

(2014) 11 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Maya Engineering Works

APPELLANT

Vs

ICICI BANK LTD.

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Citation : 2014 4 CPJ 777

Hon'ble Judges : K.S.CHAUDHARI J.

Final Decision : Petition dismissed

Judgement

1. THIS Revision Petition has been filed by the Petitioner against the order dated 4.9.2013 passed by State Commission in appeal No. 645 of 2010 -M/s. Maya Engineering Works VS. ICICI Bank Ltd. by which while dismissing appeal, the order of District Forum dismissing complaint was upheld.

2. BRIEF facts of the case are that Complainant/Petitioner is manufacturer & exporter of engineering goods having current account with Opposite Party/ Respondent. In pursuance of an overseas order, Complainant shipped goods vide invoice dated 12.07.2004 and submitted the export documents to Opposite Party for collection, but, Opposite Party failed to collect money and further failed to serve notice of dishonor. Alleging deficiency on the part of the Opposite Party, Complainant filed complaint before District Forum. Opposite Party resisted complaint and submitted that Complainant does not fall within the purview of "consumer" as Complainant was using current account with Opposite Party for commercial purposes. It was, further, submitted that Complainant changed instructions for collection thrice and prayed for dismissal of complaint. Learned District Forum after hearing both the parties, dismissed the complaint on the ground that transaction in question was a commercial transaction. Appeal filed by the Complainant was dismissed by Learned State Commission vide impugned order against which this Revision Petition has been filed. Heard Learned Counsel for the parties finally at admission stage and perused the record.

3. LEARNED Counsel for the Petitioner submitted that Petitioner falls within the purview of "consumer" even then Learned District Forum committed error in

dismissing the complaint and Learned State Commission further committed error in dismissing appeal, hence, Revision Petition be allowed and impugned order be set aside and matter may be remanded back for disposal on merits. On the other hand, Learned Counsel for Respondent submitted that order passed by Learned State Commission is in accordance with Law, hence, Revision Petition be dismissed.

4. LEARNED Counsel for Petitioner placed reliance on Kishore Lal VS. Chairman, Employees' State Insurance Corpn., : (2007) 4 Supreme Court Cases 579; in which it was held that services hired for consideration even for commercial purposes are not excluded. He, further, submitted that this Commission in Complaint No. 248 of 2011, Victory Electricals Ltd. VS. IDBI Bank Ltd. & Ors.; wrongly interpreted the aforesaid judgment of Hon''ble Apex Court. He, further placed reliance on Maharashtra Ekta Hawkewers Union & Anr. VS. Municipal Corporation, Greater Mumbai & Ors., (2007) Legal Eagle (SC) 135; in which it was held that no other Court shall interpret order of Hon''ble Apex Court or pass any order touching upon the subject matter dealt with by Apex Court concerning the issues in hand. He, further, placed reliance on Markio Tado VS. Takam Sorang, : 2013 Legal Eagle (SC) 374; in which it was observed that Law declared by Hon''ble Apex Court is binding on all Courts in India under Article 141 of the Constitution of India. I agree with the preposition of Law enunciated by Hon''ble Apex Court in Markio Tado's case (supra) that law laid down by Hon''ble Apex Court is binding on all Courts in India under Article 141 of the Constitution of India and subordinate Courts have no authority to interpret the order. But the question is, whether principle of Law laid down in Kishore Lal's case (supra) is applicable to the present case. Learned Counsel for Respondent submitted that Kishore Lal's case judgment was based on complaint filed before the year 2000 in which it was observed that services hired for consideration even for the commercial purposes are not excluded whereas in the case in hand, complaint was filed in the year 2005 for taking services for commercial purposes after 12.07.2004 i.e. after amendment. In the light of Consumer Protection Act, this Commission rightly observed in Victory Electricals Ltd.'s case (supra) that persons availing services for commercial purposes cannot be considered as "consumer" under the Consumer Protection Act. Hon''ble Apex Court in Civil Appeal No. 10650 of 2010, Birla Technologies Ltd. VS. Neutral Glass and Allied Industries Ltd. held that services hired or availed for commercial purposes after amendment on 15.03.2003, does not fall within the purpose of "consumer".

5. IN the light of aforesaid discussion, it becomes clear that Learned State Commission has not committed error in dismissing appeal and Revision Petition is liable to be dismissed.

6. CONSEQUENT LY , Revision Petition filed by the Petitioner is dismissed at admission stage with no orders as to costs.