



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 01.09.2025

Judgment delivered on: 18.09.2025

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CM(M) 757/2022 & CM APPL. 33618/2022

SOUMYA BHATTACHARYA

.....Petitioner

versus

SUDHIR KUMAR THAKUR & ORS.

.....Respondent

Memo of Appearance

For the Petitioner: Mr. Sugata Shankar Roy, Advocate

For the Respondent: Mr. A.K. Thakur, Mr. Rishi Raj and Mr. Sujeet Kumar,
Advocates for R-1 to R-3

Mr. Sanjoy Kumar Ghosh, Mr. Prabir Basu and Ms.
Rupali S. Ghosh, Advocates for R-4 & R-5

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. It needs to be seen whether Dr. Sudhir Kumar Thakur (*respondent no. 1 herein*) has any locus to file consumer complaint in question or not.
2. Let me take note of the relevant facts.
3. Mr. Shambhu Nath Thakur (*younger brother of the complainant*) was an engineer who graduated from BITS, Pilani. He had been working as General Manager in *M/s Texmaco Ltd.* He was suffering from multiple black patches on his skin and was bleeding also and, therefore, the concerned doctor, on the rolls of his employer, advised him certain tests/investigations which were conducted on 07.04.2010. Test report indicated platelet counts to be 17000/cmm and since such counts were



drastically below the normal range, he was immediately rushed to *Apollo Gleneagles Hospital, 58, Canal Circular Road, Kolkata (OP No. 1 in the complaint)*.

4. According to complainant, though there was immediate need of platelet transfusion, no attention was given to the same and even the admission in the hospital was delayed by more than one hour as valuable time was wasted by the hospital authorities in demanding advance payment. The patient was a known case of hypertension and was on Aspirin which further compounded the damage but despite all these things, well within the knowledge of the concerned hospital and their doctors, no proper treatment was given to the patient, who, eventually, died on 09.04.2010.

5. It was in the aforesaid background that a consumer complaint (*Consumer Complaint No. 114 of 2012*) was filed by Dr. Sudhir Kumar Thakur against the concerned hospital and its doctors including Dr. Soumya Bhattacharya (*OP No. 3 in the complaint*).

6. In his such complaint, he, about his locus, mentioned as under: -

“That after the death of his brother, the complainant is managing his estate and looking after the maintenance and upkeep of the wife and children of the deceased. Therefore, the complainant is filing this present complaint in his capacity as a trustee on behalf of the wife and children of the deceased.”

7. At the stage of final hearing, argument was raised, again, from the side of opposite party with respect to the maintainability of such consumer complaint. It was contended that such brother of the deceased was not ‘*legally competent*’ to file complaint when *legal heirs* of the deceased were alive and, therefore, he had no locus to file such



complaint. Such prayer has been turned down by the learned National Consumer Disputes Redressal Commission (in short *NCDRC*) on 07.12.2021 and such order is under challenge before this Court.

8. Section 2(1)(b) of *Consumer Protection Act, 1986* defines as to who can be the complainant. It reads as under: -

“complainant” means-

- (i) *a consumer; or*
- (ii) *any voluntary consumer association registered under 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;*
- (iv) *one or more consumers, where there are numerous consumers having the same interest;*
- (v) *in case of death of a consumer, his legal heir or representative;*

who or which makes a complaint;

9. Thus, if consumer is no longer alive, complaint can be instituted and pursued by his legal heir or representative.

10. The argument coming from the side of the petitioner herein is to the effect that since ‘*widow and daughters*’ of the deceased patient were alive and since there was a direction that they be impleaded as party, without their impleadment, complaint could not have been pursued by the brother of the deceased as he is not a Class-I heir as per *Hindu Succession Act, 1956*.

11. The abovesaid issue of locus had been raised earlier also by the petitioner herein before *NCDRC*.

12. It will be worthwhile to mention that when the complaint in question was taken up by *NCDRC* on 28.01.2016, same objection was raised by the opposite party and *NCDRC* noted that though the complaint had been filed by the brother of the deceased, the mother of deceased had



also filed an application, praying for adding her name as one of the complainants. Faced with the aforesaid development, objection taken by the opposite party was rejected.

13. Thus, the mother of deceased was impleaded as co-petitioner in said complaint.

14. Needless to emphasize, she is also a Class-I heir as per *Hindu Succession Act, 1956*.

15. The aforesaid order was though sought to be reviewed by opposite party, their review application was dismissed by learned NCDRC on 15.12.2017. While pressing such review application, it was argued by opposite party that in terms of *Hindu Succession Act, 1956*, in case of intestate succession, the estate devolved upon legal heirs of first degree and in absence of legal heirs of first degree, the devolution was upon the legal heirs of second degree. It was argued that since elder brother was not legal heir of first degree, the complaint should have been dismissed. Learned NCDRC took note of the fact that complaint had been filed by the complainant, on behalf of widow and minor children of his deceased brother, showing himself as their trustee and even if it was under some mistaken impression, the matter could not be rendered remediless. Observing that such widow and minor daughters were the most affected and necessary parties, they were directed to be impleaded as party to the complaint as per the aforesaid order dated 15.12.2017.

16. It also needs to be mentioned right here that during the pendency of the complaint, the mother of the deceased, who had been impleaded as co-petitioner in said complaint died and her LRs were brought on record and one such LR has also, reportedly, expired



17. Fact, however, remains that when the complaint was taken up by the NCDRC on 12.02.2019, though learned NCDRC reiterated that such brother of the deceased qualified to be a ‘complainant’ within the meaning of Section 2 (1)(b)(v) of *Consumer Protection Act, 1986*, it, in the interest of justice, also observed that there would not be any legal infirmity if such brother continues to pursue his complaint and also impleads the children, widow and mother of the deceased patient as *opposite party*.

18. Resultantly, NCDRC directed that the children, widow and mother of the deceased patient be impleaded as opposite party as OP No. 8 to 11.

19. *The direction qua impleadment of mother seemed superfluous as she had already been directed to be impleaded as co-petitioner in complaint.*

20. Fact remains that such order dated 12.02.2019 was challenged by petitioner herein by filing an appeal before the Hon’ble Supreme Court which was registered as Civil Appeal No. 3876/2019. The contention coming from the side of the petitioner before the Hon’ble Supreme Court was to the effect that he had no grievance if such heirs were to be arrayed as co-petitioners in the complaint. Said appeal was disposed of by Hon’ble Supreme Court while observing as under in its order dated 26.04.2019: -

“We do not think it appropriate to interfere in the matter at this stage. The interest of justice would be subserved if we direct the heirs and legal representatives of the deceased to implead themselves as co-petitioners in the complaint within six weeks of the order. We order accordingly. If the heirs and legal representatives decline to implead themselves as co-petitioners, the present appellant will be at liberty to challenge the locus of the complainant to maintain the complaint.



The appeal stands disposed of accordingly.

We make it clear that we have not expressed any opinion on the merits of the matter.”

21. Thus, such heirs were directed to be made co-petitioners in the complaint in question and the opposite party was given liberty to challenge the locus of the complainant, in case of any resistance coming from them.

22. Since Widow and daughters could not be impleaded as co-petitioners, the aspect of maintainability has been re-agitated by the petitioners.

23. Since the mother had already been impleaded as a co-petitioner in the year 2016, the contention raised in the present petition seems to be absolutely fallacious. Learned counsel for complainant also submits that the Hon'ble Supreme Court disposed of said appeal on 26.04.2019, without issuing any notice, and if any notice had been issued, he would have certainly apprised the Hon'ble Supreme Court that one such Class-I legal heir i.e. mother was already a co-petitioner.

24. Fact remains that complainant is brother of deceased and his mother had been impleaded, much before 26.04.2019.

25. It really does not matter whether the complainant describes himself as a trustee or *karta* or a self-styled caretaker of widow and daughters of the deceased.

26. He is, definitely, not a stranger or a rank-outsider.

27. Unfortunately, the complainant does not have the correct addresses of widow and daughters of his deceased brother and despite making best efforts, they could not be served. Since they remained unserved, it



cannot be imagined that they had or would have resisted their such impleadment and, therefore, the endeavour of the opposite party to re-open the aforesaid issue, all over again, seems to be nothing more than a delaying tactic.

28. The provisions of *Consumer Protection Act, 1986*, being a welfare legislation, need to be construed in a liberal manner and in any case, the brother of the deceased would still fall within the definition of *complainant* as he is definitely his representative as well as the legal heir even if, of a little remote degree. Reference be also made to *Spring Meadows Hospitals and Ors. v. Harjol Ahluwalia through K.S. Ahluwalia and Ors. AIR 1998 SC 1801* wherein it is held that any such complaint can be filed by a family member.

29. Words “legal heir” and “representative” have not been defined in *Consumer Protection Act, 1986*, but these cannot be given any restricted and rigid meaning. Moreover, the Act does not make any distinction between a *class-I* or *class-II* legal heir. It only refers to word ‘legal heir’. Even if argument of the petitioner herein is accepted, since mother, a class-I heir, was already a co-petitioner, the complaint becomes maintainable as such impleadment has to relate back to its date of institution. Moreover, the order of impleadment of mother, as a co-petitioner, has already attained finality.

30. The impugned order also records that the issue of *award of compensation* would be considered when situation so arises. Importantly, as per affidavit dated 20.02.2019 filed by the brother of the deceased before NCDRC, he has, categorically, deposed therein that if any compensation is awarded by the Hon’ble Commission, he i.e.



Complainant No. 1 will not claim the same and such compensation be rather awarded to the children, widow and the mother of the deceased.

31. Viewed thus, this Court does not find any merit in the present petition. Same is accordingly dismissed.

32. Since matter has delayed considerably, learned NCDRC is requested to expedite its disposal which is, even otherwise, at the stage of final arguments. It is, however, expected that the *memo of parties* in the complaint in question would be in consonance with the directions of the Hon'ble Supreme Court.

33. Pending application also stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

SEPTEMBER 18, 2025/dr/pb