

ITEM NO.2

COURT NO.12

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 5510/2020

[Arising out of impugned final judgment and order dated 16-01-2020 in FA No. 1209/2018 passed by the National Consumers Disputes Redressal Commission, New Delhi]

VIRENDER SINGH

Petitioner(s)

VERSUS

M/S. DARSHANA TRADING CO. THR. ITS
PROP. SANJAY SETH (DEAD) & ANR.

Respondent(s)

Date : 18-03-2025 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Petitioner(s) : Mr. Somesh Chandra Jha, AOR

For Respondent(s) : Mr. E.R.H. Manjunath, Adv.
Mr. Sanjay Jain, AOR
Ms. Ruchika Bhan, Adv.
Mr. Amber Jain, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The petitioner before this Court has challenged the order passed by the National Consumer Disputes Redressal Commission [in short, "the National Commission"] dated 16.01.2020, by which the order of the State Consumer Disputes Redressal Commission, Uttar Pradesh [in short, "the State Commission"] has been upheld and the complaint of the petitioner has been dismissed on the ground that he was not a 'consumer' as defined under Section 2(1)(d) of the Consumer Protection Act, 1986 (in short, "the Act").

The brief facts of the case are that the petitioner had purchased a machine viz. Model MPS GD 1212-300W HSLC Series Laser

Cutting Machine and Bending Machine, by which the manufacturing of die could be done at cheaper cost and with more precision. As there were defects in the machine and it could not even become operational, a complaint was filed by the petitioner before the State Commission, wherein the preliminary objection raised was that since the machine was purchased purely for commercial purposes, therefore, the complainant is not covered under the definition of a 'consumer' in terms of the Act and therefore, the complaint itself was not maintainable. This objection found favour with the State Commission and the petitioner's complaint was dismissed.

As has already been stated above, these findings of the State Commission have also been reiterated by the National Commission in its order dated 16.01.2020. The petitioner now urges before this Court that he is a consumer for the reason that although the machine was used, in a manner of speaking, for commercial purposes, but by and large the machine was used only for the purposes of self-employment. Therefore, he would be covered under the explanation given in Section 2(1)(d) of the Act of 1986. In other words, argue that since the machine was used for self-employment, it cannot be called 'commercial purpose'. He would also rely upon a Judgment of this Court in *Paramount Digital Colour Lab and Ors. Vs. Agfa India Private Limited and Ors.* reported in (2018) 14 SCC 81. Paragraphs 12 and 17 of the said Judgment are reproduced as under :-

"12. In this case, since the appellants have purchased the machine, Section 2(1)(d) of the Act is applicable. "Consumer" as defined under

Section 2(1)(d) of the Act does not include a person who obtains goods for a "commercial purpose". The Explanation supplied to Section 2(1) (d) clarifies that "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". If both these provisions are read together, it leads to the conclusion that if a person purchased the goods for consideration not for any commercial purpose, but exclusively for the purposes of earning his livelihood by means of "self-employment", such purchaser will come within the definition of "consumer". If a person purchases the goods for a "commercial purpose" and not for the purposes of earning his livelihood by means of "self-employment", such purchaser will not come within the definition of "consumer". It is therefore clear, that despite "commercial activity", whether a person would fall within the definition of "consumer" or not would be a question of fact in every case. Such question of fact ought to be decided in the facts and circumstances of each case."

In the facts of the above case, this Court was of the opinion that though the machine purchased had a commercial purpose, yet it was used for "self-employment" considering that the use of the machine was by the consumer and the size of his business.

What is important here is that if the machine is purchased for self-employment purposes, it cannot be categorized as "commercial purpose". But each case has to be seen in light of its own facts. In the case cited above i.e. Paramount Digital (supra), there were two unemployed graduate persons who had purchased the machine evidently for self-employment. But in the present case, the petitioner/complainant was already running a business as a commercial venture and admittedly, he had purchased the machine to expand his business. It is not a case where the petitioner was himself operating the machine, but he had employed workmen who were doing the job for him. Under these circumstances, no matter how small the venture is, it cannot be called 'self-employment' for the purposes of the Act and therefore, we find no scope to take a different view than the one taken by the State Commission and the National Commission. The Special Leave Petition is, accordingly, dismissed.

As we have dismissed the petition primarily on the ground of jurisdiction under the Act, in case the petitioner moves a Civil Suit within four weeks from today, he would be at liberty to rely upon Section 14 of the Limitation Act, 1963 and the same shall be dealt with in accordance with law.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)
ASST. REGISTRAR-CUM-PS

(RENU BALA GAMBHIR)
ASSISTANT REGISTRAR