

CASE NO.:
Appeal (civil) 92 of 1998

PETITIONER:
The Secretary, Thirumurugan Co-operative Agricultural Credit Society

RESPONDENT:
M. Lalitha (dead) through LRs. & Ors.

DATE OF JUDGMENT: 11/12/2003

BENCH:
Shivaraj V. Patil & D.M. Dharmadhikari.

JUDGMENT:
J U D G M E N T

Shivaraj V. Patil J.

The respondents, being the members of the appellant-society, had pledged paddy bags for obtaining loan. The appellant-society issued notices to the respondents demanding payment of loan amount with interest thereon. The respondents filed petitions in the District Consumer Disputes Redressal Forum, Thiruchirapally seeking direction to the appellant to release the paddy bags pledged on receipt of the loan amount or in the alternative to direct the appellant to pay the market value of the paddy bags with interest thereon from the date of pledging till the date of release and also to pass an order for compensation for mental agony and suffering. The appellant contested the claims of the respondents before the District Forum raising a preliminary objection that Consumer Forum had no jurisdiction to decide the dispute between members and cooperative society in view of Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 (for short 'the Act'). The District Forum, in the light of the pleadings of the parties, raised the following points for determination:-

"1) Whether the complainants are consumers and whether there is any consumer disputes within the meaning of the Consumer Protection Act and whether this Forum has no jurisdiction to entertain the complaints of this nature and decide the issue?

2) Whether there is any deficiency in service and negligence on the part of the opposite party in all the complaints?

3) Whether the complainants in all the complaints are entitled to the reliefs prayed for?"

The District Forum answered the points 1 and 2 in favour of the respondents and granted relief.

The appellant took up the matters in appeal before the State Consumer Disputes Redressal Commission. The respondents also filed appeal to the extent they were aggrieved in regard to payment of interest from 14.9.1992. The State Commission, by the common order, allowed the appeals filed by the appellant and dismissed the appeals filed by the respondents. The State Commission held that complaints filed by the respondents were themselves not maintainable having regard to Section 90 of the

Act. Hence, the State Commission did not deal with the other contentions.

Aggrieved by the order of the State Commission, the respondents approached the National Consumer Disputes Redressal Commission by filing revision petition. The National Commission, after hearing the learned counsel for the parties and dealing with the contentions advanced by them, found fault with the order of the State Commission. Consequently, the revision petition was allowed. The order of the State Commission was set aside restoring the order passed by the District Forum. Hence, this appeal.

The learned counsel for the appellant urged that (1) Section 90 of the Act impliedly ousts the jurisdiction of all courts and tribunals including that of a civil court under Section 9 CPC and the Consumer Forum created under the Consumer Protection Act, 1986 (for short 'the 1986 Act') from adjudicating upon the issues falling within the scope of said Section; on the facts of the present case, the dispute is covered by the said Section. For this purpose, he relied on Section 156 of the Act; (2) the Act being a special enactment and when specific provisions are made exclusively to deal with the disputes between a cooperative society and its members, the disputes raised before District Forum by the respondents were not maintainable; (3) The Act read with the Rules creates special rights and liabilities for the members and the management and lays down that all questions about the said rights and liabilities are to be determined by the Registrar and that has the provisions for appeal, revision and review. Hence the case in any event is covered by the proposition (2) set out at page 682 in Dhulabhai and others vs. The State of Madhya Pradesh and another [1968 (3) SCR 662]; and (4) If the argument of the respondents is accepted a situation may arise where one party may approach a forum under the 1986 Act and the other under the Act, or the same party may approach two forums one after the other or simultaneously. In such a situation there is likelihood of conflict of decisions, which should be avoided. He drew our attention to certain provisions of the Act and the 1986 Act. He cited few decisions in support of his submissions. He alternatively submitted that in case his contentions are not accepted, the State Commission having not decided other contentions on merit in the appeal filed by the appellant, the matter may be remanded to the State Commission to adjudicate the issues other than the issue of maintainability.

In opposition, the learned senior counsel, who assisted the Court at our request in the absence of any representation despite service of notice on the respondents, supported the impugned order, contending that Section 3 of the 1986 Act clearly shows that the remedy available under the 1986 Act is in addition to and not in derogation of the other remedies available; having regard to the Statement of Objects and Reasons and the purpose sought to be served by the 1986 Act, it cannot be said that District Forum had no jurisdiction to decide the disputes. He submitted that even under Section 156 of the Act, the jurisdiction of the District Forum is not barred; if at all, it is only the jurisdiction of the civil court in respect of certain matters is barred. He added that a consumer may include a member of cooperative society; reliefs that can be granted under the 1986 Act are wider beside being speedy. He also drew our attention to certain provisions of both the Acts and placed reliance on few decisions in support of his submissions.

We have carefully considered the submissions made on either side. The provisions of the Act to the extent they are relevant

are:

"Section 90. Disputes \026 (1) If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the competent authority constituted under sub-section (3) of Section 75 or the Registrar or the Society or its board against a paid servant of the society) arises \026

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its board or any officer, agent or servant of the society, or

(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society, or

(d) between the society and any other registered society, such disputes shall be rendered to the Registrar for decision.

Explanation \026 For the purpose of this section, a dispute shall include \026

(i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of the deceased member whether such debt or demand be admitted or not.

(ii) A claim by a registered society against a member, past member or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property, and

(iii) a decision by the board under sub-section (3) of Section 34:

Provided that no dispute relating to, or in connection with, any election shall be referred under this sub-section till the date of the declaration of the result of such election."

Section 156 \026 "Bar of jurisdiction of civil courts - Notwithstanding anything contained in any other law for the time being in force no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an

officer authorized or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done by or under this Act."

Section 3 of the 1986 Act reads:-

"Section 3. Act not in derogation of any other law \026 The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

Before proceeding further, it is useful to know the background, the objects and reasons and purpose for which the 1986 Act is enacted. Consequent upon Industrial Revolution and vast development and expansion in the field of international trade and commerce, variety of consumer goods entered the market to meet the needs of the consumers and most of services like insurance, transport, electricity, housing, entertainment, finance and banking have been made available to the consumers. Well-organized sectors of manufacturers and traders with better energy and markets have emerged affecting relationship between the traders and consumers. With the help and aid of media both electronic and print, the advertisements of goods and services in television, newspapers and magazines have created great impact and influence on the demand for the same by the consumers though there may be manufacturing defects or deficiencies or short-comings in the quality, quantity and the purity of the goods or there may be deficiency in the services rendered. In the interest of the public and to protect the consumers, it became necessary to check adulterated and substandard articles in the market. Despite various other statutes such as Indian Contract Act, 1972, Sale of Goods Act, 1930, the Indian Penal Code, 1960, The Standard of Weights and Measures Act, 1976 and the Motor Vehicles Act, 1988 etc. being in operation, very little could be achieved in the field of consumer protection. Though the MRTP Act 1969 and the Prevention of Adulteration Act, 1954 provide relief to the consumers yet it became necessary to protect the consumers from the exploitation and to save them from adulterated and substandard goods and deficiency in services and to safeguard their interest.

In General Assembly a Consumer Protection Resolution No.39/248 was passed and India is a signatory to this Resolution. The United Nations had passed a resolution in 1985 indicating certain guidelines under which the governments could make laws for better protection of the interest of the consumers and such laws were more necessary in developing countries to protect the consumer from hazardous to their health and safety and to make them available speedier and cheaper redress. With this background, the 1986 Act was enacted. The Statement of objects and reasons show that the Consumer Protection Bill 1986 sought to provide for better protection of the interest of the consumers and for the purpose, to make provision for the establishment of consumer council and other authorities in the settlement of consumer disputes and for matters connected therewith. It seeks, inter alia, to promote and protect the rights of consumers such as protection against marketing of goods which are hazardous to life and property; the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect

the consumer against unfair trade practices; the right to be assured, wherever possible, access to an authority of goods at competitive prices; the right to be heard and to be assured that the interest of consumers will receive due consideration at appropriate forums; the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers and right to consumer education. The object is also to provide speedy and simple redressal to consumer disputes, a quasi judicial machinery is sought to be set up at the district, State and Central levels. These Quasi Judicial bodies will observe principles of natural justice and have been empowered to give relief of specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of orders given by Quasi Judicial bodies have also been provided.

The preamble of the Act declares that it is an Act to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers disputes and matters connected therewith. In Section 3 of the Act in clear and unambiguous terms it is stated that the provisions of 1986 Act shall be in addition to and not in derogation of the provisions of the any other law for the time being in force.

From the statement of objects and reasons and the scheme of 1986 Act, it is apparent that the main objective of the Act is to provide for better protection of the interest of the consumer and for that purpose to provide for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. To serve the purpose of the Act, various quasi judicial forums are set up at the district, State and National level with wide range of powers vested in them. These quasi judicial forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers and to impose penalties for non-compliance of their orders.

As per Section 3 of the Act, as already stated above, the provisions of the Act shall be in addition to and not in derogation to any other provisions of any other law for the time being in force. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers, better the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is clear bar.

The view we are taking is supported by the earlier decisions of this Court. In Lucknow Development Authority vs. M.K. Gupta [(1994) 1 SCC 243], this Court observed, thus: -

"We therefore come straight away to the legal issue involved in these appeals. But before doing so and examining the question of jurisdiction of the District Forum or State or National Commission to entertain a complaint under the Act, it appears appropriate to ascertain the purpose of the Act, the objective it seeks to achieve and the nature of social purpose it seeks to promote as it shall facilitate in comprehending the issue involved and assist in construing various provisions of

the Act effectively. To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, 'to provide for the protection of the interest of consumers'. Use of the word 'protection' furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful, business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot."

In *Fair Air Engineers Pvt. Ltd. And another vs. N.K. Modi* [(1996) 6 SCC 385], this Court, after referring to Lucknow Development Authority case (supra), held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It went on to say that "It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words "in derogation of the provisions of any other law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent court of civil

jurisdiction. Nonetheless, the Act provides the additional remedy." Further, dealing with the jurisdiction of the forums under the 1986 Act in paragraph 16 this Court has stated, thus: -

"16. It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act."

(emphasis supplied)

Again in *Spring Meadows Hospital and another vs. Harjot Ahluwalia* through *K.S. Ahluwalia and another* [(1998) 4 SCC 39], this Court, having taken note of the background in which the 1986 Act came to be placed on the statute book, observed that the Act creates a framework for speedy disposal of consumer disputes and an attempt has been made to remove the existing evils of the ordinary court system. The Act being a beneficial Legislation should receive a liberal construction.

A Bench of three learned Judges of this Court in a recent decision in *State of Karnataka vs. Vishwabharathi House Building Coop. Society and others* [(2003) 2 SCC 412], expressed the view that the 1986 Act was brought into force in view of the long-felt necessity of protecting the common man from wrongs wherefor the ordinary law for all intent and purport had become illusory and that in terms of the said Act, a consumer is entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of. Referring to the *Fair Air Engineers (P) Ltd. Case* (aforementioned) the Court stated that the provisions of the said Act are required to be interpreted as broadly as possible. On the question of jurisdiction it is stated that the forums under the Act have jurisdiction to entertain a complaint despite the fact that other forums/courts would also have jurisdiction to adjudicate upon the lis. It is also noticed that the Act provides for a further safeguard to the effect that in the event a complaint involves complicated issues requiring recording of evidence of experts, the complainant would be at liberty to approach the civil court for appropriate relief.

The learned counsel for the appellant strongly relied on the decision of this Court in Chairman, Thiruvalluvar Transport Corporation vs. Consumer Protection Council [(1995) 2 SCC 479]. A deeper look at the facts of that case and question considered therein make it clear that it governs the fact of that case having regard to the specific provisions contained in the Motor Vehicles Act, 1988. In brief the facts of the case are that a person was traveling in an omni bus, the driver of the bus tried to overtake a bullock-cart due to which the bullocks got panicky whereupon the driver swerved the bus to the left and applied brakes. In this situation the person, who was sitting in the rear seat, was thrown in the front and hit against the iron bar sustaining a serious head injury and subsequently succumbed to the injury. The legal representatives of the deceased victim did not file claim petition before the Motor Accidents Claims Tribunal constituted under the Motor Vehicles Act, 1988. After expiry of the period of limitation for filing claim petition before the Motor Accidents Claims Tribunal, the LRs of the deceased filed a complaint claiming Rs.20 lakhs before the National Commission. As can be seen from paragraph 6 of the judgment, the question that arose for consideration was whether the National Commission had jurisdiction to entertain the claim application and award compensation in respect of an accident involving the death of a person caused by the use of a motor vehicle. Taking note of the fact that the Claims Tribunals constituted under the Motor Vehicles Act, 1988 had jurisdiction to entertain claim for compensation which clearly fell within the ambit of Section 165 of the Motor Vehicles Act, 1988, held that the 1988 Act can be said to be a special Act in relation to claims of compensation arising out of the use of a motor vehicle. It is observed that the accident occurred had nothing to do with service provided to the deceased, if one reads the provision along with the definition of complaint in Section 2(1)(c) and service in Section 2(1)(o) of the 1986 Act. This Court held that the complaint in that case could not be said to be in relation to any service hired or availed by the consumer because the injury sustained by the consumer had nothing to do with the service provided or availed by him. That was a case in which it was found that the National Commission had no jurisdiction at all. That was not a case of additional remedy available before a forum created under the 1986 Act. In our view the said decision does not advance the case of the appellant in any way.

The decision in Dhulabhai case (supra) also does not help the appellant. The present case is not one where the question to be considered is as to the exclusion of jurisdiction of civil court in view of the provisions of Section 90 read with Section 156 of the Act. Provisions of 1986 Act, as already made clear above, apply in addition to the other provisions available under other enactments. It follows that the remedies available under the 1986 Act for redressal of disputes are in addition to the available remedies under the Act. Under the 1986 Act we have to consider as regards the additional jurisdiction conferred on the forums and not their exclusion. In Dhulabhai case consideration was whether the jurisdiction of the civil court was excluded. Propositions (1) and (2) indicate that where the statute gives a finality to the orders of the special tribunals the jurisdiction of civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Further, where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. The remedies that are available to an aggrieved party under the 1986 Act are wider. For instance in addition to granting a specific relief the forums under the 1986 Act have

jurisdiction to award compensation for the mental agony, suffering, etc., which possibly could not be given under the Act in relation to dispute under Section 90 of the Act. Merely because the rights and liabilities are created between the members and the management of the society under the Act and forums are provided, it cannot take away or exclude the jurisdiction conferred on the forums under the 1986 Act expressly and intentionally to serve a definite cause in terms of the objects and reasons of the Act, reference to which is already made above. When the decision of Dhulabhai's case was rendered the provisions similar to 1986 Act providing additional remedies to parties were neither available nor considered. If the argument of the learned counsel for the appellant is accepted it leads to taking away the additional remedies and forums expressly provided under the 1986 Act, which is not acceptable.

The question of conflict of decisions may not arise. If the parties approach both the forums created under the Act and the 1986 Act, as indicated in the case of Fair Air Engineers (P) Ltd. (supra), it is for the forum under the 1986 Act to leave the parties either to proceed or avail the remedies before the other forums, depending on the facts and circumstances of the case.

Thus, having regard to all aspects we are of the view that the National Commission was right in holding that the view taken by the State Commission that the provisions under the Act relating to reference of disputes to arbitration shall prevail over the provisions of the 1986 Act is incorrect and untenable. The National Commission, however, did not take note of the fact that the State Commission had not decided the other contentions raised in the appeals on merits. We are inclined to accept the alternative submission made on behalf of the appellant for remanding the case to the State Commission for deciding the other issues on merits while affirming that the complaints before the district forum made by the respondents were maintainable and the district forum had jurisdiction to deal with the disputes. In this view, while affirming the order of the National Commission as to the maintainability of the disputes before the forum under the Act, we remand the appeals to the State Commission for their adjudication on other issues on merits without going to the question of maintainability of the disputes before the forum under the 1986 Act.

Before parting with the case we place on record our appreciation of the assistance given by Shri T.L.V. Iyer, learned senior counsel.

The appeal is disposed of in the above terms.

No costs.