

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 167 OF 2019

(Against the Order dated 03/10/2018 in Complaint No. 7/2013 of the State Commission Maharashtra)

1. PRADEEP MAHESH KOTHARI
DIRECTOR OF M/S. KARAN KOTHARI JEWELLERS PVT
LTD, NIKALAS MANDIR ROAD, ITWARI
NAGPUR

.....Appellant(s)

Versus

1. MYK LATICRETE PVT. LTD. & 5 ORS.
THROUGH ITS MANAGING DIRECTOR, 8-2-703/A, 4
FLOOR, LEELA GOPAL TOWERS, ROAD NO 12, BANJARA
HILLS

HYDERBAD 500 034

2. MYK LATICRETE PVT. LTD
THROUGH ITS REGIONAL MANAGER, SHRI RITESH
SINGH, 8-2-703/A, 4 FLOOR, LEELA GOPAL TOWERS,
ROAD NO 12, BANJARA HILLS

HYDERBAD 500 034

3. ARIHANT MARKETING
THROUGH ITS AUTHORIZED REP. SHRI VIPUL G-Z, J,K,
TOWERS, BEHIND MENTA PETROL PUMP WARDHAMAN
NAGAR

NAGPUR

4. POKARAN ENGINEERED STONE LTD
THROUGH ITS AUTHORIZED REP. PLOT NO 45,APSEZ,
ATCHUTAPURAM AND RAMBILI MANDALS

VISHAKHAPATNAM

AP 531011

5. POKARAN ENGINEERED STONE LTD
THROUGH ITS AUTHORIZED REP, REGD/CORPORATE
OFFICE AT 105, 1 FLOOR, S.P. ROAD SURYA TOWERS
SECUNDARABAD

AP 500 003

6. HABLANI ARCHITECTS PVT LTD
THROUGH ITS PROPRIETOR SHRI ARJUN HABLANI OFF
AT INDRAPRASTHA 3 FLOOR, 21, DIAMOND COLONY,
NARAYANA KOTHI SQUARE

INDORE 452 001

.....Respondent(s)

BEFORE:

**HON'BLE MR. DINESH SINGH,PRESIDING MEMBER
HON'BLE MR. JUSTICE KARUNA NAND BAJPAYEE,MEMBER**

For the Appellant : Mr. S. S. Sitani, Advocate

For the Respondent : For the Respondents no. 1 to no. 3 : Mr. Shaishiv Ditatia, Advocate
For the Respondents no. 4 and no. 5 : NEMO (served)
For the Respondent no. 6 : Mr. Shrikant Samantara, Proxy Advocate

Dated : 04 Jan 2023

ORDER

1. This appeal has been filed under section 19 of the Act 1986 in challenge to the Order dated 03.10.2018 of the State Commission in complaint no. 07 of 2013.

We have heard the learned counsel for the appellant as well as for the respondents no. 1 to no. 3 and the respondent no. 6. No one appears for the respondents no. 4 and no. 5.

We have also perused the material on record including *inter alia* the State Commission's impugned Order dated 03.10.2018 and the memorandum of appeal.

2. The appeal has been filed with self-admitted delay of 60 days.

However, in the interest of justice, and considering the reasons mentioned in the application for condonation of delay, to provide fair opportunity to the appellant, to decide the matter on merit rather than to dismiss it on the threshold of limitation, the delay in filing the appeal is condoned.

3. The matter relates to alleged deficiency in service in construction work of a jewellery showroom building. The State Commission has dismissed the complaint holding that the complainant was not 'consumer' under the Act 1986 and further that on merit too no deficiency in service is made out.

4. In so far as the question whether or not the complainant is 'consumer' is concerned, we may refer to the Hon'ble Supreme Court's judgment in the **Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers & Ors. IV (2019) CPJ 65 (SC)** case wherein the Hon'ble Court has *inter alia* held as under:

7. To summarize from the above discussion, though a straight- jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is 'for a commercial purpose':

(i) The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, 'commercial purpose' is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities.

(ii) The purchase of the good or service should have a close and direct nexus with a profit-generating activity.

(iii) The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.

(iv) If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of 'generating livelihood by means of self-employment' need not be looked into.

(emphasis supplied)

5. In the present case, the State Commission has held that there was close nexus between the transaction relating to construction work of the showroom building and the commercial activity of retail of jewellery and therefore the complainant was not 'consumer' under the Act 1986. The gist of its findings in this regard is reproduced below for reference:

20. Thus we find that the main purpose of the complainant was to build the luxurious show room to provide all amenities to suit unique and specific requirement of jewellery retail business and therefore it wanted to use the best quality of exterior and interior products in the said show room. We therefore hold that the transaction about purchase of tiles and adhesive and hiring of services of O.P. No. 6 had a closed nexus with the large scale commercial activity of running of the show room by the complainant. Hence we find no substance in the submission of the learned advocate of the complainant that there is no nexus. We therefore hold that as there is a close nexus in between the aforesaid transaction and hiring of services and commercial activity of the complainant, it can be said that the tiles/stones and the adhesive were purchased and services of O.P. No. 6 were hired by the complainant purely for commercial purpose and therefore the complainant does not fall within the aforesaid definition of consumer given under section 2(1)(d) of Consumer Protection Act, 1986. Thus the complaint is not maintainable before this Commission under Consumer Protection Act, 1986.

6. We do not agree with the approach adopted by the State Commission for discountenancing the status of the complainant as 'consumer', the same not being the correct appreciation in right perspective of the facts and circumstances of the case at hand. In our opinion the construction work of the showroom building had no 'close and direct nexus' with the profit-generating activity *per se* of retail of jewellery. There is a distinctive difference between the two, construction work of a showroom building is materially and substantively distinct and different from the activity of retail of jewellery *per se*.

As such, we feel that the State Commission has erred in holding the complainant not to be 'consumer'.

7. In so far as its examination on merits is concerned, we may first observe that the State Commission ought not to have ventured into the merits of the case once it had come to a view that the complainant was not 'consumer'. The correct course would have been to refrain from entertaining into the merits and allow opportunity to the complainant to take his cause before the competent civil court. We may add that once a forum takes a view that the complainant is not 'consumer', its examination on merits could also get affected, consciously or unconsciously, to the prejudice of the complainant. Such prejudice, if there, also extinguishes his recourse to the competent civil court for a free unbiased appreciation of his cause on merits. In the present case we do not know to what extent, if any, its adversely disapproving view that the complainant was not 'consumer' had prejudicially affected the State Commission in its examination of the merits of the matter, but, be that as it may, we feel that it shall be just and conscionably expedient that the examination on merits should be undertaken *de novo* afresh with a disabused mind without being prejudiced or influenced by the erroneous view that the complainant was not 'consumer'.

8. As such, we set aside the Order dated 03.10.2018 of the State Commission both in respect of its findings that the complainant was not 'consumer' as well as in respect of its findings on the merits of the matter. We remand the case back to the State Commission with the observation that in the facts and circumstances of the case the transaction relating to construction work of the showroom building did not have a 'close and direct nexus' with the profit-generating activities of the business of retail of jewellery *per se* and thus the complainant was 'consumer' within the meaning of Section 2(1)(d) of the Act 1986 and request the State Commission to rehear the parties and decide the case afresh on merits in accordance with the law.

The parties are directed to appear before the State Commission on 14.02.2023.

9. The Registry is requested to send a copy each of this Order to the parties in the appeal and to their learned counsel as well as to the State Commission immediately. The stenographer is requested to upload this Order on the website of this Commission immediately.

.....
DINESH SINGH
PRESIDING MEMBER
.....J
KARUNA NAND BAJPAYEE
MEMBER