

DRAWING PARALLELS: CONSUMER PROTECTION ACT, 1986, LOCUS STANDI WITH REGARDS TO COMMERCIAL PURPOSE AND EARNING LIVELIHOOD BY MEANS OF SELF-EMPLOYMENT

Written by *Avinash Singh Vishen*

1st Year BBA LLB Student, Symbiosis Law School NOIDA, Symbiosis International
(Deemed University)

Abstract

The Consumer Protection Act, 1986 was passed to promote and protect the rights of the customers with the intent of providing the consumers with the right to seek redressal for the grievances suffered by him. The act went to define in codification the various terminologies which were previously left undefined and subjected to matters of perception in cases of consumer grievances.

The problem so arises when on one hand, a consumer, by definition as per Section 2(1)(d), does not include a person who buys goods or uses services for the commercial purpose but on the other hand includes person who uses such goods or avails such services for the purpose of earning his livelihood through self-employment.

There is a very thin line, if any, that distinguishes use of goods/services for commercial purpose and use of goods/services for the purpose of earning livelihood through self-employment. It can be very well argued that any use of goods/services for commercial purpose effectively implies use of goods/services for the purpose of earning livelihood through self-employment. This susceptibility of interpretation of the two rules might lead to some grievances going un-redressed.

The aim of this paper is to differentiate between the application of the two rules and seek clarification through a series of case analysis and commentaries regarding the scenarios where:

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- (i) One qualifies as a consumer with respect to use of goods/services for the purpose of earning livelihood through self-employment.
- (ii) What nature of business when carried out comes under the purview of Commercial Purpose.

Basic Differentiation

Though the terms “commercial purpose” and “earning his livelihood by means of self-employment” are mentioned in Section 2(1)(d) of the Consumer Protection Act, 1986 yet they are not exclusively defined and left to the interpretation of the parties and the forum/commission to which the case has been brought.

Section 2 (1)(d) defines the locus standi of a consumer on the basis of him having brought/availed of goods/services respectively. The section also defines who qualifies or does not qualify as a consumer.

“Section 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 and 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;
- (ii) [hires or avails of] any service 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 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 purpose of earning his livelihood by means of self-employment.]”

The terms commercial purpose and earning livelihood by means of self-employment are complementary in nature. Any activity done for the purpose of earning livelihood by means of self-employment would automatically come under commercial purpose but all activities done for commercial purpose need not necessarily come under the purpose of earning livelihood by means of self-employment.

In purely commercial terms, commercial purpose extends to all business forms excluding sole-proprietorship (i.e. Partnership Firms, Joint Stock Companies, Joint Hindu Undivided Family Firms, Cooperative Societies etc.) do not qualify as a consumer. Example- **LAXMI ENGINEERING WORKS versus P.S.G. INDUSTRIAL INSTITUTE**.¹ Where it was held that the complainant didn't qualify as a consumer as the machinery so purchased by the complainant falls under the purview of commercial purpose.

The sole proprietorship to the extent that, not a large number of employees are involved in the business and that the scale of the business is very concentrated, would fall under the purview of earning livelihood by means of self-employment. Example- **MADAN KUMAR SINGH (D) THR. LR. versus DISTT. MAGISTRATE SULTANPUR & ORS.**² Where it was held that the complainant who brought a truck for the purpose of earning his livelihood qualified as a consumer, irrespective of whether a driver was employed or not, as the truck would continue to be the source of livelihood by the complainant.

However, if a sole proprietorship is operated on a large scale with a number of employees and a number of machinery, the proprietor ceases to be a consumer and the activity comes

¹ II (1995) CPJ 1 (SC)

² IV (2009) CPJ 3 (SC)

under the purview of Commercial Purpose. Example- **JCB INDIA LTD. versus PAWAN SOOD & ORS.** Where it was held that the complainant who was a contractor and purchased a JCB machine for the purpose of conducting his business as a contractor. Though a sole proprietor form of business comes under the purview of “Earning Livelihood by means of Self-Employment” yet due to the discretion given to the courts and the absence of a proper definition, commercial purpose is applied in cases where it shouldn’t be.

In reality, cases where rule of commercial purpose or self-employment is applied, the final decision whether the complainant qualifies as a consumer or not, is left to the subjective interpretation of the two rules as per the seated member of the respective Consumer Dispute Redressal Forum/Commission.

JUDICIAL OUTLOOK & COMMENTARY

1) LAKSHMI ENGINEERING WORKS *versus* P.S.G. INDUSTRIAL INSTITUTE.³

➤ Facts of the Case: -

The Appellant is a small-scale industry registered with the Directorate of Industries. The appellant ordered a PSG 450 CNC Universal Turing Central Machine on May 28, 1990 from the Respondent. The respondent delivered faulty machinery six months beyond the stipulated period. The state commission allowed the claim of the appellant and directed the respondent to pay compensation to the appellant.

The respondent then filed an appeal in the National Commission claiming that the appellant was not a consumer as per Section 2(1)(d) of the Consumer Protection Act, 1986. The National Commission set aside the order of the State Commission.

The appellant went on to file an appeal in the Honorable Supreme Court of India.

➤ Issue(s) of the case: -

i) Whether the appellant is a consumer as per Section 2(1)(d) of the Consumer Protection Act, 1986.

³ AIR 1995 SC 1428 or II (1995) CPJ 1 (SC)

ii) Whether the purchase of machinery by the Appellant qualifies as commercial purpose or earning livelihood by means of self-employment.

➤ The Supreme Court of India Held that: -

i) The appellant does not qualify as a consumer as per Section 2(1)(d) of the Consumer Protection Act, 1986 as the machinery so purchased by the appellant was purchased for commercial purpose though they didn't perform their operations on a large scale as "having regard to the nature and character of the machine and the material on record that it is not goods which the appellant purchased for use by himself exclusively for the purpose of earning his livelihood by means of self-employment"⁴

ii) The appeal failed and the judgement of National Commission upheld.

➤ Commentary

i) The Supreme Court in its judgement upheld the judgement of the National Commission and clearly stated that the appellant doesn't qualify as a consumer as though it is a small-scale industry, the expressive use of the machine was not for the purpose of earning livelihood through self-employment, but rather through the use of machinery was for the purpose of generating goods for sale and generating revenue. The machine would not be exclusively used by the appellant but rather through its employees and hence the appellant wouldn't qualify as a consumer.

ii) It can be noticed though the appellant had a small-scale operation, it came under the category of non-sole proprietorship hence commercial purpose can be easily established.

2) **SUPER ENGINEERING CORPORATION *versus* SANJAY VINAYAK PANT & ANR.**⁵

➤ Facts of the Case: -

⁴ Justice B.P. Jeevan Reddy - Para 25 of Judgement.

⁵ Citation: (1992) CPJ (1) 95 (NC)

The Respondent No. 1 (the original complainant), an unemployed man purchased a Super Offset Printing Machine priced at Rs. 3,46,770/- which is manufactured by the Appellant. The Respondent acquired a loan from Maharashtra State Financial Corporation and purchased the Machine from the Respondent No. 2 (M/s. Chetan Machinery & Paper Mart), a firm which is a retailer of products manufactured by the Appellant.

The Machine delivered to the Respondent was not the Super Offset Printing Machine which the Respondent wanted to but rather it was Stallion 22 model offset printing machine. Not only the machine ordered was different from the one which was ordered by the Respondent but also it was a defective one and in spite of various efforts made by the Respondent the defect was not removed by the Respondent No.2 (Originally Opposite Party No.1)

The Respondent moved to the State Consumer Disputes Redressal Commission (Maharashtra) for the delivery of defective goods and deficiency in service on the part of Respondent No. 2 (Originally Opposite Party No.1 of the complaint case) and the Appellant (Originally Opposite Party No.2 of the complaint case). The Original Opposite Party No. 1 argued that the purchase of the machine was for commercial purpose and hence the complaint case of the Complainant (Respondent) was not maintainable. It also pleaded that it was a mere retailer of the products manufactured by the Original Opposite Part No.2 (Appellant)

The Hon'ble State Commission held that the Complainant was a consumer as the machine was purchased for the purpose of Earning Livelihood by means of Self Employment and granted relief to the Complainant against the Appellant for manufacturing the defective machinery, no relief was granted against the Respondent No.2 (Originally Opposite Party No. 1). The appeal was filed before the National Commission by the Appellant as the case was proceeded against them *ex parte* and the relief given to the complainant was given against them for the delivery of defective goods.

- The National Consumer Disputes Redressal Commission held that: -
- i) The Complainant qualified as a consumer under Section 2 (d) of the Consumer Protection Act, 1986.
 - ii) The Order of the State Commission was modified and the relief was granted against the Respondent No.2 instead of the Appellant.

➤ Commentary: -

i) Though the nature of the machinery purchased clearly qualified as one that could be used commercially in nature yet as the Respondent was an unemployed man it could be clearly identified that the purchase of the machinery was for the purpose of earning livelihood by means of self-employment and not for commercial purpose. The Respondent wished to start a sole proprietor business through the purchase of the machine.

3) *ISAQ BABA SHAIKH versus ACTION CONSTRUCTION EQUIPMENT LTD. & ANR.*⁶

➤ Facts of the Case: -

The Appellant/Complainant purchased a Crane from the Respondent/Opposite Party. The Crane was defective and the Appellant made several requests to the Respondent regarding the same. The Appellant filed a complaint case against the Respondent at the District Forum.

The District Forum dismissed the complaint case and found that the Complainant didn't qualify as a consumer since the use of the Crane was for Commercial Purpose. The Complainant then filed an appeal at the SCDRC (Maharashtra)

➤ State Consumer Disputes Redressal Commission (Maharashtra) held that: -

- i) The order of the Learned District Forum was upheld.
- ii) The Appeal was dismissed as the use of crane was for commercial purpose

➤ Commentary

i) The main reason as to why the complaint as well as the appeal was dismissed was because the use of crane was specifically used for commercial purpose and heavy machinery such as crane cannot be said to be used for the purpose of earning livelihood by means of self-employment.

⁶ III (2013) CPJ 17C (CN) (Mah.)

ii) Even if the complainant was a person operating as a sole proprietor, the scale of business he conducted or as such the impression one gets from the machinery in question as to the scale of business he conducts, commercial purpose can be easily determined.

4) TRIO ELEVATORS COMPANY *versus* TANSINGH CHAUHAN.⁷

➤ Facts of the case: -

The Respondent/Complainant ordered three elevators of the capacity of eight persons from the Appellant/Opposite Party for the purpose of installing them in the Hotel Kalinga Palace possessed by him. The Appellant/Opposite Party delivered three elevators with the capacity of five persons instead of the ones ordered by the Respondent/Complainant. The elevators installed were not functioning properly.

The Respondent/Complainant filed a complaint at the District Forum. The complaint was allowed and the complainant was granted relief. The Appellant filed an appeal at the State Consumer Disputes Redressal Commission.

The Appeal was Remanded by the State Commission. The Appellant filed a Revision Petition at the National Consumer Disputes Redressal Commission.

➤ The National Consumer Disputes Redressal Commission held that: -

i) Complainant does not fall within the purview of consumer under the C.P. Act, as the elevators were to be installed in the hotel run for commercial purposes. In such circumstances, District Forum had no jurisdiction to entertain the complaint and complaint was liable to be dismissed. Learned State Commission has not considered this aspect and remanded the matter and directed District Forum to record expert evidence to be led by both the parties.

ii) Complaint was not entertainable before District Forum and complaint was liable to be dismissed. Consequently, revision petition filed by the petitioner is allowed and impugned order dated 09.01.2013 passed by learned State Commission in Appeal No. 243 of 2011--

⁷ III (2013) CPJ 464 (NC)

Manager, Trio Elevators Co. (India) Ltd. Vs. Tan Singh Chauhan is set aside and complaint filed by the complainant/respondent is dismissed.

➤ Commentary

i) It was very easy to determine commercial purpose in this case as the Complainant in this case was not a sole proprietorship but rather the person who runs a hotel. The complaint case was brought not in an individual capacity but rather in the capacity of owner/manger of the hotel.

ii) The complainant didn't qualify as a consumer as per Section 2(1)(d) of the Consumer Protection Act, 1986 because the elevators installed was not for the purpose of earning livelihood by means of self-employment but rather for use in a hotel which was for commercial purpose.

5) JCB INDIA LTD. *versus* PAWAN SOOD & ORS.⁸

➤ Facts of the case

The Respondent/Complainant is a contractor who purchased a JCB from the Appellant/Opposite Party which is a company that manufactures such machines. The machine in the warranty period itself started malfunctioning and was handed over to the Opposite Party. Upon inspection it was found that the machine had some manufacturing defect. Complainant filed a complaint at District Forum, Shimla.

Respondent/Complainant, therefore, prayed for issuance of a direction to the appellant and other respondents to replace the engine and also to pay compensation for the loss of earnings suffered by him as the machine had been lying idle despite heavy investment. The District Forum allowed the complaint and gave relief to the complainant. The Appellant/Opposite Party filed an Appeal in the State Consumer Disputes Redressal Commission, Shimla.

➤ The State Consumer Disputes Redressal Commission held that:

⁸ II (2013) CPJ 35B (CN) (H.P.)

i) The complainant cannot be said to be a consumer within the meaning of Section 2(1) (d) of the Consumer Protection Act, 1986. Complainant is a contractor, per his own pleadings. He has purchased the machine in connection with his occupation/vocation as a contractor. That means the machine is used by him for commercial purpose. He has nowhere pleaded that the machine is being used by him to earn his livelihood and he has self-employed himself on this machine. Therefore, he cannot be said to be a consumer within the meaning of Section 2(1) (d).

ii) Precedents of the Hon'ble National Consumer Disputes Redressal Commission, with the observations that the orders sought to be used as precedents, were passed before the amendment of Section 2(1)(d), when the availer of service for commercial purpose was not excluded from the definition of 'consumer', and that since the availer of service for commercial purpose, is now excluded from the definition of 'consumer', the said precedents are not applicable.

➤ Commentary

i) Just like the case of *Isaq Baba Shaikh v. Action Construction Equipment limited*, it was easy to determine commercial purpose here as the machinery in question is used in a purely commercial background.

ii) It is also worth noting that a contractor who falls well within the scope of a sole proprietorship but the use of the machinery in question can only be in a purely commercial background and due to the nature of machinery in question it was easy to establish commercial purpose.

6) *GOVIND RAM AGARWAL versus KOLKATA WEST INTERNATIONAL CITY PVT. LTD.*⁹

➤ Facts of the case:

Complainant/appellant entered into buyers agreement with OPs/respondents for purchasing one row house in each complaint for consideration of Rs. 40,01,000. OP provisionally allotted row house Nos. B-02/18, B-04/04 and B-04/05 to the complainant. Complainant paid about

⁹ III (2016) CPJ 411 (NC)

70% of the sale consideration amount to the OP, but OP demanded some more amount on various grounds, though, construction work had not been in progress as promised by OP.

Alleging deficiency on the part of OP, complainant filed 3 separate complaints against OP with direction to deliver possession of the units and award damages and interest. OP moved separate miscellaneous applications in all the cases and submitted that complainant had booked three row houses in the project of OP and invested huge amount for earning profit on resale; so, complainant does not fall within purview of consumer and complaints are not maintainable which may be dismissed.

Learned State Commission after hearing both the parties while allowing application dismissed complaints as not maintainable against which, these appeals have been filed. The Complainant aggrieved by the judgement filed an Appeal at the Hon'ble National Consumer Disputes Redressal Commission.

➤ The National Consumer Disputes Redressal Commission held that: -

- i) In the case in hand complainant had obtained three separate loans along with his different son in each loan application, but as units were booked in complainant's name and different sons were not made nominee in each form and only one son was made nominee for all units and there was no pleading in the complaints that units were booked for settling each son, it can very well be observed that complainant booked three units in his own name for commercial purpose and in such circumstances, he does not fall within purview of consumer.
- ii) In the light of above discussion, there is no illegality in the impugned orders and all appeals are liable to be dismissed. Consequently, appeals filed by the appellants are dismissed.

➤ Commentary

- i) The Hon'ble National Commission as well as the State Commission placed reliance on the evidence provided by the Opposite Party/Respondent wherein they were able to prove that the complainant invested the money in the property so as to earn huge profits through resale.
- ii) Once the above evidence was provided, it was easy to determine that there was commercial purpose and the complainant was not a consumer.

iii) Herein, the person brought the complaint in his personal capacity and even though he was not a person involved in the business of sale/resale of property, commercial purpose was easily established because the intent of the person was to earn profits through resale of the property in question and it was clearly not for the purpose of earning livelihood by means of sole proprietorship.

7) APS INTERNATIONAL PRIVATE LIMITED *versus* EMAAR MGF LAND LIMITED¹⁰

➤ Facts of the case

M/s. APS International Private Limited, the complainant is a private limited company incorporated as per the provisions of the Companies Act. On 17.1.2008, the complainants paid an amount of Rs. 31,74,906 to M/s. Emaar MGF Land Ltd., the OP, towards registration amount for shops/commercial area measuring 5858 sq. Ft., in Mohali Hills, Sector-105, SAS Nagar, District Mohali, Punjab.

Both the parties entered into a Central Plaza Premises Buyer's Agreement, Annexure C2, whereby they impressed upon the complainants to purchase commercial area being Unit No. 55 measuring 5858 sq. Ft. on different floors and for each floor, the OP entered into separate Central Plaza Premises Buyer's Agreements with the complainants for the area at sale price mentioned against each other.

The complainants were made to understand that the development activities are in full swing and that the possession, complete in all respects, with all amenities, would be handed over, within a period of 36 months.

On 31.3.2015, due to complete failure on the part of OP to comply with their contract, the OP was requested to return the whole of the amount, along with interest, to pay the compensation on account of financial loss suffered by the complainants and also to pay the amount towards harassment caused to the complainants.

¹⁰ I (2016) CPJ 113 (NC)

- The National Consumer Disputes Redressal Commission held that: -
- i) The complainant is a private limited company and does not qualify to be 'consumers' as per section 2 (d) of the Consumer Protection Act, 1986. Therefore, the complaint case is dismissed.
 - ii) Further, they may seek help from the law laid down in the celebrated authority reported in *Laxmi Engineering Works v. P.S.G. Industrial Institute* with regards to limitation.

➤ Commentary

- i) Commercial purpose is easily established in this case as the complainant was not a sole proprietor but rather is a private limited company.
- ii) It is also worth noting that the subject matter of the complaint that was filed was shops/commercial area and not a flat or house hence the innate nature of the subject matter was commercial.

8) *BUNGA DANIEL BABU versus SRI VASUDEV CONSTRUCTIONS*¹¹

➤ Facts of the case.

Appellant is the owner of the plot Nos. 102, 103 and 104 in survey No. 13/1A2, Patta No. 48 admeasuring 1347 sq. yards situated at Butchirajupalem within the limits of Visakhapatnam Municipal Corporation. Being desirous of developing the site, the land owner entered into a Memorandum of Understanding (for short "the MOU") with the Respondents on 18.07.2004 for development of his land by construction of a multi-storied building comprising of five floors, with elevator facility and parking space. Under the MOU, the apartments constructed were to be shared in the proportion of 40% and 60% between the Appellant and the Respondent No. 1.

It was stipulated that the construction was to be completed within 19 months from the date of approval of the plans by the Municipal Corporation and in case of non-completion within the said time, a rent of Rs. 2000/- per month for each flat was to be paid to the Appellant.

¹¹ III (2016) CPJ 1 (SC)

An Addendum to the MOU dated 18.07.2004 was signed on 29.04.2005 which, inter alia, required the Respondents to provide a separate stair case to the ground floor. It also required the Respondents to intimate the progress of the construction to the Appellant and further required the Appellant to register 14 out of the 18 flats before the completion of the construction of the building in favour of purchasers of the Respondents.

The occupancy certificates for the 12 flats were handed over to the occupants only on 30.03.2009, resulting in delay of about three years and three months. In addition, the Appellant had certain other grievances pertaining to deviations from sanction plans and non-completion of various other works and other omissions for which he claimed a sum of Rs. 19,33,193/- through notices dated 6.6.2009 and 27.6.2009.

The Appellant approached the District Forum for redressal of his grievances. The District Forum appreciating the factual matrix in entirety framed two issues for determination, which in essence are, whether the complainant was a "consumer" within the definition of Section 2(1)(d) of the Act; and whether there was any deficiency in services on the part of the opposite party.

➤ The learned district forum held that

i) District Forum opined that the complainant came under the definition of Consumer Under Section 2(1)(d)(ii) of the Act. On the second point of deficiency as well, it partly allowed the claim in favour of the Appellant-complainant by awarding a sum of Rs. 15,96,000/- towards rent for delayed construction, Rs. 19,800/- as reimbursement of vacant land tax, Rs. 70,000/- as cost for rectification of defects in the premises and Rs. 25,000/- for mental agony. It was further directed that the above said sum shall carry interest @ 9% per annum from the date of filing of the complaint. Be it stated, cost of Rs. 10,000/- was also awarded.

ii) Respondent constrained by the decision of the District Forum preferred an appeal before the State Commission

➤ The State Commission held that: -

i) The SCDRC did not agree with the finding of the District Forum and came to hold that the Appellant-complainant did not come within the ambit of definition of "consumer" under

the Act and accordingly dismissed his claims as not maintainable. The appellate forum expressed the view that as the agreement was entered into by the Appellant-complainant for more than two plots and there was an intention to sell them and let them on rent and earn profit, the transaction was meant for a commercial purpose.

ii) Grieved by the said decision, the Appellant-complainant invoked the revisional jurisdiction of the National Commission.

➤ The National Commission held that: -

i) The NCDRC concurred with the view expressed by the State Commission by holding that the State Commission had rightly distinguished the authority in Faqir Chand Gulati's case on facts because the flats were not for personal use and the complainant had already sold four of the twelve flats.

ii) The appellant was declared not a consumer as per Section 2(1)(d) of the consumer protection act 1986.

iii) The appellant thereafter moved to the supreme court.

➤ The Supreme Court of India held that: -

i) It is clear as day that the Appellant is neither a partner nor a co-adventurer. He has no say or control over the construction. He does not participate in the business. He is only entitled to, as per the MOU, a certain constructed area. The extent of area, as has been held in Faqir Chand Gulati (*supra*) does not make a difference. Therefore, the irresistible conclusion is that the Appellant is a consumer under the Act.

ii) There has to be appropriate adjudication with regard to all the aspects except the status of the Appellant as a consumer by the appellate authority. Consequently, the appeal is allowed, the judgments and orders passed by the National Commission and the State Commission are set aside and the matter is remitted to the State Commission to re-adjudicate the matter treating the Appellant as a consumer.

➤ Commentary

i) The State Commission as well as the National Commission were of the opinion that since more than two plots were into consideration it was easily assumable that the intent of the

appellant through the MOU was to earn profit. However, they failed to consider the fact that such an intent was never showcased by the appellant.

ii) It is because of the lack of proper interpretation of the term commercial purpose and the lack of a definition as per the CPA that the appellant would have suffered irreparable loss and grave injustice. The hon'ble Supreme Court was right in the application of its sound judicial mind and taking up an interpretation which concurred with the figures of justice.

9) *REKHA D. SHAH versus M. ABBAS & CO.*¹²

➤ Facts of the case: -

Complainants booked an office premises No. A-1001 with M/s. M. Abbas & Co.- Opposite Party 1 for the purpose of self-employment and earning their livelihood and wanted to start their own consultancy firm.

The complainants booked the office on 10th Floor for a lump sum price of Rs. 2,01,75,000 admeasuring 2,175 sq. Ft. Carpet area. The complainants paid Rs. 5,00,000 as token amount. They made payments in the sum of Rs. 2,50,000 each through cheques dated 16.10.2006, in the sum of Rs. 33,81,500 each through two cheques dated 14.11.2006 and Rs. 25,21,875 through two cheques each on 29.6.2007. They have paid a total amount in the sum of Rs. 1,23,06,750.

The Opposite Party-1 also confirmed vide letter dated 16.2.2009 that it had received Rs. 1,23,06,750 towards the booking of office at 10th floor A-1001.

The Opposite Party argued that the complaint was not a consumer dispute. The complainants purchased the premises for their consultancy firm, which is for commercial purposes. The complainants are residing in a high-profile area, which makes it clear that the disputed property is not the only source of livelihood, but an investment made by them.

¹² IV (2016) CPJ 252 (NC)

The complainant stated that they required the office for their personal use. They explained that the office is for self-employment and earning their livelihood and they wanted to start their consultancy firm. They submitted the affidavits in support of their case.

- The National Consumer Disputes Redressal Commission held that: -
 - i) The complainants are 'Consumers' and qualify the conditions of the Section 2(1)(d)(i).
 - ii) The Opposite Party Nos. 1 and 2 jointly and severally were directed to put the complainants in possession of Office No. A-1001 at 10th Floor of the building, known as 'The Paladium', situated at CTS No. 118/153, Ram Krishna Road, Opp. Emerald Court, Kondivita, Andheri (E), Mumbai - 400059, Maharashtra. Opposite Party Nos. 1 and 2 are jointly and severally directed to complete the construction of the building and hand over the vacant possession of the said premises to the complainants.

- Commentary: -
 - i) The complainant though wanted to start a consultancy was functioning primarily as a sole proprietor and was placing reliance on her own skills to start the firm. This fact was considered by the national commission while passing the judgement.
 - ii) Commercial purpose in this case could not be established as though the office was a commercial plot the use for it was clearly established to be that of earning livelihood by means of self-employment.

10) MADAN KUMAR SINGH (D) THR. LR. versus DISTT. MAGISTRATE SULTANPUR & ORS.¹³

- Facts of the case: -

¹³ IV (2009) CPJ 3 (SC)

Appellant was an auction purchaser of a truck bearing registration No. UP I-4775, put to an auction sale, on account of default in payment of installments committed by its previous owner Iqbal, having taken loan from Union Bank of India under "Self Employment Scheme".

Recovery Certificate was issued to the Collector, Sultanpur (U.P.) by the said bank. The auction was held in the Tehsil Compound, Sultanpur, on 19.8.1999. The appellant's bid for a sum of Rs. 70,000/- being the highest, was knocked down in his favour and accepted by respondent No. 1.

As per the terms and conditions of the auction, appellant deposited a sum of Rs. 20,000/-, as soon as the bid was knocked down in favour of the Appellant. Since no objection was received against the said auction sale, the appellant deposited balance amount of Rs. 50,000/- on 20.8.1999.

After the sale having been confirmed in favour of the appellant, he was entitled to receive possession of the truck, which was not delivered to him by the respondents. Thus, he made a representation on 30.11.1999 for delivery thereof. He continued to make several representations with the respondents for delivery of the truck purchased in the auction and also to hand over to him the documents so that the vehicle could be transferred in the name of the appellant so as to enable him to ply the same.

The truck was delivered to the appellant after about six months from the date of auction sale, for which no plausible reasons were assigned by the respondents.

Despite handing over possession of the truck at a belated stage, respondents did not deliver necessary documents of the truck to the appellant so as to enable him to get the vehicle transferred in his name, thereby depriving him of its commercial use, the purpose for which he had purchased.

He was therefore, constrained to file a petition under Section 12 of the Consumer Protection Act, 1986 (for brevity, 'the Act') claiming damages.

Appellant was ultimately delivered the possession of the truck on 14.3.2000, during the pendency of the complaint before the District Forum. The relevant papers thereof were not handed over to him for a long time but on persistent requests, the same were handed over to

him some time in the month of January, 2005. Thus, after a lapse of more than five years from the date, the auction was confirmed in favour of the appellant.

The District Consumer Forum dismissed the complaint of the appellant holding therein that appellant is not a "consumer" within the definition of the Act.

Feeling aggrieved, appellant filed an appeal before the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow which was registered as Appeal No. 2327 of 2000. The State Commission dismissed the appeal with certain observations reproduced herein below:

The District Consumer Forum Sultanpur has dismissed the complaint on the finding that such matters are not cognizable by it under COPRA. No error at all can be found in the aforesaid finding. It is open to the appellant to file copy of this order before District Magistrate Sultanpur with such prayer relating to the documents of the vehicle as advised. The District Magistrate will deal with such representation in accordance with law and pass necessary orders within two months.

Against the order of the State Commission, appellant filed Revision Petition No. 929 of 2003 before the National Consumer Disputes Redressal Commission, New Delhi. The same came to be disposed of vide impugned order on 18.5.2005 and the complaint filed by appellant has partly been allowed with the following directions:

“In view of the long delay, we are inclined to grant damages to the extent of Rs. 25,000/- along with cost of Rs. 5000/- payable by the respondents to the Petitioner jointly and severally. In view of the facts and circumstances of the case, we direct the District Magistrate, Sultanpur, U.P. to conduct an inquiry into the matter and fix the responsibility including the recovery of this awarded amount from the officers who are found guilty of deficiency/negligence in this case.”

Feeling aggrieved thereby the auction purchaser Madan Kumar Singh (since dead) preferred a Special Leave Petition whereas respondents have also preferred Special Leave Petition against Madan Kumar Singh (since dead).

The original appellant having died during the pendency of the appeal, his legal representative was brought on record.

➤ The Hon'ble Supreme Court of India held that: -

i) The conduct, behaviour and attitude of the respondents, throughout, has been highly reprehensible. When the bank had issued a Fard Nilami and respondents were entrusted with the job of auction then the said auction should have been implemented fully in letter and spirit. Once the highest bid of the appellant was knocked down in his favour, pursuant thereto, he had deposited the requisite amounts, then as a necessary consequence thereof he should have been delivered the truck immediately along with the necessary documents. For the reasons best known to the respondents they had not only delayed delivery of the truck but had also, despite the efforts made by the appellant, not handed over the papers of the truck to him for long number of years. Any explanation offered during the course of the arguments is not acceptable to us, which certainly shows their malafide intentions.

ii) Even assuming for a moment that bank had not delivered the papers of the truck to the respondents then it was the duty of the respondents to have insisted the bank for delivery of the papers which they had failed to do. Thus, in any case, there cannot be any escape of the respondents from shaking off the liability fastened on them by the National Commission.

iii) Taking the totality of the situation as it exists, we are of the opinion that a total amount of Rs. 1,00,000/- payable by respondents jointly or severally to the appellant would subserve the justice.

iv) Even though the Act specifically does not authorise to grant interest but in appropriate cases, grant of interest on the facts and circumstances of the case is permissible. The same has been done by this Court in long catena of cases.

v) In this case also, keeping the circumstances under which appellant was made to run from pillar to post, to get the documents of the truck from the respondents, we are of the opinion that ends of justice would be met if interest at the rate of 6% p.a. from the date of the original application till actual payment of the aforesaid enhanced awarded amount is made by the respondents. We accordingly do so. The appeal arising out of SLP(C) No. 20515 of 2005 is allowed with costs and Appeal arising out of SLP (C) No. 11210 of 2006 is dismissed with costs. Counsel fee assessed at Rs. 10,000/- each.

➤ Commentary

- i) It was easy to establish commercial purpose in the District Forum and the State Commission since the commodity in question as a truck the use for which can be for commercial purpose. Even though the complainant mentioned his use of truck for purpose of Earning Livelihood by Means of Self Employment, his plea was overlooked by the District Forum and State Commission.
- ii) The National Commission took the outlook that the truck would be used by the Appellant for Earning Livelihood by means of Self Employment as no evidence could be produced to prove anything contrary.
- iii) It is such discretion that the Consumer Protection Act has been subjected to, which leads to the purpose of consumer protection being defied to some extent.

CONCLUSION

Through mere reading of the Section 2(1)(d) of the Consumer Protection Act, 1986. It is not easy to differentiate between the terms “Commercial Purpose” and “Earning Livelihood by means of Self-Employment”. It is always the facts and circumstances of a case that help in determining whether the complainant falls within the definition of the term “Consumer” or not. However, leaving it up to the facts and circumstances without providing a proper definition leaves the plaintiff in a very vulnerable state. It leaves a scope of unwarranted discretion to the Consumer Forums/Commissions.

Ideally, a proper definition should be set out with regards to what form of business if carried out, would fall within the definition of consumer as per Section 2(1)(d). The lack of a proper definition which clearly specifies what forms of business doesn't fall under “Commercial Purpose” leads to orders like that of **Madhu Builders & Developers and Ors. Vs. Ashok, Hind Co-Op. Housing Society Ltd. and Ors.**¹⁴ wherein it was held that even a Cooperative Society is a consumer as per Section 2(1)(d). It is beyond doubt that a Cooperative Society is commercial on a larger scale than a sole proprietorship, However, on one hand, in the above stated case the Society was given relief but in the case of **Isaq Baba Shaikh Vs. Action**

¹⁴ IV (2016) CPJ 586 (NC)

Construction Equipment Ltd. & Anr.¹⁵ as well as **JCB India Ltd. Vs. Pawan Sood & Ors.**¹⁶ the complainants though sole proprietors were not given relief.

Business as per National Council of Education Research and Training is classified into five main classifications on the basis of its form and scale. The five main classifications are: -

- i) Sole Proprietorship
- ii) Partnership Firm
- iii) Joint Hindu Undivided Family Firm
- iv) Cooperative Society
- v) Joint Stock Company

On a purely commercial outlook, a sole proprietor should fall under the definition of the term Consumer because it is the only form of business that is carried out for the purpose of Earning Livelihood by means of Self-Employment. All other forms of business (Partnership Firm, Joint Hindu Undivided Family Firm, Cooperative Society and Joint Stock Company) as recognized by the National Council of Educational Research and Training should be termed as Non-Consumers as they are more focused on the increasing profitability and scaling of their business. It is also worth mentioning that whereas Sole Proprietorship involves one person making decisions and that same person bearing the consequences, all other forms of business are either governed by a board of directors/shareholders or in case of Joint Hindu Undivided Family Firm by a Karta, the consequences of the decisions of the said business organizations are bore by the shareholders or the company rather than the individuals making the decision.

If a proper definition is set out, it would end the scope for discretion of the courts which often leads to limited application of the purpose behind the Consumer Protection Act. It can be clearly inferred that the lawmakers placed too much reliance on the self-explanatory nature of the statement “Earning Livelihood by means of Self Employment” but such reliance has lead to giving the Consumer Forums/Commissions a lot of discretionary power with regards to

¹⁵ III (2013) CPJ 17C (CN) (Mah.)

¹⁶ II (2013) CPJ 35B (CN) (H.P.)

whether they want to entertain a complaint or not wherein there is the slightest of the pinch of a commercial activity.

