

A MRS. VISWALAKSHMI SESIDHARAN AND ORS.
v.
THE BRANCH MANAGER, SYNDICATE BANK, BELGAUM

FEBRUARY 13, 1997

B [K. RAMASWAMY, S. SAGHIR AHMAD AND
G.B. PATTANAİK, JJ.]

Consumer Protection Act, 1986.

C *Deficiency in service—Claim for damages—Consumers obtained loan from Bank—Bank did not release a part of the amount—Consumer filing claim petition against the Bank—In a letter to the Bank, consumer admitted their failure to repay the instalments due to slump in market—Held, the admission stands in the way of the consumers to plead at the later stage that they suffered loss on account of the deficiency in service—Orders of Tribunal and the National Commission dismissing the claim do not warrant interference—Merely filing of the suit by the Bank does not put a bar on the Tribunal to go into the merits in the complaint.*

E CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 4077 of 1997.

From the Judgment and Order dated 6.10.95 of the National Consumers Disputes Redressal Commission, New Delhi in F.A. No. 177 of 1993.

F Prem Malhotra for the Petitioners.

The following Order of the Court was delivered :

G This Special Leave Petition arises from the order of the National Consumer Disputes Redressal Commission, New Delhi. The petitioners had loan taken from the respondent-Bank on two accounts, one for a sum of Rs. 1,50,000 and the other for Rs. 3,00,000. It would appear that the Bank had disbursed a sum of Rs. 1.47 lacs and the balance amount was not released to the petitioners. It was their case, in the complaint H laid before the District Forum, that due to deficiency in service, namely,

failure to disburse the total amount contracted under the agreement, the petitioner could not carry on the business and discharge the obligations to pay the labour charges and, therefore, could not manufacture the products for which orders had been served. Since, there was slump in the market, they could not discharge the contract for repayment. Accordingly, they filed the complaint for damages in the sum of Rs. 9,50,000. The Tribunals below dismissed the case and the National Commission confirmed the dismissal of the complaint on the three grounds. First, the petitioner had not complied with the conditions of the agreement of repayment. Thereby they committed breach of the contract. They cannot, therefore, complain of the deficiency of service. Another ground given was that the suit was filed by the Bank for recovery on the premise that the Tribunal could not go into that question. Thirdly, it was Stated that in a letter addressed by the petitioners to the Bank that they had admitted that the failure to pay the instalments was due to slump in the market of the finished products and, therefore, they could not repay the loan.

Though we find that there is not much force in the findings recorded by the courts below on the first two grounds, the last ground merits acceptance. If pursuant to the contract the Bank did not disburse the amount and if there was any resultant default in the payment on account thereof, that may be a defence open to the petitioners in the suit and also furnishes right to complain of deficiency in service to seek redressal under the Consumer Protection Act. On that ground, the relief could not be rejected and the question was required to be gone into. Secondly, the mere filing of the suit for recovery of the amount may not be an absolute bar on the Commission to go into that question for the reason that the issue before the Civil Court is not the deficiency in the service unless that is specifically raised as a defence in the suit. However, we think that is one of defaults in the payment of the instalments. Under those circumstances, merely filing of the suit by the Bank does not put a bar on the Tribunal to go into the merits in the complaint. Each case requires examination on the facts of the case. On the other hand, we find force in the reasoning given by the Tribunal on third point. It is the petitioners' case that they were unable to produce the goods and have them marked to pay back the loan in instalments. It was not the case

- A that it was due to deficiency in service. On the other hand, it is admitted that due to slump in the market they could not sell the goods, realise the price of the finished product and pay back the loan to the Bank. That admission stands in their way to plead at the later stage that they suffered loss on account of the deficiency in service. Under those circumstances,
- B we do not find any ground warranting interference.

The special leave petition is dismissed.

R.P.

Petition dismissed.