further the judgments cited by the appellant have no relevance to the facts of the present case for the reasons stated hereinabove.

15. On the contrary, the judgments of the Supreme Court, as noticed above, clearly state that as per Section 3 of the Act the provisions of the Act are in addition to and not in derogation of any other provision of any other law for the time being enforced. Having due regard to the scheme of the Act and the purpose sought to be achieved to protect the interest of the consumers better, the provisions are to be interpreted broadly, positively and purposefully to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar.

16. In the light of the judgments discussed hereinabove, there is no room for any doubt that proceedings under the Consumer Protection Act and in a Civil Court can simultaneously go on, even if the issues involved in the two proceedings are substantially similar. The remedies are independent of each other. The existence of parallel or other adjudicatory Forums cannot take away or exclude the jurisdiction created under the Consumer Protection Act. It is also pertinent to mention that in the present case, the proceedings in the Civil Court and those in the Consumer Forum have been initiated by two different parties though, admittedly, their grievances relate to the same incident as also the fact that the two parties are related. However, the fact remains that they are two independent parties who have initiated independent and separate proceedings before this High Court and the Consumer Forum.

17. The learned Single Judge has rightly declined to grant the relief to the appellants in the writ petition filed by them. We see no infirmity in the order of the learned Single Judge to warrant any interference by us. The appeal must fail. Accordingly, the appeal is dismissed. The pending application stands disposed of.