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(2015) 09 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

Case No : 1006 of 2015

SHAMEEM JAHAN APPELLANT

Vs

STATE BANK OF INDIA & ANR. RESPONDENT

Date of Decision : 24-09-2015

Acts Referred:

Consumer Protection Act, 1986, Section 2(1)(d), Section 2(1)(d)(II) - Definitions - Definitions

Citation : 2016 1 CPJ 430

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : BHARAT SWAROOP SHARMA

Judgement

1. Ms Shameem Jahan has filed instant consumer complaint alleging deficiency on the part of the opposite party bank in relation with her loan account for Rs.4.00 crores sanctioned on 04.08.2014 which has resulted in monetary loss to the complainant. The complainant has thus prayed for compensation of Rs.1,23,28,000/- with 18% on the said amount.

2. On careful reading of the complaint, it prima facie appears that if the allegations of the complainant are true, then also, the services of the bank were availed for commercial purpose and, as such the complainant does not fall within the definition of ''consumer'' and cannot maintain the consumer complaint. Thus, we have heard arguments on maintainability.

3. Learned Shri B S Sharma, Advocate for the complainant has taken us through the definition of ''consumer'' as provided under section 2 (1) (d) of the Consumer Protection Act, 1986 (in short, the Act) and submitted that services of the opposite party bank were not hired for commercial purpose as the loan was taken for construction of a godown to be let out to the Food Corporation of India and not for any business transaction. Secondly, it is contended that even if it

is assumed that taking of loan for construction of a godown to be let out is a commercial purpose, the case of the complainant is squarely covered under the Explanation to Section 2 (1) (d) (ii) of the Act, which gives a restrictive definition

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to the commercial purpose for the purpose of the Act. In support of this contention, learned counsel has drawn our attention to ground " C " in the complaint where it is alleged that complainant had applied for loan for her livelihood. In order to appreciate the contention of learned counsel for the complainant, it is necessary to have a look on the definition of "consumer" as envisaged under section 2 (1) (d) of the Act. The definition is reproduced as under: 2. (1) d) "Consumer" means any person who,- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose] ; { Explanation - For the purposes of this clause, "Commercial purpose does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment}.

4. On reading of the above, it is clear that a person is a consumer who buys goods or hires or avails of services for consideration. However, there is an Explanation inbuilt in section 2 (1) (d) (ii) which excludes the buyer of the goods or hirer of the services for commercial purpose. Thus, the question which needs determination is whether the alleged loan transaction between the parties is for commercial purpose? In order to find answer to the above question, following allegations in the complaint are relevant: "That the complainant is constrained to file the present complaint in favour of whom the term loan for Rs.400.00 lacs was sanctioned on date 4.8.2014 for the

construction of Rural godown of capacity 15,000 MT for Food Corporaiton of India. That the complainant had sought loan from respondent for Rs.400.00 lacs as per term loan for the construction of rural godown for Food Corporation of India and for that purpose she had deposited Rs.50,000/- with respondent and in pursuance of that field investigation was conducted by the authorized person on date 17.4.2014. The copy of the examination of titled and filed report prepared at behest of respondent by its authorized person is enclosed herewith and marked as Annexure C2 That on 15.05.2014 as per requirement by the respondent the complainant purchased adjacent land and in this regard she had to spend Rs.4,70,000/-. The copy of the sale deed executed on date 15.05.2015 in favour of the complainant is enclosed herewith and marked as Annexure C-3."

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5. On reading of the above, it is clear that complainant had applied for loan of Rs. 4.00 crores with intention to construct a godown with capacity of 15,000 metric ton for giving it on rent to the Food Corporation of India. This conduct of the complainant leaves no doubt in our mind that the loan was applied for commercial purpose.

6. The Apex Court in the matter of Laxmi Engineering Works Vs. P S G Industrial Institute (1995) 3 SCC 583 had an occasion to analyse the scheme of the Act wherein Hon''ble Supreme Court while interpreting the Explanation to Section 2 (1) (d) (ii) has observed as under: "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 earing 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 emphasis 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 self-employment" in the explanation. The ambiguity in the meaning of the words "for the purpose of earning his livelihood" is explained and clarified by

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the other two sets of words."

7. In Cheema Engineering Services V Rajan Singh (1997) 1 SCC 131 , Hon''ble Supreme Court has explained the term self employment by observing thus: "Self employment connotes altogether a different concept, namely, he alone uses the machinery purchased for the purpose of manufacture.... by employing himself in working out or producing the goods for earning his livelihood. ''He'' includes the members of his family."

8. The issue came up before the Coordinate Bench in the matter of Shakti Engineering Works Vs. Sri Krishna Coir Rope Industries 2000 (3) CPJ 13 (NC), wherein coordinate bench has held that in order to have protection of Explanation to Section 2 (1) (d) (ii), one must establish that he himself was engaged in the activity which generates livelihood. Acting in supervising capacity would not satisfy the requirement of explanation.

9. From the above judgments, it is clear that complainant in order to avail shelter of Explanation to Section 2 (1) (d) (ii) is required to establish that he availed of the services exclusively for earning livelihood by way of self employment.

10. Now the question arises whether the allegations made in the complaint prima facie show that the complainant had availed of services of the opposite party for earning livelihood by way of self employment. The word self employed has been defined in Oxford Advanced Learner''s Dictionary as "working for oneself and not employed by someone". The word "employment" means to engage in some work or productive activity to earn. Admittedly, the complainant had applied for loan for raising construction of godown to be let, which obviously is a commercial purpose. Letting of godown by no means would require active engagement of the complainant in any activity or work to earn the rental of godown. Thus, it cannot be said that the complainant availed of services of the opposite party for earning livelihood by means of self employment to bring the complainant within the ambit of Explanation to Section 2 (1) (d) (ii) of the Act.

11. In view of the discussion above, it is evident that complainant is not a "consumer" as envisaged under section 2 (1) (d) of the Act. As such, the complainant cannot maintain the consumer complaint. Complaint is accordingly dismissed. The complainant, however, shall be at liberty to avail of remedy available to him by approaching appropriate forum.

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