

A RAMESHWAR PRASAD SHRIVASTAVA AND ORS.

v.

DWARKADHIS PROJECTS PVT. LTD. AND ORS.

(Civil Appeal No. 5802 of 2018)

B DECEMBER 07, 2018

[UDAY UMESH LALIT AND R. SUBHASH REDDY, JJ.]

C *Consumer Protection Act, 1986: ss. 2(1)(b)(iv), 12(c) and 13(6) – Expression in s. 2(1)(b)(iv) “one or more consumers where there are numerous consumers having the same interest” – Interpretation of – Complaint referable to s. 2(1)(b)(iv) – Application of Or. 1 r. 8 – Held: Language used and the text in s. 13(6) is clear that wherever a complaint is filed by a complainant in the category referred to in s. 2(1)(b)(iv)-one or more consumers where there are numerous consumers having the same interest”, the provisions of*
D *Or. 1 r. 8 shall apply with the modification that reference to suit or decree shall be construed as reference to a complaint or order of the District Forum – Expression “with the permission of the District Forum” as appearing in s. 12(1)(c) must be read along with s. 13(6) – Sections 12(1)(c) and 13(6) are not independent but are to be*
E *read together and they form part of the same machinery – Thus, in consumer complaints by one or more consumers where there are numerous consumers having the same interest, it is mandatory to give notice of the institution of the suit to all persons so interested in accordance with Or. 1 r. 8 – In view thereof, the National Commission rightly held that complaint filed by some of the*
F *allottees was not maintainable since there was no application u/s. s. 12(1)(c) – Code of Civil Procedure, 1908 – Or. 1 r. 8.*

Disposing of the appeals, the Court

G **HELD: 1.1** The expression appearing in sub-clause (iv) of Section 2(1)(b) of the Consumer Protection Act, 1986 reads “*one or more consumers where there are numerous consumers having the same interest*”. This very expression finds incorporated in sub-clause (c) of Section 12(1) with an addition following said expression, namely “... with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested”.
H Section 12(1) thus, in its substantive part says that a complaint

may be filed with the District Forum by any of the four categories as mentioned in sub-clauses ‘a’ to ‘d’. Since sub-clause (c) contemplates filing of such complaint, “... with the permission of the District Forum”. The context and in what manner such permission is required to be taken in terms of the provisions of the Act is available in Section 13(6) of the Act which *inter alia* lays down that where the complaint is referable to Section 2(1)(b)(iv), the provisions of Rule 8 of Order 1 CPC, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District forum thereon. The mandate, “shall apply” is quite significant. [Para 11, 12][1128-B-F]

1.3 The language used and the text in s. 13(6) is clear that wherever a complaint is filed by a complainant in the category referred to in s. 2(1)(b)(iv), the provisions of Order 1 Rule 8 shall apply with the modification that reference to suit or decree shall be construed as reference to complaint or order of the District Forum. The expression “with the permission of the District Forum” appearing in s. 12(1)(c) must be read along with s.13(6) which provides the context and effect to said expression. Sections 12(1)(c) and 13(6) are not independent but are to be read together and they form part of the same machinery. [Para 13][1128-F-H]

1.4 The submission that the expression “*one or more consumers, where there are numerous consumers having the same interest*” may be given widest possible interpretation so as to make the redressal mechanism easy, cost effective and efficacious, cannot be accepted as the language employed in the relevant provisions is absolutely clear and does not admit of any other interpretation. If the submission of the appellants is accepted, the category of persons referred to in Section 13(6) of the Act, with the aid of requisite permission in terms of Order I Rule 8 CPC could maintain a class action which may bind similarly placed consumers but those referred to in Section 12(1)(c) would be a different category who would not be bound by the provisions of Order I Rule 8 of CPC. In essence a separate category of persons as consumer/consumers would be entitled to maintain an action

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- A under Section 12(1)(c) of the Act. Certainly that is not the intent. If the submission is accepted, it would be going against the express mandate of the statute. All that such interpretation would help achieve for some consumers is to maintain an action in a forum with higher pecuniary jurisdiction where, but for such collective cause of action, the action would not lie in such forum with higher pecuniary jurisdiction. [Para 14][1129-A-F]

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D 1.6 The National Commission was justified in holding Consumer Case to be not maintainable. The matters were pending with the National Commission for more than three years during which time the pleadings were exchanged and the evidence was filed. In the circumstances, though the view taken by the National Commission is upheld, the proper course would be to enable the appellants to approach the concerned State Commission. If the State Commission is so approached, the matter shall not be proceeded *de novo* but from the stage at which it was before the National Commission. [Para 15, 16][1129-F-H; 1130-A-C]

Ambrish Kumar Shukla and others v. Ferrous Infrastructure Pvt. Ltd. I (2017) CPJ 1 (NC) – approved.

- E *The Chairman, Tamil Nadu Housing Board, Madras v. T.N. Ganapathy* (1990) 1 SCC 608 : [1990] 1 SCR 272 ; *Babu Manmohan Das Shah & ors. v. Bishun Das* (1967) 1 SCR 836 – referred to.

Case Law Reference

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| F [1990] 1 SCR 272 | referred to | Para 6 |
| (1967) 1 SCR 836 | referred to | Para 14 |
| (2017) CPJ 1 (NC) | approved | Para 15 |

- G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5802 of 2018.

From the Judgment and Order dated 13.02.2018 of the National Consumer Disputes Redressal Commission, New Delhi in Consumer Complaint Case No.250 of 2013.

With

- H Civil Appeal No. 9162 of 2018.

Ms. Priyanjali Singh, Rahul Rathore, K. K. Shukla, Advs. for the Appellants. A

V. V. Manoharan, Nityanand Singh, Ajay Kumar Talesara, Advs. for the Respondents.

The Judgment of the Court was delivered by
UDAY UMESH LALIT, J. B

1. These appeals under Section 23 of the Consumer Protection Act, 1986 (hereinafter called 'the Act') are directed against the judgments and orders dated 13.02.2018 and 08.08.2018 passed by the National Consumer Disputes Redressal Commission, New Delhi ('the National Commission' for short) dismissing Consumer Case Nos.250 of 2013 and 43 of 2014 as not maintainable. C

2. An advertisement campaign was started by the first respondent sometime in 2006-2007 for sale of apartments in a group housing project called "Aravali Heights" located at Sector-24, Dharuhera, Haryana. Various interested persons booked their apartments and entered into builder-buyer agreements. Clause 11 of such typical agreement provided that the possession would be delivered by the first respondent within three years. The time specified for delivery thus expired in the year 2010 but no possession was offered within the stipulated time. It appears that letters were received by various such buyers from April, 2012 onwards asking for payment of final instalment connected with delivery of possession. Various buyers found that the apartments were not habitable at all and the infrastructure such as roads, water supply, sewerage, storm water drain, fire fighting system, electricity were not constructed or made functional. Some of the buyers therefore filed Civil Writ Petition No.25054 of 2014 in the High Court of Punjab and Haryana which was disposed of by the High Court directing said petitioners to make appropriate representation to the competent authority. It further appears that thereafter detailed representations were made and an order came to be passed by the concerned directorate which was then challenged by certain allottees by filing Civil Writ Petition No.26358 of 2016. D
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3. At this stage 19 such allottees came together and filed a joint complaint being Consumer Case No.250 of 2013 on 06.08.2013 in the National Commission praying following reliefs:

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- A “1. For delayed possession, this Hon’ble commission may direct the Respondent No.1 to provide a tower-wise schedule for completion and handing over the possession of all the flats in the “Aravali Heights” Multi-storeyed Group Housing Complex) located at Sector 21, Dharuhera on the basis of current progress & development activities.
- B Direct the Respondent No.1 to provide tower-wise construction status achieved so far for each tower in the complex with corresponding dates of achieving completion and an honest and logical tower-wise details/list of unfinished construction tasks and corresponding schedule of completion thereof.
- C Payment of penalty @ 36 per cent per annum, compounded annually (at the prevailing market rate) be imposed on the total amount paid to the builder so far by the apartment buyers and be directed to be paid immediately or at the time of possession to be calculated on the basis explained in the complaint.
- D 2. Declare that the demand raised by the Respondent No.1 for the enhanced/extra EDC by including interest thereon as null and void.
- E Direct the Respondent No.1 to provide details of the initial EDC and EDC Charge and Calculations thereof in terms of the latest directive/memo issued by the official Respondents including the status of its payment by the Builder to the DGTCP – Haryana including their payments by the Respondent No.1 to the DGTCP – Haryana.
- F Direct the builder to raise fresh/rectified demand bills/letter towards EDC Charges after addressing the stated issues-supra. Direct the adjustment of the extra amounts paid by some of the Buyers against the EDC with interest @ 24% thereon against the fresh computations/bills raised as above.
- G Direct the Respondent No.1 to maintain transparency in the matter of payment of EDC Charges to the Authorities by displaying the status on their Website so as to restore Buyer Confidence.
- H 3. Direct the Respondent No.1 to refund the open stilt car parking charges in the sum of Rs.75,000/- to Rs.1,50,000/- to the buyers and the community building membership charges – these

being not saleable and part of common areas and not belonging to the Respondent No.1 A

4. Direct the Respondent No.1 to refrain from raising illegal demands of new PLC and immediately withdraw their demand letters to customers of some of the units demanding new PLC under flimsy grounds. B

Direct the Respondent No.1 to refund with 36% interest the PLC money claimed from all those consumer/Complainants whose flats have ceased to remain Green Facing/falling under PLC of Green facing.

5. Direct the Respondent No.1 to refrain from raising illegal demands of the additional electricity charges, and to immediately withdraw their demand letters to customers of some of the units demanding the additional electricity charges under flimsy grounds. C

6. Direct the Respondent No.1 to refrain from raising illegal demands of the electricity charges, as the said demand and the affixation of the electricity charges is unilateral, and any such charges towards the electricity are payable when the possession is given, and for an amount, which is determined in consultation with the buyers. D

7. Direct the Respondent No.1 to refrain from raising illegal demands of the Maintenance Charges, as the said charges are payable when the possession is given to the buyers after completing the flat in all respect. E

8. Direct the Respondent No.1 to pay penalty for the mental harassment caused to the Complainants @ 10,00,000/- (Rupees Ten lakhs) per Complainant). F

9. Direct the Respondent No.1 to pay costs towards Legal expenditure @ Rs.50,000/- (Rupees Fifty Thousand) per Complainant.

10. Direct the Respondent No.1 to complete the project and the flats with all the amenities and facilities including water connection, electricity connection, power back up, roads, park, parking space, club house, street lighting, sewage drains, rainwater drains, firefighting system etc. G

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A 11. Declare the aforesaid legal omissions and commissions as amounting deception, deficiency in service and amounts to unfair trade practice together with monetary compensation/penalty/etc. as prayed in the complaint for the gross mental tension and harassment.”

B 4. The National Commission issued notice on 23.08.2013, whereafter the first respondent put in appearance and filed its written statement. After exchange of pleadings, the evidence was also completed. After about 20 hearings in the matter, by order dated 25.02.2016 the case was fixed for final arguments.

C 5. On 07.10.2016 a Bench of three Members of the National Commission delivered judgment in *Ambrish Kumar Shukla and others v. Ferrous Infrastructure Pvt. Ltd.*¹ while answering reference made to the larger Bench of the National Commission. One of the points which was referred to the larger Bench of the National Commission was as under:

D “(i) Whether a complaint under Section 12(1)(c) of the Consumer Protection Act filed on behalf of or for the benefit of only some of the numerous consumers having a common interest or a common grievance is maintainable or it must necessarily be filed on behalf of or for the benefit of all the consumers having a common interest or a common grievance against same person(s)”

E 6. After considering the relevant provisions of the Act namely Section 2(1)(b) defining the expression “complainant”, Section 12(1) and Section 13(6) of the Consumer Protection Act, 1986 (‘The Act’, for short) as well as the provisions of Order I Rule 8 of Code of Civil Procedure (‘CPC’, for short) and a decision of this Court in *The Chairman, Tamil Nadu Housing Board, Madras v. T.N. Ganapathy*² the larger Bench of the National Commission held as under:

F “.....The primary object behind permitting a class action such a complaint under Section 12(1)(c) of the Consumer Protection Act being to facilitate the decision of a consumer dispute in which a large number of consumers are interested, without recourse to each of them filing an individual complaint, it is necessary that such a complaint is filed on behalf of or for the

¹I (2017) CPJ 1 (NC)

H ²(1990) 1 SCC 608

benefit of all the persons having such a community of interest. A complaint on behalf of only some of them therefore will not be maintainable. If for instance, 100 flat buyers/plot buyers in a project have a common grievance against the builder/Developer and a complaint under Section 12(1)(c) of the Consumer Protection Act is filed on behalf of or for the benefit of say 10 of them, the primary purpose behind permitting a class action will not be achieved, since the remaining 90 aggrieved persons will be compelled either to file individual complaints or to file complaints on behalf of or for the benefit of the different group of purchasers in the same project. This, in our view, could not have been the Legislative intent. The term ‘persons so interested’ and ‘persons having the same interest’ used in Section 12(1)(c) mean, the persons having a common grievance against the same service provider. The use of the words “all consumers so interested” and “on behalf of or for the benefit of all consumers so interested”, in Section 12(1)(c)(d) leaves no doubt that such a complaint must necessarily be filed on behalf of or for the benefit of all the persons having a common grievance, seeking a common relief and consequently having a community of interest against the same service provider.

7. The aforesaid Consumer Case No.250 of 2013 was thereafter taken up for consideration. The National Commission observed certain factual developments in the matter as under:

“4. A perusal of the record clearly establishes that at the time of filing of this Complaint, no application under Section 12(1)(c) seeking permission to file joint Complaint had been filed by the Complainants, though there were 19 Complainants in this Complaint. Thereafter, an I.A.No.12680 of 2017 has been filed by the Complainants seeking amendment of the Complaint. The said application also contained an Application under Section 12(1)(c) of the Act.

5. Ms. Priyanjali Singh, Advocate for the Complainants at the time of arguments in this case, on instructions, stated that the Complainants did not wish to press I.A.No.12680 of 2017 seeking amendment of the Complaint and requested the Complaint should be dealt with as filed earlier. Hence, I.A.No.12680 of 2017 was dismissed as not pressed.”

A 8. It was observed that since there was no application under Section
 12(1)(c) of the Act, in view of the decision rendered by larger Bench of
 the National Commission in *Ambrish Kumar* (supra), the complaint in
 the instant case was not maintainable. The National Commission thus
 by its order dated 13.02.2018 dismissed the aforesaid Consumer Case
 No.250 of 2013 as not being maintainable. Similarly, by order dated
 B 08.08.2018 the National Commission dismissed Complaint Case No.43
 of 2014 preferred by 4 buyers in respect of same project of the first
 respondent as not being maintainable.

C 9. These appeals thus question the correctness of the decisions of
 the National Commission and raise issues concerning maintainability of
 the complaints. At this stage we may extract the relevant provisions of
 the Act.

“Section 2(1) In this Act, unless the context otherwise
 requires, -

- D (a)
- (b) “complainant” means-
- (i) a consumer; or
- (ii) any voluntary consumer association registered under
 E the Companies Act, 1956 (1 of 1956) or under any other
 law for the time being in force; or
- (iii) The Central Government or any State Government; or
- (iv) One or more consumers, where there are numerous
 consumers having the same interest;
- F (v) In case of death of a consumer, his legal heir or
 representative; who or which makes a complaint;

G **Section 12.** Manner in which complaint shall be made –
 (1) A complaint in relation to any goods sold or delivered or
 agreed to be sold or delivered or any service provided or
 agreed to be provided may be filed with a District Forum
 by-

- (a) The consumer to whom such goods are sold or delivered or
 agreed to be sold or delivered or such service provided or
 agreed to be provided;

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- (b) Any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be proved is a member of such association or not; A
- (c) One or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or B
- (d) The Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general. C

Section 13. Procedure on admission of complaint

... ..

(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.” D

10. We heard Ms. Priyanjali Singh, learned Advocate in support of the appeals and Mr. V.V. Manoharan, learned Advocate for the first respondent. According to Ms. Singh, the definition of the Complainant as found in Section 2(1)(b) permits even a voluntary consumer association to espouse the cause of aggrieved party/parties. In her submission the expression “*one or more consumers, where there are numerous consumers having the same interest*” ought to be given widest possible interpretation so as to sub-serve the underlying objectives of the Act and to make the redressal mechanism easy, cost effective and efficacious. She further submitted that in cases having large number of apartment holders, if only some of them approach the consumer forum, their grievance redressal ought not to be forced to go through the mechanics of Section 13(6) of the Act read with the provisions of Order 1 Rule 8 CPC. According to her any such insistence would render the remedy exorbitant as cost required for newspaper publication itself would be quite prohibitive. On the other hand, Mr. Manoharan, learned Advocate E

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A for the first respondent, submitted that the view taken by the Commission in *Ambrish Kumar* (supra) was correctly and rightly applied by the Commission in the present case. He further submitted that such view was the only possible view, going by the text of the relevant provisions.

B 11. A closer look at Section 2(1)(b) would show that under sub-clause (i) it is the consumer himself, as aggrieved person who could be the Complainant and maintain an action. Under sub-clause (ii), a voluntary organization or association may espouse the cause of such aggrieved person. Under sub-clause (iii) either the central government or the state government may take-up the matter as complainant. We are, however, concerned with the expression appearing in sub-clause (iv) which reads
C “one or more consumers where there are numerous consumers having the same interest”. This very expression finds incorporated in sub-clause (c) of Section 12(1) with an addition following said expression, namely “..... with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested”.

D 12. Section 12(1) thus in its substantive part says that a complaint may be filed with the District Forum by any of the four categories as mentioned in sub-clauses ‘a’ to ‘d’. Since sub-clause (c) contemplates filing of such complaint, “..... with the permission of the District Forum”, we will have to see the context and in what manner such permission is
E required to be taken in terms of the provisions of the Act. The answer is available in Section 13(6) of the Act which *inter alia* lays down that where the complaint is referable to Section 2(1)(b)(iv), the provisions of Rule 8 of Order 1 of the First Schedule to the CPC, 1908 (Act 5 of 1908) shall apply subject to the modification that every reference therein
F to a suit or decree shall be construed as a reference to a complaint or the order of the District forum thereon. The mandate, “shall apply” is quite significant.

G 13. The language used and the text in Section 13(6) is clear that wherever a complaint is filed by a complainant in the category referred to in Section 2(1)(b)(iv), the provisions of Order 1 Rule 8 CPC *shall apply* with the modification that reference to suit or decree shall be construed as reference to a complaint or order of the District Forum. The expression “with the permission of the District Forum” as appearing in Section 12(1)(c) must be read along with Section 13(6) which provides the context and effect to said expression. In our view Sections 12(1)(c)
H and 13(6) are not independent but are to be read together and they form part of the same machinery.

14. It is however submitted that the expression “*one or more consumers, where there are numerous consumers having the same interest*” may be given widest possible interpretation so as to make the redressal mechanism easy, cost effective and efficacious. We are afraid we cannot accept such contention as the language employed in the relevant provisions is absolutely clear and does not admit of any other interpretation. It was laid down by this Court in *Babu Manmohan Das Shah & ors. v. Bishun Das*³ as:-

“The ordinary rule of construction is that a provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent the manifest intention of the legislature from being carried out.”

If we accept the submission of the appellants, the category of persons referred to in Section 13(6) of the Act, with the aid of requisite permission in terms of Order I Rule 8 of the CPC could maintain a class action which may bind similarly placed consumers but those referred to in Section 12(1)(c) would be a different category who would not be bound by the provisions of Order I Rule 8 of CPC. In essence a separate category of persons as consumer/consumers would be entitled to maintain an action under Section 12(1)(c) of the Act. In our considered view that certainly is not the intent. If we accept the submission, we would be going against the express mandate of the statute. All that such interpretation would help achieve for some consumers is to maintain an action in a forum with higher pecuniary jurisdiction where, but for such collective cause of action, the action would not lie in such forum with higher pecuniary jurisdiction.

15. We, therefore, find that the view taken by the National Commission in the case of *Ambrish Kumar* (supra) is consistent with the text of the provisions and is the correct view. The National Commission, in the present case, was therefore justified in holding Consumer Case Nos. 250 of 2013 and 43 of 2014 to be not maintainable.

16. During the course of hearing we had asked Ms. Singh, learned counsel if the appellants were willing to proceed with the requirements under Section 13(6) of the Act and take appropriate steps as mandated under Order 1 Rule 8 CPC. She, however, responded that the entire

³(1967) 1 SCR 836 at page-839

- A process being prohibitive in terms of cost, her clients were unwilling to proceed in that behalf. It must however be noted that the matters were pending with the National Commission for more than three years during which time the pleadings were exchanged and the evidence was filed. In the circumstances, though we uphold the view taken by the National Commission, the proper course would be to enable the appellants to approach the concerned State Commission. If the State Commission is so approached, the matter shall not be proceeded *de novo* but from the stage at which it was before the National Commission. That is to say that the matter shall be proceeded with on the strength of same pleadings and the evidence laid before the National Commission.
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- C 17. With these observations these Civil Appeals stands disposed of. No costs.

Nidhi Jain

Appeals disposed of.