Advantage Consumer

Monthly News Letter of Consumer Protection Council, Rourkela

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Queries & Answers through the Web

(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.)

Continued from July 2026 issue....

Consumer Protection Act creates a special and additional remedy for consumers and the jurisdiction so conferred cannot be displaced merely by reference to an arbitration agreement between the parties.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 10724/2016

T.K.A. PADMANABHAN **...APPELLANT**

VERSUS

ABHIYAN COOPERATIVE GROUP HOUSING

SOCIETY LTD, THROUGH ITS SECRETARY **...RESPONDENT**

O R D E R

VIKRAM NATH, J.

ANALYSIS

16. At the outset, we must emphasize that the 1986 Act is a beneficial legislation intended to provide a simple, inexpensive and expeditious remedy to a consumer who complains of defect in goods or deficiency in service. Section 3 of the 1986 Act makes the position explicit by providing that the remedy under the Act is in addition to and not in derogation of any other remedy available under law. The existence of another forum or another mode of adjudication, therefore, does not by itself exclude the jurisdiction of the consumer fora.

17. This principle has been consistently recognised by this Court. In ***Fair Air Engineers Pvt. Ltd. v. N.K. Modi,*** this Court held that the remedy under the 1986 Act is an additional remedy and that the existence of an arbitration clause would not automatically oust the jurisdiction of the consumer forum. The same principle was reiterated in ***Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha,*** where this Court held that the remedy under the 1986 Act is available notwithstanding the existence of remedies under the cooperative societies law. Again, in ***National Seeds Corporation Ltd. v. M. Madhusudhan Reddy,*** this Court emphasised that the availability of an alternative statutory remedy is not a bar to the maintainability of a consumer complaint.

18. The position has been put beyond doubt in ***Emaar MGF Land Ltd. v. Aftab Singh***. In the said decision, this Court held that even where an agreement contains an arbitration clause, the consumer forum is not denuded of its jurisdiction to entertain and decide a consumer complaint. The reason is that the 1986 Act creates a special and additional remedy for consumers and the jurisdiction so conferred cannot be displaced merely by reference to an arbitration agreement between the parties.

19. The legal position upheld in the precedents above is of direct relevance in the present case. The appellant's complaint was not a civil suit simpliciter. It was a complaint under the 1986 Act alleging deficiency in service on account of delay in handing over possession of a flat. The fact that the agreement between the parties contained an arbitration clause could not, by itself, be treated as sufficient to non-suit the appellant before the consumer forum.

20. The matter must also be examined in the light of Section 12(4) of the 1986 Act. Section 12 of the 1986 Act contemplates a statutory sequence. At the threshold, the District Forum is required to consider whether the complaint deserves to be admitted or rejected. Once the complaint is admitted and allowed to be proceeded with, the forum is required to deal with it in the manner provided under the Act. The proviso to Section 12(4) contains a clear legislative restraint. It provides that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court, tribunal or authority set up by or under any other law for the time being in force.

21. The significance of the proviso lies not merely in its text, but also in the statutory policy which it reflects. The 1986 Act creates a special adjudicatory mechanism for consumer disputes. Once that mechanism is validly invoked and the complaint is admitted, the consumer cannot be driven out of that forum merely because the agreement between the parties contains an arbitration clause. A private contractual clause cannot be permitted to defeat the continued operation of a statutory remedy which Parliament has expressly made additional to other remedies under Section 3 of the 1986 Act.

22. Section 12(4) therefore has to be read harmoniously with Section 3 of the 1986 Act. Section 3 preserves the additional character of the consumer remedy. Section 12(4), after admission of the complaint, gives procedural effect to that protection by requiring the consumer forum to proceed under the Act and by preventing diversion of the complaint to another forum. The provision is intended to ensure that a consumer complaint, once admitted, is not rendered illusory by compelling the consumer to begin afresh before another forum or authority.

23. In the present case, the complaint had been admitted and notice had been issued to the respondent. The respondent thereafter filed an application under Section 8 of the Arbitration and Conciliation Act, 1996. The District Forum initially rejected the application by noticing that the remedy under the 1986 Act is in addition to other remedies. However, after the matter was remitted by the High Court for reconsideration, the District Forum referred the parties to arbitration. The State Commission affirmed that view. In our opinion, this approach did not give due effect to the scheme of the 1986 Act and to the settled principle that an arbitration clause does not, by itself, oust the jurisdiction of the consumer forum.

24. The order of the National Commission suffers from an additional infirmity. The principal issue before the National Commission was whether the District Forum and the State Commission were justified in referring the complaint to arbitration. The National Commission, however, dismissed the revision petition on the ground that the appellant was not a consumer at the time of filing of the complaint, since he had already taken possession of the flat without protest. In doing so, the National Commission failed to address the central jurisdictional question arising from the orders passed by the District Forum and the State Commission.

25. The reasoning adopted by the National Commission cannot be sustained. The appellant's complaint was not for delivery of possession simpliciter. His grievance was that there had been delay in handing over possession of the flat and that he was entitled to compensation for such delay. A claim for compensation for delayed possession necessarily arises from the period prior to the actual delivery of possession. The subsequent receipt of possession cannot, by itself, extinguish the right of the allottee to seek adjudication of a claim for compensation for the alleged delay.

26. Whether there was in fact any delay, whether such delay was attributable to the respondent, whether the appellant had accepted possession unconditionally, and whether any compensation is payable are all matters which require adjudication on merits. The consumer complaint has not been adjudicated on merits at any stage. The claim of the appellant for compensation on account of alleged delay in handing over possession has neither been accepted nor rejected after evidence. Equally, the defence of the respondent society has also not been examined on merits. These issues could not have been concluded at the threshold by holding that the appellant ceased to be a consumer merely because possession had been delivered before the complaint was filed. In such circumstances, it would not be appropriate for this Court to record any finding on the factual controversy between the parties.

27. The proper course, therefore, is to restore the consumer complaint for adjudication on merits. The parties must be afforded due opportunity of hearing and of leading evidence. All questions relating to deficiency in service, delay, waiver, acceptance of possession, entitlement to compensation, and all other issues on merits shall remain open to be considered by the competent consumer forum in accordance with law.

28. During the intermediary period, the District Consumer Disputes Redressal Commission has been set up at Dwarka. It is also stated before us that both parties are staying in Dwarka. In view of the same, and in order to avoid any further inconvenience and delay, it would be appropriate to direct that the complaint

be placed before the District Consumer Disputes Redressal Commission, Dwarka.

CONCLUSION

29. For the reasons recorded above, the appeal is allowed.

30. The judgment and order dated 04.01.2016 passed by the National Commission in Revision Petition No. 1942 of 2013, the order dated 26.02.2013 passed by the State Commission in First Appeal No. 680 of 2009, and the order dated 27.07.2009 passed by the District Forum are set aside.

31. Consumer Complaint No. 579 of 2005, stated to have been renumbered as Complaint No. 712 of 2007, is restored and shall be placed before the District Consumer Disputes Redressal Commission, Dwarka, for decision on merits.

32. The District Consumer Disputes Redressal Commission, Dwarka, shall decide the complaint after affording due opportunity of hearing and of leading evidence to both parties.

33. Since the complaint is of the year 2005, the District Consumer Disputes Redressal Commission, Dwarka, shall make an endeavour to decide the same preferably within a period of one year from the date of receipt of a copy of this order.

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

35. **……………………………..J.**

36. **[VIKRAM NATH]**

37. **……………………………..J.**

38. **[V. MOHANA]**

39. NEW DELHI; JUNE 04, 2026

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Complainant failed to establish the loss to the stock of tendu leaves occurred due to any insured peril covered under the Insurance Policy and consequently, the repudiation of the claim by the Insurance Company is not unjustified.

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

PRONOUNCED ON: 18.06.2026

FIRST APPEAL NO.751 OF 2015

(From the order dated 25.8.2015 in Complain Case No. CC/14/21 of the State Consumer Disputes Redressal Commission, Chhattisgarh, Pandri, Raipur)

Balwant Shukla, Age 59 years,
So Late Kashinath Shukla,
R/o: Premnagar, Post - Basantpur,
Tehsil: Wadrafnagar, District Balrampur (C.G.)
Through: General Power of Attorney Holder
Rajesh Kumar Jaiswal,

S/o: Bhagwan Das Jaiswal,
R/o : Namnakala, Ambikapur,
Tahsil and District:Surguja (C.G.) ... Appellant/Complainant

Versus

The Oriental Insurance Company Limited,
Through: Branch Manager,
Branch Office : Ambikapur,
Manendragarh Road,
Near Ambedkar Chowk,
Ambikapur, District:Surguja (C.G.) ... Respondent/OP

BEFORE:

HON'BLE MR.JUSTICE SUDIP AHLUWALIA, PRESIDING MEMBER
HON'BLE AVM J. RAJENDRA, AVSM VSM (RETD.), MEMBER

JUDGMENT

1. The two Appeals, bearing Nos. FA/751/2015 and FA/755/2015 are filed by Balwant Shukla (hereinafter referred to as the "Appellant/ Complaint") against Oriental Insurance Company Limited (hereinafter referred to as the "Respondent/OP"). These Appeals challenge the Orders dated 25.08.2015 in (1) CC/14 21 and (2) CC/14/20 respectively passed by the learned State Consumer Dispute Redressal Commission, Raipur, ("State Commission"), which dismissed both the Complaints.
2. Since the facts and questions of law involved in both Appeals are substantially similar, except for minor variations in dates and amounts, these Appeals are being disposed of by this common Order. Nevertheless, for ease of reference, First Appeal No. 751 of 2015 shall be considered as the lead case, and the facts outlined below are derived from **Consumer Complaint No. 21 of 2014.**
3. Brief facts of the case, as per the Complainant, are that he was engaged in the business of sale and purchase of tendu leaves for earning his livelihood by way of self-employment. He stored the tendu leaves purchased from the Forest Department in a godown belonging to Smt. Aju Jaiswal situated at Prem Nagar. The Complainant obtained a Standard Fire & Special Perils Insurance Policy No. 191400/11/2015/19 dated 21.04.2014 from the OP Insurance Company, after physical verification of the stock. The policy covered tendu leaves valued at Rs.64,58,000 and a premium of Rs.8,617 was paid by the Complainant. It was further averred that during April, 2014, while the stored tendu leaves were being removed from the godown, the Complainant noticed deterioration in a portion of the stock. Upon inspection of the entire stock, he found the tendu leaves valued at Rs.25,00,000 had deteriorated. Intimation of the loss was given to the OP Insurer on 30.04.2014. The Complainant furnished all documents sought by the OP Insurer and the Surveyor appointed by it, who conducted physical verification of the stock and assessed the loss. According to the Complainant, despite submission of all

requisite documents, the claim was not settled. Subsequently, vide letter dated 06.06.2014, the OP repudiated the claim on the grounds that the damage to the stock of bidi leaves had not occurred due to any insured peril, and that deterioration of the insured stock was beyond the scope of coverage under the policy. Alleging that the repudiation was arbitrary and contrary to the terms and conditions of the policy, the Complainant contended that he was entitled to compensation of Rs.25,00,000 for the loss suffered and filed the Consumer Complaint seeking the reliefs prayed for therein.

4. On being issued notice, the OP Insurer contested the complaint by filing its written version and denied the allegations made therein. It was contended that the complaint was not maintainable as Shri Rajesh Kumar Jaiswal was not duly authorized through a valid General Power of Attorney to institute the proceedings. Also, the Complainant was not a "consumer" within the scope of the Act, 1986, as he was engaged in obtaining tendu leaf contracts from the Forest Department on a large scale for commercial purposes and not for earning his livelihood by self-employment. The OP denied that the policy was issued after physical verification of the stock and that it had issued the insurance policy No.191400/11/2015/19 dated 22.04.2014 in the Complainant's name. It was contended that the tendu leaves were lying in the godown for over two years and were purchased from the Forest Dept on an "as is where is basis" under an agreement dated 28.03.2014.

To be continued in the next issue.....

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