(2019) 04 CAL CK 0081

In the Calcutta High Court

Case No : Civil Order/Misc. Cas (CO) No. 1411 Of 2018

Woods Birch Hazel Residents Association	APPELLANT
Vs	
Managing Director Bengal United Credit Belani Housing Company Limited	RESPONDENT

Date of Decision : 25-04-2019

Acts Referred:

Consumer Protection Act, 1986 — Section 2, 2(f), 2(g), 11(1), 11, 12 (i)(c), 13(6), 13(6)h, 14, 14(a), 17, 21, 21(a)(i), 27
Sale Of Goods Act, 1930 — Section 2(i)
Legal Services Authorities Act, 1987 — Section 12
Code Of Civil Procedure, 1908 — Order 1 Rule 8
Constitution Of India, 1950 — Article 32, 136, 141, 226, 227

Citation : (2019) 04 CAL CK 0081

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Sarathi Dasgupta, Pratik Ghosh, Avishek Roy Choudhury, Abhrajit Mitra, Sarvapriya Mukherjee, Radhika Singh, S. Dasgupta

Judgement

Rajasekhar Mantha, J

1. The revisionist is aggrieved by the Order No. 20 dated 7th February, 2018 passed by the State Consumer Disputes Redressal Commission, West Bengal, in complaint case No. 66 of 2014 (Wood Birch Hazel Residence Association Vs. Managing Director, Bengal United Credit Belani Housing Company Ltd.).

2. A complaint was filed by the Revisionist / Petitioner seeking reimbursement of Rs.14 Lacs towards failure of the OP to install fire fighting equipment in the Housing Complex concerned along with a sum of Rs.10 lacs as compensation as also a further sum of Rs.50,000 as litigation costs. Thus the total claim of the petitioners was Rs.24,50,000/-.

3. By the impugned order the complaint case was rejected as not being maintainable before the State Commission since the value of each of the flat

units purchased by the members of the Revisionist in the residential complex of the OP exceeds Rs.1 Crore. It was held that even if a small defect in the entire residential complex is complained of and the complainant seeks compensation, the value of the entire flat and each member of the petitioner must be the basis of valuation in terms of Section 17 of the Consumer Protection Act, 1986.

4. The State Commission relied upon the decision of National Consumer Disputes Redressal Commission in the case of Quality Foils India Pvt. Ltd. Vs. Bank of Madura Ltd. and Ors., as also the case of Ambrish Kumar Sukla & Ors. Vs Ferrous Infrastructure Pvt. Ltd. reported in (2017) 1 CPJ 1 (NC).

5. There are some other facts that need to be set out, although not directly relevant to the revision petition, to show the impropriety of the conduct of proceedings before the Commission.

6. After the complaint was filed the Opposite Party filed counter-affidavit on 19th January, 2015. Evidence in chief was filed on behalf of the complainant on the 24th April, 2015. The Opposite Party issued a questionnaire to the evidence at affidavit on the 25th August, 2015. The Opposite Party itself filed its evidence by affidavit in 18th August, 2016. The petitioner filed questionnaire to such evidence on the 21st April, 2017. Notes of argument were filed on the 21st November 2017.

7. The matter was finally taken up for hearing on 9th January, 2018 when the Commission for the first time observed that the complaint was not properly valued and since the value of each of the apartments as a whole in the Housing Complex, if taken, the valuation of the complaint would exceed Rs.1 Crore. The National Consumer Disputes Redressal Commission at New Delhi alone could hear the matter as per the State Commission.

8. It is the pertinent to note that the complainants were only aggrieved by non-installation of fire fighting facilities within the housing complex, and sought no other relief. The question for consideration before this Court is how the pecuniary jurisdiction of the fora under the 1986 Act is to be reckoned.

9. Counsel for the Opposite Party took a preliminary objection on the assumption that this Court was inclined to either strike down as ultra vires the definition of goods and services in Section 11 and Section 17 of the Consumer Protection Act, 1986 to ascertain pecuniary jurisdiction of the District Forum, State Commission and the National Commission. In this regard he relied upon the case of Hiral P. Harsona and Ors. Vs. Kusum Narottamdas Harsona and Ors. reported in (2016) 10 SCC 165, Cellular Operators Association of India and Ors. Vs. Telecom Regulatory Authority of India and Ors. reported in (2016) 7 SCC 703, Yogendra Kumar Jaiswal and Ors. Vs. State of Bihar and Ors. reported in (2016) 3 SCC 183, Arun Kumar and Ors. vs. Union of India and Ors. reported in [2006] Supp(6) SCR 290, State of Andhra Pradesh and Anr. Vs. K. Jayaraman and Ors. Reported in (1974) 2 SCC 738.

10. This Court does not intend to address any vires of any provision of the 1986 Act nor does it intend to read down any provision, thereof hence the aforesaid cases cited by the OP are not relevant to the instant case and hence not dealt with.

11. The next part of the preliminary objection raised by the Counsel for the Opposite Party is that since an alternative remedy of appeal is available to the petitioners, i.e. to the National Consumer Disputes Redressal Commission at New Delhi, this Court should not entertain the petitioners' application under Article 227 of the Constitution of India challenging the decision. He relies upon the decision of Cicly Kallarackal Vs. Vehicle Factory reported in (2012) 8 SCC 524 particularly Paragraph 9, Nivedeta Sharma Vs. Cellular Operators Association of India and Ors. reported in (2011) 14 SCC 337 at Paragraph 15 and 16, Om Prakesh Saini Vs. DCM Limited and Ors. reported in (2010) 11 SCC 622 at Paragraph 11 and 12, Surya Dev Rai Vs. Ramchander Rai and Ors. reported in (2003) 6 SCC 675 at Paragraph 38. He also relies upon two decisions of the Calcutta High Court in the case of Rose Valley Real Estates and Constructions Limited Vs. SEBI reported in [2011] 165 Company Cases 234(Cal), ANZ Grindlays Bank and Ors. Vs. President, District Consumer Disputes Redressal Forum and Ors. reported in AIR 1995 Cal 104.

12. Per contra Counsel for the petitioner would rely upon the decisions of Vadivelu Vs. Sundaram and Ors. reported in (2000) 8 SCC 355, Gainwell Enterprises Pvt. Ltd. Vs. Ashoke Kumar Agarwal reported in 2014 SCC Online Cal 4259 and Ranjit Sarkar Vs. Pradip Das reported in 2014 SCC Online Cal 17180. Of particular relevance is a recent Division Bench judgment of the Calcutta High Court in the case of Universal Consortium of Engineers (P) Ltd. and Anr. Vs. State of West Bengal and Ors. being WP No. 23027 (W) of 2017 delivered on 18th February, 2019.

13. In the case of Universal Consortium (supra) at Paragraph 104, 105, 110, 111, 112 are necessary to be set out hereinbelow.

"104. Article 226 of the Constitution does not, in terms, impose any limitation or restraint on a High Court from entertaining a writ petition if an efficacious alternative remedy is available to the party approaching it. That a High Court ought not to entertain a writ petition where an efficacious alternative remedy is available to such party is part of the several 'self-imposed restrictions' evolved by the Supreme Court in its various pronouncements. Requiring a party to exhaust the alternative remedy prior to approaching the court of writ is not a rule of law but a rule of convenience and discretion which, at any rate, does not oust the jurisdiction of the Court. If any authority for this proposition is necessary, reference may usefully be made to the decision in Ram & Shyam Co. v State of Haryana, reported in (1985) 3 SCC 267. In such decision, the decision of the Constitution Bench of the Supreme Court in State of U.P. v. Mohammad Nooh, reported in AIR 1958 SC 86, was relied on wherein the Constitution Bench had observed "that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy".

105. In Whirlpool Corporation v. Registrar of Trade Marks, reported in (1998) 8 SCC1, almost all the precedents on the point of entertainability of a writ petition where a statutory remedy by way of appeal or revision was available, were considered. The observations of the Court read thus:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution . This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for 'any other purpose'. 15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field." (underlining for emphasis by us)

110. In an appropriate case, where a party without exhausting the alternative remedy that is available to him/it, invokes the writ jurisdiction of a High Court and while challenging an order of the National Commission sets up a case of any of the exceptional situations to exist (the writ is claimed (i) for enforcement of a Fundamental right, or (ii) to remedy a breach of natural justice, or (iii) for quashing an act/order that is wholly without jurisdiction), there ought to be no valid reason as to why the High Court may not look into the petition to ascertain whether what is claimed is correct, instead of dismissing it at the threshold on the ground that the impugned order has been passed by the National Commission. Incidentally, if in such a writ petition constitutionality of a provision of the CP Act is under challenge along with an order of the National Commission and the petition contains dual prayers to declare the impugned statutory provision as ultra vires the Constitution as well as a writ of certiorari to quash such order, would the remedy of an appeal being available before a higher court, i.e., the Supreme Court, be of any immediate significance and relevance? We doubt whether the Supreme Court would declare a provision unconstitutional while exercising its appellate power under the CP Act. Any declaration on the vires of a statute/statutory provision ideally would come from the Supreme Court exercising original writ powers (Article 32) or writ powers while hearing a civil

appeal arising out of a writ petition after grant of special leave (Article 136). On the other hand, if the High Court is satisfied that there has been gross miscarriage of justice and also that the provision impugned is unconstitutional, should the High Court stay at a distance and say that the dicta in Cicilly Kallarackal (supra) has to be shown respect since the decision itself has been circulated for ensuring compliance and not the other decisions of high authority which went unnoticed in Cicilly Kallarackal (supra)?

111. Access to justice is now regarded as a guaranteed Fundamental Right. We need not refer to decisions of the Supreme Court holding so. However, the decision in Cicilly Kallarackal (supra) could result in rendering such right illusory for a party. Take for instance a party (not covered by section 12 of the Legal Services Authorities Act, 1987), who is based in Campbell Bay, Nicobar Islands and does not have the financial as well as other resources to carry an order passed by the National Commission adversely affecting his interest to the Supreme Court in appeal. Perceiving that the order, which is alleged to have been passed behind his back, would intrude upon any of his Fundamental Rights, he seeks to have such order effaced from the record and impugns such order before the Circuit Bench of the High Court at Calcutta at Port Blair complaining of observance of the principles of natural justice in the breach by the National Commission and prays for a writ of certiorari. In such a scenario, should such a party be relegated to the appellate forum in New Delhi in terms of an ordinary law enacted by the Parliament for no better reason than that an appeal is available before a court higher than the High Court? Would the High Court be denuded of its jurisdiction although the Constitution may have conferred upon the party the liberty to move the court of writ? We are inclined to believe that the answers, on the basis of all the precedents on the point [but not considered in Cicilly Kallarackal (supra)], ought to be in the negative. Whether such writ petition would be entertained or not having regard to the pleaded case as well as the existence of the remedy of a statutory appeal before the Supreme Court is entirely the discretion of the concerned learned Judge. The discretion may be declined acting judiciously but to hold that the writ court would have 'no jurisdiction' to entertain the grievance voiced in the writ petition and that it is the appellate power of the Supreme Court conferred by the provisions of the CP Act that is to be invoked, if it were intended in Cicilly Kallarackal (supra), we must say with the greatest of respect at our command that Cicilly Kallarackal (supra) is a judicial pronouncement that whittles down, nullifies, curtails, abrogates, dilutes and takes away the power conferred on the High Court by the Constitution to enforce the Fundamental Rights and other rights that can validly be claimed by a party which, in terms of the several previous decisions of the Supreme Court itself, the Supreme Court cannot.

112. The principle underlying Article 141 of the Constitution is very clear. The law declared by the Supreme Court shall be binding on all the courts within the territory of India. Technically speaking, we are as much bound by Cicilly Kallarackal (supra) as all other decisions rendered prior to it that we have

referred to above. In such a situation, dismissing a writ petition or a civil revisional application wherein an order of the State Commission or the District Forum is under challenge without even looking into the ground of challenge and the nature of right sought to be enforced by blindly following the decision in Cicilly Kallarackal(supra) may not be a proper exercise of discretion. Showing respect to Cicilly Kallarackal (supra) should not be seen as showing disrespect to the other decisions of high authority of the Supreme Court in any manner. If an attempt were made to reconcile the conflicting views, the decision in Cicilly Kallarackal (supra) should be read as one which lays down the law that interference with the orders of the National Commission under sections 21(a)(i) and 27 of the CP Act would not be permissible in the absence of any of the exceptions summarized in Whirlpool Corporation (supra) being satisfied. The National Commission, which is a creature of the CP Act, would not have the power to decide on a question of constitutionality of a provision of the CP Act and if such question incidentally arises while the order of the National Commission is under challenge in any writ petition, would it not be proper to hold that the High Court should decide the same at the first instance? The National Commission does not enjoy any exalted status that its orders would not be subject to judicial review, whatever be the nature of grievance that a party may have in relation to it."

14. It follows from the above in which decision the Division Bench of this Court had analysed the principles for exercise of jurisdiction under Article 226 and 227 of the Constitution in the face of available alternative of an appeal, that the High Court cannot shirk its responsibility under Article 227 of the Constitution to address grave jurisdictional errors. Particularly when such errors will lead to a misinterpretation of the provisions of the statute concerned and thereby negate and deny a remedy otherwise available to a litigant and in this case to a consumer. There is no doubt in the mind of the Court that the provisions of Section 11 and 17 have been completely misinterpreted by the State Commission by following an incorrect pronouncement by the National Commission in a part of the Ambrish Sukla Case (Supra).

15. The further preliminary objection raised before this Court from exercising jurisdiction under Article 227 is that the decisions of the National Commission are binding on the State Commission. It is argued that only the National Commission can correct its own decisions. Since the State Commission has only followed the decisions of the National Commission, the petitioners according to the O.P., are required to approach Latter for correction of its errors. Reliance is placed on the cases of India Nippon Electricals Limited Vs. Customs, Excise and Service Tax Appellate Tribunal, Chennai and Ors. being CMA No. 3480 of 2011 decided on 11th April, 2017 as also the decision of the Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Kamlakshi Finance Corporation Limited reported in 1992 Supp (1) SCC 443.

16. The dicta laid down in the aforesaid two cases are based on the principle of

stare decisis as inter alia enshrined in Article 141 of the Constitution of India. It is indeed settled law that the decision of the National Commission is binding on the State Commission. However, this Court is, therefore, of the view that the correctness of the decision of the National Commission can always be examined by the High Court both on the Article 226 and 227 of the Constitution of India.

17. As already stated hereinabove a decision based on a complete incorrect interpretation of a statute, or an incorrect decision of the National Commission would have serious consequences of depriving a litigant of availing the benefits of the statute itself. Such deprivation may in more than one case and as it is clearly found in the instant case lead to defeating object and purpose of the statute itself. Hence this Court under Article 227 cannot hesitate to assess the correctness an application of the decisions of the National Commission as followed by the State Commission in the instant impugned order. Such view is supported by the views of the DB of this Court in the Universal Consortium decision set out hereinabove.

18. It is, therefore, necessary for this Court to analyse the decision of the National Commission in the case of Ambrish Sukla (Supra) as also the case of Quality Foils India Pvt. Ltd. Vs. Bank of Madura Limited reported in 1996(2) C.P.C. 55. However for the said purpose some earlier decisions of the National Commission also need to be addressed.

19. The first of such decision on the pecuniary jurisdiction of the fora 1986 Act under Section 11 is Public Health Engineering Department Vs. Upbhokta Sanrakshan Samiti reported in 1(1992) CPJ182 (NC). The said decision was delivered in the context of the pecuniary jurisdiction under Section 11 of the 1986 Act of the District Forum. The facts in the said case were inter alia that a complaint was preferred by a body called Consumer Protection Committee, Jodhpur, in seeking to recover from PHD Jodhpur compensation for alleged negligence leading to a large number of persons being infected with jaundice which spread like an epidemic. The names of 46 persons were duly mentioned in the complaint. Rs.20,000/- was claimed for every student victim of jaundice and Rs.10,000/- for general victim and Rs.1,00,000/- for the deceased victims. The total claim in the complaint of each victim those exceeded Rs.50000/- and the overall claim in the complaint was well over Rs.40 lakhs.

20. The District Forum rejected the complaint on the basis of pecuniary jurisdiction. The State Commission, however, disagreed and remanded the matter back to the District Forum holding that the claim of each individual complainant must be taken for the purpose of jurisdiction although a single common complaint was filed. It is in that context that the National Commission held that the aggregate value of each individual claim in the complaint, albeit common and single, must be added and taken into consideration to determine the question of pecuniary jurisdiction under the 1986 Act. Paragraph 5 and 6 of the said decision are set out hereinbelow.

"5. In our opinion this proposition is clearly wrong since under the terms of Section 11 of the Act the pecuniary jurisdiction of the District forum would depend upon the quantum of compensation claimed in the petition. The view expressed by the State Commission is not based on a correct understanding or interpretation of Section 11. On the plain words used in Section 11 of the Act, the aggregate quantum of compensation claimed in the petition will determine the question of jurisdiction and when the complaint is filed in a representative capacity on behalf of several persons, as in the present case, the total amount of compensation claimed by the representative body on behalf of all the persons whom it represents will govern the valuation of the complaint petition for purposes of jurisdiction.

6. The quantum of compensation claimed in the petition being far in excess of Rs.1 lakh the District Forum was perfectly right in holding that it had no jurisdiction to adjudicate upon the complaint. The reversal of the said order by the State Commission was contrary to law. The Order of the State Commission is accordingly set aside, and the order passed by the District Forum directing the return of the Complaint Petition to the petitioner for being presented to the competent forum under the Consumer Protection Act, 1986 will stand restored. No costs."

21. Hence, it is clear that the use of word aggregate was part of the language of the judgment of the National Commission and was not intended to be added before the expression "value of goods" or "value of services" in Section 11 of the 1986 Act.

22. In the case of Quality Foils (Supra), the National Commission was testing an order of the Haryana State Commission which remanded a matter back to the District Forum. In the complaint a claim for Rs.16,36,474/- was made against the Bank of Madura together with compensation. At Paragraph 3, 4 and 5 the National Commission combined value of all the reliefs put together in the complaint and found that the same was Rs.19,83,474/- and held that it was a State Commission that had the jurisdiction to hear the complaint and not the District Forum and remanded the matter back to the State Commission. The relevant parts of the said decision are set out hereinbelow.

"3...........We are concerned in this case with the pecuniary jurisdiction of the State Commission. Section 17 of the Consumer Protection Act, 1986 reads as follows : "Jurisdiction of the State Commission-Subject to the other provisions of this Act, the State Commission shall have jurisdiction :

(a)(i) to entertain complaints where the value of the goods or services and compensation, if any claimed exceeds rupees [five lakhs but does not exceed rupees twenty lakhs].

The Act does not specifically lay down as to how a complaint is to be valued for the purpose of jurisdiction. The mode of valuation of civil suit for purposes of jurisdiction is laid down in the Suit Valuation Act, 1987. Generally the amount of the claim or the actual value of the property claimed determine the pecuniary jurisdiction except in certain cases mentioned in the Suits valuation Act. The jurisdiction of the Civil Court to entertain a suit is to be determined by the allegations made in the plaint and not by the result of the suit. Similarly, the complainant has to make allegations in the complaint that the goods bought by him or agreed to be bought by him suffer from any one or more defects as defined in Section 2(f) or the services hired or availed of or agreed to be hired by him suffer from deficiency as defined in Section 2(g) in any respect. Reference is also invited to the definition of the expressions, complaint, complainant, consumer dispute, goods and services as provided in Section 2 of the Act. When these definitions are considered alongwith the provisions of Section 17 (a)(i), it is manifest that it is essential for the complainant to value the goods or services which the opposite party had provided or agreed to be provided as also the compensation, if any, claimed by the complainant because the criteria laid by the statute is "value". On that valuation the jurisdiction of the District Forum or the State Commission or the National Commission would depend. It may not be necessary to have a separate paragraph in the complaint as to jurisdiction, but the value of the claim made or the relief must be spelt out from the complaint or from the prayer clause of the complaint.

23. The language used by the National Commission in the subsequent Paragraph 4 could have been more succinct. One must balance the language used in Paragraph 3 (set out above) and correlate the same with the ultimate result of the case to determine the true scope and purport of the decision. What was intended to be held is that the actual value of the goods or services purchased was not the criteria for determining pecuniary jurisdiction under Section 11,17 and 21 of the 1986 Act. What is relevant is the actual claim made by the complainant that would determine the pecuniary jurisdiction of the respective fora under the 1986 Act.

24. Following its view in the case of Quality Foils, in Bharat Qumar Nandy Vs. Eden Real Estate Private Limited decided on 4th February, 2016, the National Commission held that the total claim made by a purchaser of a residential flat unit being less than Rs.20 Lakhs and the complainant not claiming possession of the flat (value whereof far exceeded Rs.20 lakhs), the District Forum had jurisdiction to entertain the complaint. Thereby meaning that the valuation of the claim towards compensation of relief sought would be the determinant factor to attract the jurisdiction of a particular forum under the 1986 Act.

25. Further in the case of Amrapali Sapphire Flat Buyers Welfare Association Vs. Amrapali Sapphire Developers Pvt. Ltd. And Ors. reported in II (2017) CPJ 391 (NC) following the decision of Public Health Engineering Department (supra), it was held that the aggregate value of each flat paid by each buyer who was claiming refund of price or possession of their flat units must be considered to determine the pecuniary jurisdiction of the fora under the Commission. There were about 43 allottees who clubbed themselves into one single complaint. It

was, therefore, held that since the value of each flat unit was about Rs.1 Crore the State Commission would not have jurisdiction. The view of the National Commission is correct and in harmony with its earlier decision.

26. In the background of the above decisions let us now analyse the decision of the National Commission in the case of Ambrish Sukla (supra). There were three first appeals that the Ambrish Sukla decision was addressing. The first four points for reference to the larger bench were all under Section 12 (i)(c) of the Act. In fact there were two orders of reference, one dated 24th May, 2016 and another dated 11th August, 2016. Under the reference dated 11th August, 2016 the first three points are directly relevant to the issue herein. The same are set out hereinbelow.

"(i) In a situation, where the possession of a housing unit has already been delivered to the complainants and may be, sale deeds etc. also executed, but some deficiencies are pointed out in the construction/development of the property, whether the pecuniary jurisdiction is to be determined, taking the value of such property as a whole, OR the extent of deficiency alleged is to be considered for the purpose of determining such pecuniary jurisdiction.

(ii) Whether the interest claimed on such value by way of compensation or otherwise, is to be taken into account for determining the pecuniary jurisdiction of a particular consumer forum.

(iii) Whether "the value of the goods or services and compensation, if any, claimed" is to be taken as per the original value of such goods, or services at the time of purchase of such goods or hiring or availing of such service, OR such value is to be taken at the time of filing the claim, in question."

27. Reference points Nos. 4, 5, 6 and 7 are similar to the reference under order dated 24th May, 2016 i.e. under Section 12 (i)(c). While answering the reference two issues were addressed i.e. the application of Order 1 Rule 8 of the first schedule to the Code of Civil Procedure 1908 read with Section 13(6)h and 12 (i)(c) of the 1986 Act and its application. Secondly, the point of reference already set out hereinabove. This Court is not concerned in the instant case with the decision in connection withSection12(i)(c) read with Section 13 (6) of the 1986 Act read with Order 1 Rule 8 of the CPC which have been addressed under issue No. 1, 2 and 3 from Paragraphs 1-12 of the said judgement.

28. However, against Paragraph 14 the answer given to points No.1, 2 and 3 under the reference dated 11/08/2016, already set out hereinabove calls for examination. At paragraph 14 the National Commission has held as follows.

"14. Reference order dated 11.8.2016 Issue No. (i)

It is evident from a bare perusal of Section 21, 17 and 11 of the Consumer Protection Act that it's the value of the goods or services and the compensation, if any, claimed which determines the pecuniary jurisdiction of the Consumer Forum. The Act does not envisage determination of the pecuniary jurisdiction based upon the cost of removing the deficiencies in the goods purchased or the services to be rendered to the consumer. Therefore, the cost of removing the defects or deficiencies in the goods or the services would have no bearing on the determination of the pecuniary jurisdiction. If the aggregate of the value of the goods purchased or the services hired or availed of by a consumer, when added to the compensation, if any, claimed in the complaint by him, exceeds Rs.1.00 crore, it is this Commission alone which would have the pecuniary jurisdiction to entertain the complaint. For instance if a person purchases a machine for more than Rs.1.00 crore, a manufacturing defect is found in the machine and the cost of removing the said defect is Rs.10.00 lacs, it is the aggregate of the sale consideration paid by the consumer for the machine and compensation, if any, claimed in the complaint which would determine the pecuniary jurisdiction of the Consumer Forum. Similarly, if for instance, a house is sold for more than Rs.1.00 crore, certain defects are found in the house, and the cost of removing those defects is Rs.5.00 lacs, the complaint would have to be filed before the Commission, the value of the services itself being more than Rs.1.00 crore."

29. The aforesaid answer appears to this Court to, be fundamentally wrong and completely defeat the object and purpose of the Consumer Protection Act, 1986. Some portions of the 1986 Act must be set out for the purpose of addressing the issue

30. Section 11(1) of the Act prescribes the pecuniary jurisdiction and the method of assessment thereof by the district forum.

"11. Jurisdiction of the District Forum.-

(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed 1[does not exceed rupees twenty lakhs]."

31. The pecuniary jurisdiction of the State Commission is set out at Section 17.

"17.Jurisdiction of the State Commission.- [

(1)] Subject to the other provisions of this Act, the State Commission shall have jurisdiction-

(a) to entertain-

(i) complaints where the value of the goods or services and compensation, if any, claimed 2[exceeds rupees twenty lakhs but does not exceed rupees one crore]; and

(ii) appeals against the orders of any District Forum within the State; and

(b) to ....

[(2) A ....

(a) the ....

(b) any ....

(c) the ....

[17A. Transfer ......

[17B. Circuit ...."

32. Section 14 of the Act prescribes the authority and powers and reliefs that the consumer forum can award. Section 14 is set out hereinunder.

"14. Finding of the District Forum.-

(1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to 1[do] one or more of the following things, namely:-

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party: [Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;]

[(e) to [remove the defects in goods] or deficiencies in the services in question;

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

(g) not to offer the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale;

[(ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(hb) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently: Provided that the minimum amount of sum so payable shall not be less than five per cent. of the value of such defective goods sold or services provided, as the case may be, to such consumers: Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to ....

(i) to ....

[(2) Every ....

(2A) Every ....

(3) ...."

33. The definition of goods is stated in section 2(i) defines goods to mean goods as defined in the Sale of Goods Act, 1930.

"2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

(1) "buyer" means a person who buys or agrees to buy goods;"

34. Hence the definition of goods must be understood in the context of expression deficiency. Section 2(g) of the Consumer Protection Act refers to define deficiency.

"2(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;"

35. The definition of consumer at 2(d) of the 1986 Act is as follows:

"2(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 prom-ised, 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 purposes;

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 selfemployment;"

36. The definition of complaint is set out under Section 2(c) is set out hereinunder.

"2(c) "complaint" means any allegation in writing made by a complainant that-

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;

(ii) the goods bought by him or agreed to be bought by him; suffer from one or more defects;

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(iv) a trader or service provider, as the case may be, has charged for the goods or for the service mentioned in the complaint a price in excess of the price -

(a) fixed by or under any law for the time being in force

(b) displayed on the goods or any package containing such goods ;

(c) displayed on the price list exhibited by him by or under any law for the time being in force;

(d) agreed between the parties;

(v) goods which will be hazardous to life and safety when used or being offered for sale to the public,--

(A) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(B) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;"

37. It, therefore, appears to this Court that the expression goods and services must be read alongwith the expression complaint and consumer in the context of the remedies that the fora under the Act of 1986 may allow under Section 14 of the 1986 Act. Section 14 clearly stipulates that the fora under 1986 Act can direct removal of a defect pointed out by a complainant in the goods or services purchased by him. If this be one of the remedies that the Act empowers the fora under the 1986 Act may grant, to compel a complainant to value his goods over and above the defect complained of by him would definitely defeat the object and purpose of the Act.

38. In Lucknow Development Authority Vs. M.K. Gupta, reported in (1994) 1 SCC

243, the Hon'ble Supreme Court held as follows :

"2. How the dispute arose in different appeals is not of any consequence except for two appeals which shall be adverted to later, for determining right and power of the Commission to award exemplary damages and accountability of the statutory authorities. 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 'rob 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. A scrutiny of various definitions such as 'consumer', 'service', 'trader', 'unfair trade practice' indicates that legislature has attempted to widen the reach of the Act. Each of these definitions are in two parts, one, explanatory and the other expandatory. The explanatory or the main part itself uses expressions of wide amplitude indicating clearly its wide sweep, then its ambit is widened to such things which otherwise would have been beyond its natural import. Manner of construing an inclusive clause and its widening effect has been explained in Dilworth v. Commissioner of Stamps [1899 AC 99 : 15 TLR 61] as under:

"'include' is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural, import, but also those things which the definition clause declares that they shall include."

It has been approved by this Court in Regional Director, Employees' State Insurance Corpn. v. High Land Coffee Works of P.F.X. Saldanha and Sons [(1991) 3 SCC 617] ; CIT v. Taj Mahal Hotel, Secunderabad [(1971) 3 SCC 550] and State of Bombay v. Hospital Mazdoor Sabha [AIR 1960 SC 610 : (1960) 2 SCR 866 : (1960) 1 LLJ 251] . The provisions of the Act thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented legislation. The primary duty of the court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to the attempted objective of the enactment."

39. In Laxmi Engineering Works Vs. P.S.G. Industrial Institute, reported in (1995) 3 SCC 583, the Hon'ble Supreme Court held as follows:

"10. A review of the provisions of the Act discloses that the quasi-judicial bodies/ authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these forums/commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. The forum so created is uninhibited by the requirement of court fee or the formal procedures of a court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the complainant himself; any recognized consumers' association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Governments can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest.

The Act provides for "business-to-consumer" disputes and not for "business-to-business" disputes. This scheme of the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal."

40. In Common Cause, A Registered Society Vs. Union of India, reported in (1997) 10 SCC 729, the Hon'ble Supreme Court held as follows:

"2. The object of the legislation, as the Preamble of the Act proclaims, is "for better protection of the interests of consumers". During the last few years preceding the enactment there was in this country a marked awareness among the consumers of goods that they were not getting their money's worth and were being exploited by both traders and manufacturers of consumer goods. The need for consumer redressal fora was, therefore, increasingly felt. Understandably, therefore, legislation was introduced and enacted with considerable enthusiasm and fanfare as a path-breaking benevolent legislation intended to protect the consumer from exploitation by unscrupulous manufacturers and traders of consumer goods. A three-tier fora comprising the District Forum, the State Commission and the National Commission came to be envisaged under the Act for redressal of grievances of consumers. The petitioner, Common Cause, a registered society, espousing the cause of members of the public, filed this petition two years after the Act came into force complaining that the implementation of the provisions of the Act was sluggish, in that, the machinery for redressing the grievances of the poor consumers at the base level i.e. the District Forums, had not been set up in all the districts in the country except a few. This writ petition was, therefore, moved under Article 32 of the Constitution for a direction to the appropriate Government for urgent implementation of the provisions of the Act in this behalf. Similar grievances are made in the second petition also."

41. Given to the object and purpose of the Act as discussed by the Hon'ble Supreme Court in the aforesaid cases, the Ambrish Sukla (supra) decision to the extent set out herein above does not appear even remotely to be good law as a consumer who is only aggrieved by a portion of total goods supplied to him may be compelled to go to a higher forum than the one available to him. He would miss out a stage of appeal if he has to value his complaint for the full value of goods and/or services availed by him. He may in fact be happy and satisfied if a defect which may be a tenth of the value of the entire goods purchased by him, is awarded to him under Section 14(a) of the 1986 Act. There is, therefore, absolutely no logic or justification to compel him to value his complaint on the basis of the full value of the goods/services purchased by him.

42. The cost of travel and litigation to a consumer who is only aggrieved, for example, by a defect in steering wheel or tyre in a large car purchased by him at Thiruvanthapuram, Mumbai, Hyderabad, Kolkata, Bhopal or Ahmadabad etc. is admittedly high the degree of control over such litigation at a faraway place may equally be onerous. The interpretation given by the Ambrish Sukla (Supra) set out hereinabove cannot, therefore, be harmony with the object and purpose of the Consumer Protection Act, 1986 set out hereinabove. The distance to be covered for a litigant and the cost and control thereof have been held to be valid reasons to negate the interpretation given in the Ambrish Sukla Judgment set out hereinabove, in the case of Samir Dutta Vs. Mamata Das reported in 2017 SCC OnLine Cal 15485 (SB) at Paragraph 37 as also in the Universal Consortium Case (Supra) at Paragraph 111 (Already set out hereinabove).

43. It is now well-settled that the principle of 'dominus litis' is applicable in all

areas of litigation except those specifically barred and regulated by specific statute. No such bar appears to have been placed and rightly showed under the 1986 Act in respect of the definition of goods or services or under Section 11 and 17 thereof. Except as already held and decided in the context of Section 12 (i)(c) and 13(6) of the 1986 Act read with Order 1 Rule 8 of the Code of Civil Procedure, the value and meaning of 'goods' and 'services' must be deemed to mean the value of the same as attached and to the extent complained of by a litigant. Needless to mention the propriety of the valuation of a claim in the context of the facts of each case can always be assessed by the fora under the 1986 Act.

44. There is yet another mistake in the Ambrish Sukla decision that this Court notices. In the Public Health Engineering Department (supra) the expression aggregate of the value used was not meant to add the same to a statute. Such exercise would amount to interpret in aid of upholding the vires of a statue. Such power is conferred only to tribunals under 323B of the Constitution of India. The Bench of the National Commission in the Public Health Engineering Department (supra) case was quite conscious of such fact. The expression 'aggregate of value' was thus used in the regular language of its order and did not intend nor prescribed that such word should be added to the 1986 Act in Section 11 and 17 before the words goods and services.

45. It was lastly argued by the Opposite Party that the Ambrish Sukla decision was approved by the Honble Supreme Court in the case of Rameshwar Prasad Shrivastava Vs Dwarkadhis Projects Pvt. Ltd. reported in AIR 2019 SC 169. This Court has carefully considered the said decision and finds that Hon'ble Supreme Court only addressed and approved the view taken in the Ambrish Sukla case to the extent of the answer given in the context of Section 13(6), read with Section 12(1)(c) read with Order 1 Rule 8 of the CPC. The Hon'ble Supreme Court did not have occasion in the facts to deal with the portion of the Ambrish Shukla case with regard to the pecuniary jurisdiction of the fora under the 1986 Act as set out hereinabove.

46. Before parting with the judgment this Court notes that the Ambrish Sukla judgment was carried in appeal to the Hon'ble Supreme Court in case No. D000871 of 2017 by the respondent therein. Despite an order for rectification of defects, the same was not done. The said matter thus came to be dismissed on 12th February, 2018 by the Hon'ble Supreme Court vide Diary No. 871 of 2017. There is a further reference to the Ambrish Sukla Judgment for being considered in Civil Appeal No. 5336 of 2017 Dipak Punia Vs. Adel Landmarks Limited. Since appeal against the Amrbish Sukla decision was dismissed, the said Civil Appeal No. 5336 of 2017 was disposed of on an interim order dated 8th September, 2017.

47. For the reasons stated hereinabove the impugned judgment of the State Commission is hereby set aside and the matter is restored to its file and number to be heard disposed of on merits. The application under Article 227 of the

Constitution of India is allowed. There shall be no order as to costs.

48. Urgent Photostat certified server copy of this order, if applied for, be given to the parties upon compliance of all formalities.

