

# Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

“ An aware consumer is an asset to the nation”

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## Queries & Answers through the Web

([www.advantageconsumer.com](http://www.advantageconsumer.com) is the website of Consumer Protection Council, Rourkela. One of the major attractions of the website is that a visitor can ask queries on issues relating to consumer protection. Answers to these queries are made free of cost, by the Chief Mentor of the Council, Sri B. Vaidyanathan.)

## As per the Consumer Protection Act, 2019, only appeals against the Orders of the NCDRC, in Original Petitions, can be filed before the Supreme Court.

(Excerpts from the detailed judgment passed by the Justices J.B.Pardiwala and Manoj Misra, on the 26<sup>th</sup> July 2023 have been reproduced, for the benefit of the readers.   
-B.Vaidyanathan, Chief Mentor)

Supreme Court of India

M/s Universal Sompo General Insurance ... vs Suresh Chand Jain, pronounced on 26 July, 2023, SPECIAL LEAVE PETITION (CIVIL) NO. 5263 of 2023.

### JUDGMENT

1. This petition seeking leave to appeal under [Article 136](#) of the Constitution is at the instance of M/s Universal Sompo General Insurance Company Limited, Original appellant before the National Consumer Disputes Redressal Commission (for short, ‘the NCDRC’) in the First Appeal No. 376 of 2016 by which the NCDRC dismissed the appeal filed by the petitioner herein thereby affirming the order passed by the State Consumer Disputes Redressal Commission (for short, ‘the SCDRC’) of Delhi, holding that the respondent No. 1 /complainant was entitled to receive the claim amount and appropriate compensation from the petitioner and its joint venture partner viz., Allahabad Bank (respondent No. 2) for the goods stolen from the premises in question.

### FACTUAL MATRIX

2. It appears from the materials on record that the respondent Bank, acting as an intermediary issued a Standard Fire and Special Perils Policy dated 05.12.2011 in favour of the complainant through the petitioner herein. Similarly, a Burglary Insurance Policy was also issued in favour of the complainant dated 08.12.2011. Both the policies covered a sum of Rs. 50 lakh for the risk of fire and burglary. The policies were for the period between 25.11.2011 and 24.11.2012.

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5. On 29.06.2012, a theft took place at the Bawana premises and for that FIR No. 213/2012 was lodged on 30.06.2012 at the PS Bawana. Both, the petitioner and the Bank were also informed about the theft. A surveyor was appointed by the petitioner to inspect the premises and on 01.07.2012, a formal complaint was lodged by the complainant with the petitioner.

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7. On 03.06.2013, the complainant aggrieved by the inaction on the part of the petitioner approached the SCDRC, Delhi under [Section 17](#) of the Consumer Protection Act, 1986 (for short, 'the Act 1986'), by way of Complaint No. 357/2013. He prayed for his claim of Rs. 49 lakh to be processed along with compensation of Rs. 20 lakh and interest at the rate the respondent Bank was charging from the complainant, with costs of the complaint.

8. By order dated 18.03.2016, the SCDRC partly allowed the complaint holding that the petitioner and the respondent bank were jointly and severally liable for the deficiencies in providing services to the complainant and the complainant was entitled to be compensated for the theft of goods worth Rs. 41,31,180/- @ 12 % interest per annum from the date of the claim. The petitioner and the bank were also directed to pay Rs. 2 lakh to the complainant towards compensation for mental agony, harassment and deficiency in providing services. The petitioner was further directed to finalise the fire claim of Rs. 4 lakh of the complainant.

9. The petitioner herein feeling aggrieved with the order passed by the SCDRC challenged the same before the NCDRC by filing the First Appeal No. 376 of 2016 under [Section 19](#) of the Act 1986. The petitioner prayed before the NCDRC to set aside the SCDRC's order in exercise of its appellate jurisdiction and grant costs against the complainant in favour of the petitioner.

10. By order dated 16.01.2023, the First Appeal filed by the petitioner herein came to be dismissed.

11. In such circumstances referred to above, the petitioner is here before this Court with the present petition, seeking special leave to appeal under [Article 136](#) of the Constitution.

#### **DISCUSSION**

12. In the course of the hearing of this matter, manifold contentions were raised on either side. However, the moot question that falls for our consideration is whether we should entertain this petition seeking special leave to appeal under [Article 136](#) of the Constitution directly against the order passed by the NCDRC in exercise of its appellate jurisdiction or relegate the petitioner to avail the remedy of filing a writ petition under [Article 226](#) of the Constitution or a petition invoking supervisory jurisdiction of the jurisdictional High Court under [Article 227](#) of the Constitution?

13. Before, we proceed to answer the aforesaid question, we must look into the few relevant provisions of the Act 1986.

14. [Section 21\(a\)](#) of the Act 1986 is titled 'Jurisdiction of the National Commission'. The same reads thus:

"21. Jurisdiction of the National Commission. - Subject to the other provisions of this Act, the National Commission shall have jurisdiction —

(a) to entertain —

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the orders of any State Commission;

...."

15. [Section 23](#) of the Act 1986 provides for an 'Appeal'. The same reads thus:

"23. Appeal.- Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of [section 21](#), may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of that amount or rupees fifty thousand, whichever is less.” (Emphasis Supplied)

16. [The Consumer Protection Act, 1986](#) stood repealed on 20.07.2020 ([Section 106](#), the Act 1986) and the [Consumer Protection Act, 2019](#) (for short, ‘the Act 2019’) came into force. In the instant case, the complaints were instituted under the Act 1986. However, we must highlight the relevant provisions of the Act 2019, which are parimateria to the provisions of the Act 1986.

“58. Jurisdiction of National Commission. – (1) Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services paid as consideration exceeds rupees ten crore:

Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;

(ii) complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;

(iii) appeals against the orders of any State Commission;

(iv) appeals against the orders of the Central Authority;.....

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67. Appeal against order of National Commission. - Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-

clause (i) or (ii) of clause (a) of sub-section (1) of section 58, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited fifty per cent. of that amount in the manner as may be prescribed.”

***17. A plain reading of the aforesaid provisions of the Act 1986 and Act 2019, respectively would indicate that the remedy of appeal to this Court is available only with respect to the orders passed by the NCDRC in exercise of its powers conferred by [Section 21\(a\)\(i\)](#) of the Act 1986 and [58\(1\)\(a\)\(i\)](#) or [58\(1\)\(a\)\(ii\)](#) of the Act 2019. In other words, both the Acts provide for the remedy of appeal to this Court only with respect to the orders which are passed by the NCDRC in its original jurisdiction or as the court of first instance (original orders) and no further appeal lies against the orders which are passed by the NCDRC in exercise of its appellate or revisional jurisdiction.***

18. Adverting to the case at hand, the appeal before the NCDRC was against the order passed by the SCDRC under [Section 17\(1\)\(a\)\(i\)](#) of the Act 1986. Such appeal to the NCDRC was maintainable, as provided under [Section 21\(a\)\(ii\)](#) of the Act 1986. As per [Section 23](#) of the Act 1986, any person, aggrieved by an order made by the NCDRC in exercise of its powers conferred by [Section 21\(a\)\(i\)](#), may prefer an appeal against such order to this Court. Therefore, an appeal against the order passed by the NCDRC to this Court would be maintainable only in case the order is passed by the NCDRC in exercise of its powers conferred under [Section 21\(a\)\(i\)](#) of the Act 1986. No further appeal to this Court is provided against the order passed by the NCDRC in exercise of its powers conferred under [Section 21\(a\)\(ii\)](#) of the Act 1986.

There is no provision for filing any further appeal against the order passed on the appeal filed against the order of the SCDRC. In such circumstances, the petitioner has come before this Court under [Article 136](#) of the Constitution.

#### **SCOPE AND GRANT OF SPECIAL LEAVE UNDER [ARTICLE 136](#) OF THE CONSTITUTION**

19. This Court has held in [Pritam Singh v. State](#) reported in 1950 SCC 189 : 1950 SCR 453 at p. 459: “Generally speaking this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against”. It was also said [in that case](#) that the view that once an appeal has been admitted by special leave the entire case is at large and that the appellant is free to contest all the findings of fact and raise every point which could be raised in the High Court is wrong. Only those points can be urged at the final hearing of the appeal which are fit to be urged at the preliminary stage when leave to appeal is asked for. This principle was stated, it is true, in a criminal case but it is of as much significance in civil cases as in the trial of criminal appeals. [See: [Murtaza and Sons and Another v. Nazir Mohd. Khan and Others](#) reported (1970) 3 SCC 876].

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21. In [Ujagar Singh and Another v. State \(Delhi Administration\)](#) reported in (1979) 4 SCC 530, Y. V. Chandrachud, C.J., speaking for the Bench observed as under:

“1. ... There is hardly a case, civil or criminal, which does not raise some question of law or the other. But no question of law of general public importance is involved in these petitions. It is time that it was realised that the jurisdiction of this Court to grant special leave to appeal can be invoked in very exceptional circumstances. A question of law of general public importance or a decision which shocks the conscience of the Court are some of the prime requisites for the grant of special leave. ...” (Emphasis supplied)

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26. We shall now look into a very recent pronouncement of this Court in the case of [Ibrat Faizan v. OmaxeBuildhome Private Limited](#) reported in 2022 INSC 573. In the said case, the appellant had booked a flat in the project floated by the respondent. The appellant paid the entire amount of consideration but the respondent did not hand over the flat within the time stipulated in the agreement. Therefore, the appellant filed a consumer complaint before the SCDRC on 10.08.2013, alleging deficiency of service on the part of the respondent. The SCDRC allowed the complaint filed by the appellant vide its order dated 16.10.2020. The SCDRC directed the respondent to hand over the flat to the possession of the appellant subject to their meeting the requirements. The SCDRC further directed the respondent to pay compensation for the deficiency of service of the respondent in the form of nine per cent simple interest till the date of delivery of the flat in possession of the appellant.

27. The appellant filed an execution and contempt petition against the respondent since he did not comply with the order of the SCDRC. Vide its order dated 12.03.2021, the SCDRC directed the respondent to produce the details of bank accounts or properties for the purpose of attaching the same and to implement the order passed by the SCDRC.

28. The respondent filed an appeal before the NCDRC. On 30.03.2021, the NCDRC stayed the order of SCDRC subject to the deposit of the cost of entire flat along with nine per cent interest on the amount paid till date in the Registry of the SCDRC.

29. The respondent, being aggrieved against the order of NCDRC filed a writ petition before the High Court, challenging the order passed by the NCDRC. Before the High Court the respondent contended that the NCDRC ought not to have directed the respondent, the builder, to deposit the entire cost of the apartment along with the compensation awarded by the SCDRC. The High Court stayed the order of National Commission, vide its order dated 25.05.2021. The said stay order was issued subject to the condition that the respondent is to deposit with the State Commission fifty per cent of the amount directed to be deposited by way of interest towards compensation, within four weeks from the date of stay order issued by the High Court.

30. In the meantime, the NCDRC passed the final order, confirming the order passed by the State Commission, vide its order dated 09.12.2021. The respondent also filed a writ petition before the High Court, challenging the final order passed by the NCDRC. The High Court, in this petition, also granted interim stay vide its order dated 22.12.2021. Against this order the appellant filed an SLP before this Court. This Court vide its order dated 21.03.2022 directed the High Court to decide the jurisdictional issue under [Article 227](#) of the Constitution against the order passed by the NCDRC on or before 18.04.2022 and intimate the outcome to this Court. The High Court vide its order dated 31.03.2022 held that the writ petition before the High Court against the order of NCDRC was maintainable. This order was challenged by the appellant before this Court.

31. The appellant submitted the following before this Court:

(a) Against the order of NCDRC, a petition before the High Court under [Article 227](#) of the Constitution is not maintainable.

(b) Only appeal is maintainable before this Court against the order of NCDRC as per the provisions of the [Consumer Protection Act](#).

(c) Without exhausting the appellate remedy, the High Court ought not to have entertained the petition under [Article 227](#) of the Constitution.

(d) The High Court ought not to have stayed the order passed by the NCDRC in the limited jurisdiction available under [Article 227](#) of the Constitution.

32. The respondent submitted the following before this Court:

(a) The provisions of the Act 2019 do not have appeal provisions against the order of NCDRC passed in exercise of appellate/revisonal jurisdiction and therefore writ petition under [Article 226](#) or petition under [Article 227](#), as the case may be, is maintainable before the High Court against the order of NCDRC.

(b) For the aforesaid purpose the respondent relied on the following judgments:

- Associated Cement Companies Ltd. v. P. N. Sharma, AIR 1965 SC 1595; and
- L. Chandra Kumar v. Union of India, (1997) 3 SCC 261.


33. This Court considered the question for its decision as to whether against the order passed by the NCDRC in an appeal under [Section 58\(1\)\(a\)\(iii\)](#) of the Act 2019, petition before the High Court under the [Article 227](#) of Constitution of India would be maintainable.

34. After due analysis of the provisions of the Act 2019, which are parimateria to the provisions of the Act 1986, this Court in [Ibrat Faizan](#) (supra) held as under:

“11. ....Therefore, an appeal against the order passed by the National Commission to this Court would be maintainable only in case the order is passed by the National Commission in exercise of its powers conferred under Section 58(1)(a)(i) or under Section 58(1)(a)(ii) of the 2019 Act. No further appeal to this Court is provided against the order passed by the National Commission in exercise of its powers conferred under Section 58(1)(a)(iii) or under Section 58(1)(a)(iv) of the Act. In that view of the matter, the remedy which may be available to the aggrieved party against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) or Section 58(1)(a)(iv) would be to approach the concerned High Court having jurisdiction under Article 227 of the Constitution of India.”

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42. In the result, this petition is disposed of with liberty to the petitioner to approach the jurisdictional High Court and challenge the order passed by the NCDRC, in accordance with law ..... 

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## Few Points about Consumer Rights:

Consumer Rights is an insight into what rights consumer holds when it comes to sellers which provide the goods. What if the goods provided to the consumer by the business is not up to the standard? Then in that case – what should a consumer do? To be precise, what rights consumers have is in the court of law to fight against the malpractices of the business firms or seller.

- **Right to Safety:** This is the first and the most important of the Consumer Rights. They should be protected against the product that hampers their safety. The protection must be against any product which could be hazardous to their health – Mental, Physical or many of the other factors.
- **Right to Information:** They should be informed about the product. The product packaging should list the details which should be informed to the consumer and they should not hide the same or provide false information.
- **Right to Choose:** They should not be forced to select the product. A consumer should be convinced of the product he is about to choose and should make a decision by himself. This also means consumer should have a variety of articles to choose from. Monopolistic practices are not legal.
- **Right to Heard:** If a consumer is dissatisfied with the product purchased then they have all the right to file a complaint against it. And they said complaint cannot go unheard; it must be addressed in an appropriate time frame.
- **Right to Seek Redressal:** In case a product is unable to satisfy the consumer then they have the right to get the product replaced, compensate, and return the amount invested in the product. We have a three-tier system of redressal according to the Consumer Protection Act 1986.
- **Right to Consumer Education:** Consumer has the right to know all the information and should be made well aware of the rights and responsibilities of the government. Lack of Consumer awareness is the most important problem our government must solve.

## Support Your Cause

Consumer Protection Council, Rourkela is a registered voluntary organization, espousing the cause of the consumer. To a great extent, for its sustenance it depends on the good will of its donors like you. We solicit your support for sustaining the multifarious activities of the council. Donation to the council is eligible for tax exemption under Section : 80-G(5) (iv) of the IT Act. Donation may please be contributed through cash or crossed cheque / DD, drawn in favour of “ **Consumer Protection Council, Rourkela**”.

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