



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.4841 OF 2023

**SANT ROHIDAS LEATHER INDUSTRIES
AND CHARMAKAR DEVELOPMENT
CORPORATION LTD.**

...APPELLANT (S)

VERSUS

VIJAYA BANK

...RESPONDENT (S)

J U D G M E N T

MANOJ MISRA, J.

1. This statutory appeal arises from a judgment and order of the National Consumer Disputes Redressal Commission at New Delhi¹, dated 13.03.2023, in Consumer Complaint No. 2866 of 2017, whereby the consumer complaint of the appellant was dismissed, *inter alia*, on the ground that the

¹ NCDRC

complainant (i.e., the appellant herein) is not a consumer as per Section 2(1)(d) of the Consumer Protection Act, 1986².

FACTS

2. The appellant, a company incorporated, filed a consumer complaint against Vijaya Bank³ (the respondent), *inter alia*, alleging that it had invested a sum of Rs. 9,00,00,000 (Rs.9 Crores), by way of a fixed deposit, with the Bank, for a period of one year, w.e.f. 28.02.2014, and evidencing the transaction a fixed deposit receipt⁴ dated 03.03.2014 was issued to the appellant and even interest payable on the said FDR was credited in the account of the appellant on 26.03.2014 after deducting TDS⁵. However, on 27.06.2014, the appellant received a letter from the Bank about sanction of a loan/credit facility/ overdraft of Rs. 8.10 Crores against the FDR. Suspecting foul play in sanction of loan/ credit facility/ overdraft against the FDR, the appellant lodged a complaint with the Economic Offences Wing, Crime Branch, Mumbai on 16.07.2014. A letter was also sent to the Bank to reverse the entries *qua* the

² 1986 Act

³ Bank

⁴ FDR

⁵ Tax Deducted at Source

fraudulent overdraft account. The Bank, however, did not accede to the request. As a result, the matter was reported to the Reserve Bank of India⁶. Subsequently, on 04.03.2017, the Bank informed the appellant that the overdraft facility has been closed by adjusting the amount outstanding thereunder against maturity value of the FDR and the remaining balance i.e., Rs. 50,58,847 was remitted *vide* DD No. 245983, dated 04.03.2017. The appellant accepted neither adjustment nor remission and requested the Bank to make payment of the entire FDR amount. As the Bank failed to refund the amount, consumer complaint was filed with a prayer that the Bank be directed to pay the principal amount of Rs. 9 Crores along with interest at the rate of 9.75% per annum from 28.02.2014 along with compensation as well as costs.

3. The Bank contested the complaint on merits as well on its maintainability, *inter alia*, on the following grounds:

(a) The allegations of fraud/forgery etc. can be decided by either a Civil Court or a Criminal

⁶ RBI

Court and not in summary proceedings under the 1986 Act; and

(b) The complainant company is engaged in commercial activity; the alleged investment was to augment profits, therefore, the complainant is not a consumer as defined in Section 2(1)(d) of the 1986 Act.

4. NCDRC by placing reliance on the definition of 'consumer', as defined in Section 2(1)(d)⁷ of the 1986 Act, as also on a decision of this Court in ***Lilavati Kirtilal Mehta Medical Trust vs Unique Shanti Developers and others***⁸ held that the deposit made by the appellant with the Bank had a direct nexus to generation of profit(s) (i.e., earning interest on surplus funds), therefore, the banking services availed were for a commercial purpose. Hence, the

⁷ 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 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 or for any commercial purpose; or
- (ii) hires or avails of 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 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 such 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 purposes of earning his livelihood by means of self-employment];

⁸ (2020) 2 SCC 265

complainant would not be a consumer *qua* the Bank as per Section 2(1)(d) of the 1986 Act. In consequence, NCDRC dismissed the complaint without expressing any opinion on its merit.

5. Aggrieved by rejection of its complaint, the appellant has filed this appeal.

6. We have learned counsel for the parties and have perused the materials available on record.

SUBMISSIONS ON BEHALF OF THE APPELLANT

7. On behalf of the appellant, it was submitted:

(a) Appellant is an undertaking of State of Maharashtra. It availed services of the Bank. As there has been deficiency in service, complaint against the Bank was maintainable.

(b) Deposit in a Bank by itself is not reflective of a commercial purpose. Every legal person parks its money or funds in a Bank. Therefore, deposit in a Bank by itself should not be a determining factor to hold that banking services availed by the depositor were for a commercial purpose.

Moreover, parking of surplus funds in a Bank does not by itself amount to a commercial activity. It may merely be an investment. Therefore, the view taken by NCDRC that the appellant is not a consumer is unsustainable in law.

(c) Moreover, there is no direct nexus between the services availed and generation of profit by the appellant because the principal object of the appellant is to arrange and supply raw materials to specified industries.

(d) Besides, even a company can be a consumer. Therefore, merely because appellant is a company incorporated it would not be a factor determining whether it is a consumer or not.

8. In light of the above submissions, the learned counsel for the appellant prayed that the impugned order be set aside and the matter be remanded back to NCDRC for a decision on merits.

SUBMISSIONS ON BEHALF OF RESPONDENT-BANK

9. *Per contra*, on behalf of the Bank, it was urged that though main object of the appellant may be to promote the

leather industry, etc., but it is not precluded from investing money, not immediately required by the company, for profits. Thus, the purpose of such investment was to augment profits and, therefore, banking services were availed for a commercial purpose. NCDRC was, therefore, justified in holding the appellant not a consumer as per Section 2(1) (d) of the 1986 Act.

10. Additionally, it was submitted on behalf of the Bank that there exists a serious dispute on facts and the allegations in the complaint relating to fraud/ forgery/ manipulation can only be decided in a regular civil or criminal proceeding and not by way of a summary proceeding under the 1986 Act.

ISSUES

11. Upon consideration of the rival submissions and the materials placed on record, in our view, the following issues arise for our consideration:

- (i) Whether the appellant, a body corporate, while availing services of the Bank to deposit its surplus funds in an interest bearing term

deposit, such as an FDR, could be considered a consumer as defined in Section 2(1)(d) of the 1986 Act?

(ii) Whether the nature of allegations made in the complaint were such that they took the claim outside the purview of proceedings under the 1986 Act?

ISSUE NO.(i)

12. Section 2(1)(d)(ii) of the 1986 Act, *inter-alia*, provides that “consumer” means any person who hires or avails of 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 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 such 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. The Explanation to clause (d) of sub-section (1) of Section 2 of the 1986 Act provides that 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 purposes of earning his livelihood by means of self-employment.

13. The expression ‘person’ used in Section 2(1) (d) is defined in Section 2(1)(m)⁹ of the 1986 Act. Construing the definition of ‘person’ as provided in Section 2(1)(m) of the 1986 Act, this Court in ***Karnataka Power Transmission Corporation & Another v. Ashok Iron Works Pvt. Ltd.***¹⁰ held that the definition of person is inclusive and not exhaustive and it would include a body corporate.

14. In ***Lilavati Kirtilal Mehta Medical Trust (supra)***, this Court observed that there could be no straitjacket formula for determining whether an activity or transaction is for a commercial purpose. Yet, by way of guidelines, certain principles were summarised in paragraph 19 of the judgment, which is reproduced below:

⁹ **Section 2. Definitions.** - (1) In this Act, unless the context otherwise requires, -

(m) ‘person’ includes, -

(i) a firm whether registered or not;

(ii) a Hindu undivided family;

(iii) a co-operative society;

(iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not

¹⁰ (2009) 3 SCC 240, paragraph 21

“19. To summarize from the above discussion, though a straightjacket 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.”

19.1 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.

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

19.3 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.

19.4 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.”

15. What is clear from above is that the identity of the person making the purchase, or the value of the transaction, is not conclusive to determine whether the transaction or activity is for a commercial purpose. What needs to be seen is the dominant intention or dominant purpose of the transaction i.e. whether it is to facilitate some kind of profit generation for the purchaser(s) and/or its/their beneficiary. If it is found that the dominant purpose behind the purchase of goods or services is personal use and consumption by the purchaser, and those are otherwise not linked to any commercial activity, the question whether such purchase is for generating a livelihood by means of self-employment need not be addressed. However, where the transaction is for a commercial purpose, it may have to be considered whether it is for generating livelihood by means of self-employment or not.

16. In ***National Insurance Co. Ltd. v. Harsolia Motors & Ors.***¹¹, the complainant, a commercial entity engaged in the business of sale of vehicles, took fire insurance policy from an insurance company, covering its

¹¹ (2023) 8 SCC 362

office, showroom, garage, machinery lying in the showroom premises, etc. The complainant's case was that damages were sustained during Godhra riots and, therefore, the complainant was entitled to be indemnified under the policy of insurance. Aggrieved by action of the insurance company a complaint was filed by claiming deficiency in service. The insurance company took an objection that the complainant was not a consumer as per Section 2(1)(d) of the 1986 Act because its ultimate object is to earn profits. The State Commission upheld the objection; against which, the complainant went in appeal before NCDRC. NCDRC held that the expression "*for any commercial purpose*" would mean that the goods purchased or services hired should be used in any activity directly intended to generate profit, but in a case where goods purchased or services availed are not intended to generate profit, it would not be a commercial purpose. Consequently, when a person takes an insurance cover for indemnification of actual loss suffered, the intention is not to generate profits. Therefore, the complainant was a consumer. Upholding the above view of the National Commission, this Court observed:

“43. ... What needs to be determined is whether the insurance service had a close and direct nexus with the profit generating activity and whether the dominant intention or dominant purpose of the transaction was to facilitate some kind of profit generation for the insured or to the beneficiary and our answer is in the negative and accordingly we are of the view that the complaint filed by the respondent insured herein has no close or direct nexus with the profit generating activity and the claim of insurance is to indemnify the loss which the respondent insured had suffered and the Commission has rightly held that the respondent is a consumer under section 2(1)(d) of the 1986.

44. We further reiterate that ordinarily the nature of the insurance contract is always to indemnify the losses. Insurance contracts are contracts of indemnity whereby one undertakes to indemnify another against loss / damage or liability arising from an unknown or contingent event and is applicable only to some contingency or act likely to come in future.”

17. In ***Poly Medicure Ltd. v. Brillio Technologies (Pvt) Ltd.***¹², after considering several decisions including ***Harsolia Motors***, it was observed that if the transaction has a direct nexus with generation of profits, it would be treated as one for a commercial purpose. However, whether a transaction has nexus with generation of profits or not is to be determined on the facts of each case by taking into

¹² 2025 SCC OnLine SC 2443

consideration, *inter alia*, the nature of the goods purchased or services availed and the purpose for which it is purchased or availed and if, upon consideration of all relevant factors, the picture that emerges is one which reflects that the object of the purchase of goods/services is to generate or augment profit, the same would be treated as one for a commercial purpose. It was also observed that insurance service by its very nature is to secure the insured against an unforeseen loss, therefore, the dominant object of availing such service is not to generate profit but to secure oneself against unforeseen losses.

18. Thus, what is clear from above is that to determine whether the purchasing of goods, or availing of services, is for a commercial purpose or not, one has to look at the dominant object or purpose with which those goods are purchased or services are availed. To ascertain the dominant object, nature of the goods purchased or the services availed also assume importance. Therefore, each case would have to be decided on its own facts. What is also clear is that the status of the purchaser or recipient of goods or services, that is, whether it is an individual or a body corporate, is not the

determining factor for holding whether the transaction is, or is not, for a commercial purpose.

19. Besides, the burden to prove that the goods purchased, or services availed, as the case may be, is for a commercial purpose is on the respondent and not the complainant. In ***Shriram Chits (India) Private Limited v. Raghachand Associates***¹³, after analysing the definition of “consumer”, this Court observed that the definition has three parts. The first part relates to buying of goods/ availing of service for a consideration. Burden of proving the same rests on the complainant. The second part relates to the exception, that is, whether those goods were bought, or services availed, for a commercial purpose. The burden of proving this part lies on the respondent. The third part relates to the explanation, that is, even though the goods purchased, or services availed, are for a commercial purpose, the same are for the purpose of earning complainant’s livelihood, by way of self-employment. The burden of proving the third part lies on the complainant.

¹³ (2024) 9 SCC 509

20. In the instant case, the transaction out of which the complaint arises is regarding a deposit made by the appellant with the Bank. Section 2(1)(o) of the 1986 Act defines 'service'. It means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, finance, insurance etc. There is no dispute that such deposit was made and the Bank had agreed to pay interest. Thus, to that extent the respondent-bank is the service provider and the appellant a service recipient *qua* Bank's contractual obligation to pay interest and maturity value of the FDR. Therefore, in that context, the appellant can be considered a consumer of banking services offered by the respondent. However, the moot question is whether there was any deficiency in rendering those services. If yes, whether those services were availed for a commercial purpose. Both the issues are interlinked because if the Bank's defence that the FDR was pledged for availing credit facility is accepted, not only a commercial purpose gets imputed to the transaction but then there may be no deficiency in rendering service *qua* the

FDR as it would be subject to a subsequent contract of pledge.

21. A bank renders multiple types of service. Accepting cash deposits from customers and paying interest thereon is the most basic of services rendered by a bank, as ordinarily all cash deposits yield interest. Therefore, merely because a deposit earns interest, it does not mean that the deposit was made for a commercial purpose because there may be other reasons to deposit the money in a bank and those may have nothing to do with generation of profit. For example, holding of cash by a person beyond a limit may not be permissible under the statutory framework. Therefore, he may have to deposit the money notwithstanding whether his intention is to earn profits. Besides, banking service may be utilized for safe-keeping of money as keeping cash is fraught with risk. Thus, merely because a fixed deposit receipt earns interest does not mean that the banking service availed is for a commercial purpose. To this extent, we do not agree with the view of NCDRC.

22. However, if the deposit is made to leverage credit facilities for augmenting business, it would have a direct nexus with revenue generation/ profits. In such a case, it could be said that the banking service was availed for a commercial purpose. In that scenario, the service recipient may not fall in the category of a consumer unless he brings his case within the four corners of the Explanation to Section 2(1)(d) of the 1986 Act.

23. It is undisputed that the appellant is a body corporate. Though being a body corporate is not the determining factor of a service recipient's intent to generate profit, yet it is a factor to be considered along with others to ascertain the true intent with which the service in question was availed.

24. In the instant case, according to the complainant, the deposit was for a fixed term and had no direct nexus to the core business of the complainant i.e., the appellant. Though, according to the Bank, the deposit was to generate profit as the FDR not only carried interest, it was pledged to

avail credit facilities/ overdraft for business use and, therefore it served a commercial purpose.

25. The complaint allegations, if read as a whole, would reveal that the complainant (i.e., the appellant) was aware about Bank's stand that the FDR was pledged to avail credit facilities. If that is correct then it is a matter of common knowledge that credit facilities are availed by a corporate body for its business. Therefore, there existed a serious dispute regarding the true intent of the appellant in making such deposit.

26. In normal course, parking of surplus funds by a body corporate with a bank, either for safe custody or to comply with statutory mandate, as the case may be, is not reflective of a commercial purpose. More so, because ordinarily all deposits in a Bank earn interest. Hence, it would be too naive to hold that since the deposit earned interest, banking service was availed for a commercial purpose. However, it would be different where deposits are made to leverage a credit facility, or for availing other banking services, for business use. Deposit of the latter kind

may amount to availing banking services for a commercial purpose.

27. In the case on hand, the deposit was by one business entity, namely, the appellant company, with another business entity, namely, the Bank. It was thus, a business-to-business transaction. Admittedly, the Bank had set up a case that FDR was pledged to avail credit facility and the maturity value of the FDR was adjusted against the dues. Though the appellant has denied this loan transaction, this issue is not settled by either a criminal court or a civil court even though a criminal complaint has been made in that regard. In such circumstances, it is not a simple case of not fulfilling contractual obligation *qua* the deposit but a case where a subsequent contract of pledge is set up which, if accepted, would override the contractual obligation under the FDR. Thus, without determining whether there was fraud played upon the appellant, or forged documents were created for a false pledge /loan, it would not be possible to determine whether the services availed by the appellant from the respondent-Bank were for

a commercial purpose or not. Issue No.(i) is decided accordingly.

ISSUE NO.(ii)

28. In *Ravneet Singh Bagga v. KLM Royal Dutch Airlines and Another*¹⁴ this Court had the occasion to construe the words ‘service’, as defined in Section 2(1)(o), and ‘deficiency’, as defined in Section 2(1) (g) of the 1986 Act. After considering their respective definitions provided in the 1986 Act, it was held:

“5. Section 2(1)(o) defines “service” to mean service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service. Section 2(1)(g) defines “deficiency” to mean any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

¹⁴ (2000) 1 SCC 66

6. The deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it. The complainant has, on facts, been found to have not established any wilful fault, imperfection, shortcoming or inadequacy in the service of the respondent. The deficiency in service has to be distinguished from the tortious acts of the respondent. In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist for grant of relief under the Act for the alleged acts of commission and omission attributable to the respondent which otherwise do not amount to deficiency in service. In case of bona fide disputes no wilful fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance in the service can be informed (sic). If on facts it is found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of the transaction and that their action or the final decision was in good faith, it cannot be said that there had been any deficiency in service. If the action of the respondent is found to be in good faith, there is no deficiency of service entitling the aggrieved person to claim relief under the Act. The rendering of deficient service has to be considered and decided in each case according to the facts of that case for which no hard and fast rule can be laid down. Inefficiency, lack of due care, absence of bona fides,

rashness, haste or omission and the like may be the factors to ascertain the deficiency in rendering the service.”

(Emphasis supplied)

29. Following the decision in ***Ravneet Singh Bagga*** (supra) in ***Chairman and Managing Director, City Union Bank Limited and Another v. R. Chandramohan***¹⁵, it was held:

“14. The proceedings before the Commission being summary in nature, the complaints involving highly disputed questions of facts or the cases involving tortious acts or criminality like fraud or cheating, could not be decided by the Forum/Commission under the said Act. The “deficiency in service”, as well settled, has to be distinguished from the criminal acts or tortious acts.”

(Emphasis supplied)

30. It is thus settled that the burden to prove deficiency in service is on the complainant, and deficiency in service is different from criminal or tortious acts of the service provider. Though one of the objects of the 1986 Act is to provide speedy and simple redressal to consumer disputes, its object is not to deal with complex factual issues

¹⁵ (2023) 7 SCC 775

pertaining to criminal or tortious liability in a summary manner.

31. In light of the aforesaid legal position, we shall now consider whether the allegations set out in the complaint, took the complaint out of the purview of the 1986 Act.

32. According to the complaint allegations, the appellant had invested 9 crores by way of a term deposit with the Bank. It is also the case of the appellant that the said term deposit was fraudulently hypothecated for availing overdraft without the sanction of the appellant company. What is important to note is that when the overdraft against the FDR was brought to the notice of the appellant, a complaint was made with the respondent-bank. The response of the Bank to that complaint is important, inasmuch as the Bank claims that the original of the FDR is with the Bank and the same stands pledged for availing overdraft. Besides, the Bank claimed that the FDR which the appellant claims to be in its possession is a forged document. In the complaint itself, the appellant admitted that this matter was reported to the Economic Offences

Wing. Therefore, the main grievance of the appellant appears to be *qua* adjustment of proceeds of the FDR against the amount outstanding in the overdraft account. Thus, what is clear from the complaint allegations is that the Bank had acknowledged the FDR and had accounted for the interest payable thereon but, instead of releasing the maturity proceeds in favour of the appellant, it had set up a subsequent contract of pledge of that FDR for according overdraft facility to the appellant. According to the appellant this pledge is a fraudulent act and amounts to an offence. In such circumstances, the complaint allegations as they stand cannot be adjudicated upon in a proceeding under the 1986 Act as those allegations could appropriately be addressed in a regular criminal or civil proceeding. Hence, the complaint as framed is not maintainable. Issue No.(ii) is decided in the aforesaid terms.

33. In light of our conclusion on Issue No.(ii), we are of the view that NCDRC was justified in dismissing the complaint even though the reasons recorded by it for such dismissal may not be entirely correct. As a result, the appeal lacks merit and is, accordingly, dismissed. Dismissal

of the complaint shall not be a bar on the right of the appellant to take recourse to appropriate proceedings before appropriate court/ forum. There shall be no order as to costs.

34. Pending application(s), if any, stand disposed of.

.....**J.**
(PAMIDIGHANTAM SRI NARASIMHA)

.....**J.**
(MANOJ MISRA)

New Delhi;
March 19, 2026