

A M/S CHEEMA ENGINEERING SERVICES
v.
RAJAN SINGH

NOVEMBER 1, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Consumer Protection Act, 1986 :

C S.2 (1) (d) Explanation—Purchase of machine for preparation of bricks—Whether for self-employment or for commercial purpose—Held: Burden on the respondent to prove—Matter remitted to District Form for recording evidence and disposing of the matter within six months—“Consumer”—Meaning of.

Words & Phrases :

D “Consumer”—Meaning of in the context of Consumer Protection Act.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 14787 of 1996.

E From the Judgment and Order dated 6.5.96 of the National Consumers Disputes Redressal Commission, New Delhi in R.P. No. 729 of 1995.

C.S. Vaidyanathan, Rajan K. Sharma, Rakesh K. Sharma and Ms. Shalu Sharma for the Appellant.

F B. Parthasarthy for the Respondent.

The following Orders of the Court was delivered :

Leave granted.

G We have heard learned counsel on both sides.

H The only question for consideration is : whether the respondent has been using the machine “Brickman” for clay preparation, brick moulding, brick drying and brick burning, after purchasing the same from the appellant for earning his livelihood within the meaning of Explanation to

Section 2 (1) (d) of the Consumer Protection Act, 1986? Section 2 (1) (d) A
reads as under :

“Consumer” means any person who:

(i) buys any goods for a consideration which has been paid or B
promised or 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 C
or for any commercial purpose; or

(ii) hires any services for a consideration which has been paid
or promised or partly paid and partly promised, or under any
system of deferred payment and includes any beneficiary of D
such services other than the person who hires 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.”

If any goods are purchased for consideration, paid or promised or E
partly paid or under any system of deferred payment including any user of
such goods other than the person who by such goods for the 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 the purchaser is the ‘consumer’ with the meaning of the Act. But
the Act provides for certain exceptions, namely, “does not include a person F
who obtains such goods for resale or any commercial purpose; or ..”

The Explanation to the definition of ‘consumer’ has been added by
way of an amendment in 1993 which reads as under :—

“Explanation—for the purpose of sub-clause (i) “commercial G
purpose” does not include use by a consumer of goods bought
and used by him exclusively for the purpose of earning his
livelihood, by means of self-employment.”

In other words, the Explanation excludes from the ambit of H

- A** commercial purpose in sub-clause (i) of Section 2(1) (d), any goods purchased by a consumer and used by him exclusively for the purpose of earning his livelihood by means of self-employment. Such purchase of goods is not a commercial purpose. The question, therefore, is: whether the respondent has been using the aforesaid machine for self-employment? The word 'self-employment' is not defined. Therefore, it is a matter of
- B** evidence. Unless there is evidence and on consideration thereof it is concluded that the machine was used only for self-employment to earn his livelihood without a sense of commercial purpose by employing on regular basis the employee or workmen for trade in the manufacture and sale of bricks, it would be for self-employment. Manufacture and sale of bricks in a commercial way may also be to earn livelihood, but "merely earning
- C** livelihood in commercial business", does not mean that it is not for commercial purpose. Self-employment connotes altogether a different concept, namely, he alone uses the machinery purchased for the purpose of manufacture by employing himself in working out or producing the goods for earning his livelihood. 'He' includes the members of his family, Whether the respondent is using the machine exclusively by himself and
- D** the members of his family for preparation, manufacture and sale of bricks or whether he employed any workmen and if so, how many are matters of evidence. The burden is on the respondent to prove them. Therefore, the Tribunals were not right in concluding that the respondent is using the machine only for self-employment and that therefore, it is not a commercial purpose. The orders of all the Tribunals stand set aside. The matter is
- E** remitted to the District Forum. The District Forum is directed to record the evidence of the parties and dispose it of in accordance with law within a period of six months from the date of the receipt of this order.

The appeal is accordingly allowed. No costs.

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G.N.

Appeal allowed.