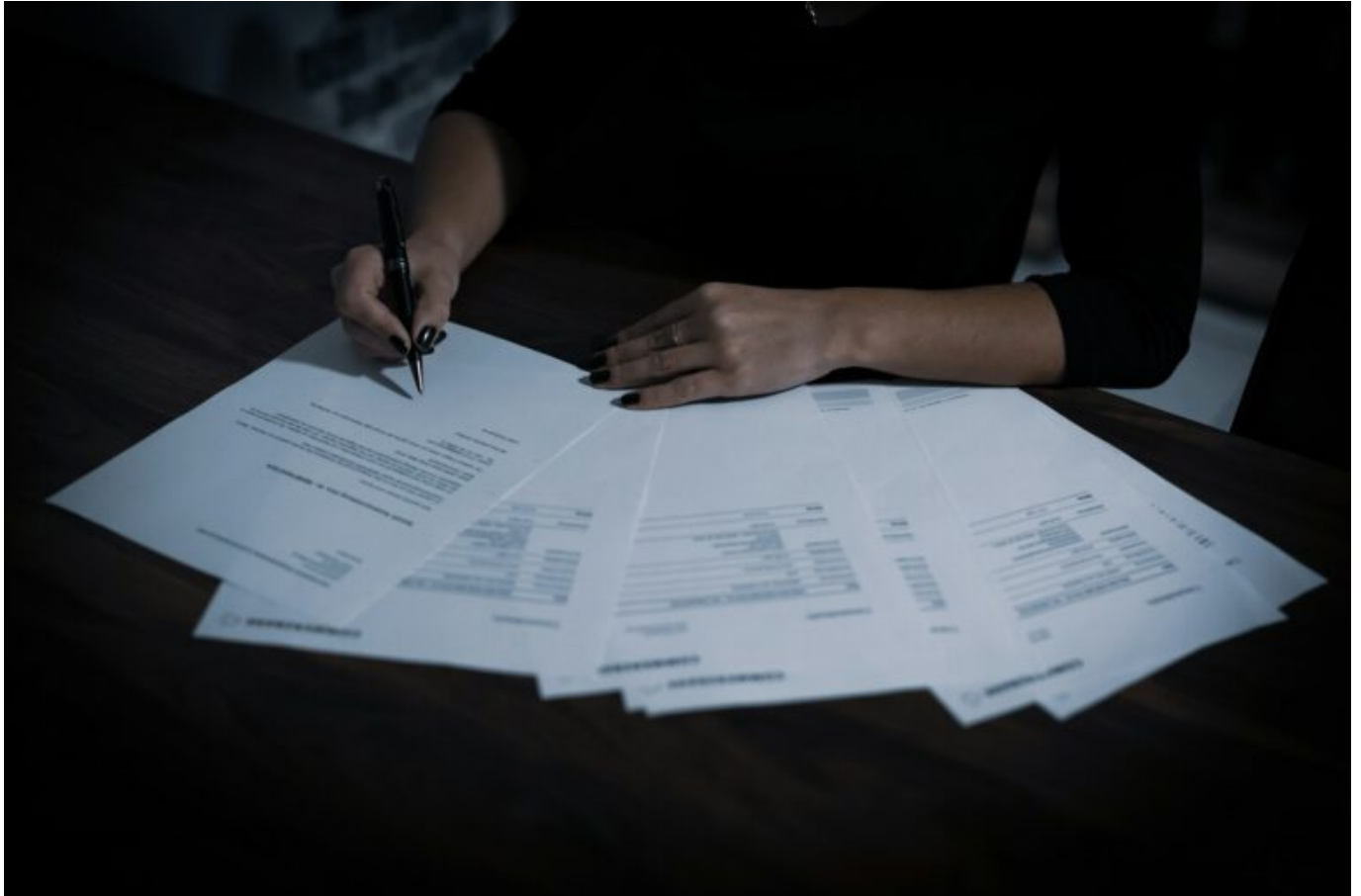


Courts can't rewrite contracts, have to rely on T & C agreed by parties while adjudicating disputes: Supreme Court

written by King Stubb & Kasiva | March 28, 2024



Introduction

In a recent landmark judgment of the Apex Court of India, a 2 – judge bench led by Hon'ble Justice Aniruddha Bose and Hon'ble Justice Sanjay Kumar held that the courts do not have the power to rewrite the terms of the contract agreed by the parties nor can the courts create a new contract between the parties to a contract and the power of adjudicating a dispute arising out of a contract is restricted to the terms and conditions of the contract agreed by the parties in advance while the contract was created.

Once the contract has been entered into by the parties in its written form, the parties are bound to follow it and according to the basic principle of contract law, no other rules or regulations would supersede the terms in a general situation unless the law permits. Additionally, the fundamental principle upon which the law of contracts is based is “consensus ad idem” meaning meeting of minds wherein both the parties have expressly or impliedly agreed or consented to the terms after fulfilling all the essential

requirements of a valid contract. Undue change in the terms of the contract or taking an opinion contrary to the contract would not only be against public policy but also against the fundamental principles of mercantile law and business ethics and would lead to giving an opportunity to the parties to take benefit of their own wrongs or delinquency and deprive the other party to obtain the benefits of equity, justice and good conscience.

After the parties have expressly entered into a written agreement, not only have they reduced themselves to be governed only by the terms of the contract but also have consented to be bound by such terms and conditions for adjudication of any further dispute or relation arising by the parties. Any subjective interpretation or creation of new terms and conditions out of the contract which has not expressly been made a part of the contract would have an impact on the other party.

In the present case, the National Consumer Disputes Redressal Commission (NCDRC) tried to undertake a different interpretation of the terms of the contract which had been entered by the parties which expressly stated that the buyer had been given the power to terminate the contract and claim a reimbursement of the consideration paid by him for the purchase of an apartment in case the seller was unable to provide a certificate of occupation within a period of one year. Even though the seller failed to furnish the same document within the period as specified in the contract, the Commission rejected the plea of the complainant to terminate the contract and seek redressal or refund but also did not take any definitive action against the seller stating that even though there was undoubtedly a delay by the party in abiding by the terms of the contract, such delay could not be deemed as an unreasonable period and therefore there was no entitlement on the part of the applicant/complainant to seek a refund of his consideration.

Taking this matter to the Hon'ble Supreme Court as an appeal, the Apex Court noted that the fundamental issue arising out of such case is whether the courts or judicial institutions possess the power to adjudicate upon a dispute by taking their own subjective or liberal interpretation of the terms without taking into account the express terms or conditions agreed by the parties already in their contract. The court therefore came to its opinion that such practice of rewriting the terms and conditions is not only ultra vires of the court's power but also creates an erroneous precedent. The court's duty is limited to highlighting the terms and conditions of the contract and enable the parties to abide by the same.

Additionally, the court also noted that the power of the court, in any case, cannot extend to rewriting the contract even though the court feels the same or it seems reasonable. However, the court can direct the parties to enter into a new contract after discharging the rights and liabilities of the parties arising out of the previous contract. Referring to a Constitutional Bench judgment in the landmark case of General Insurance Society Ltd. V. Chandumull Jain and Ors., the court had noted that it is a definitive duty of the court to interpret the words used in the contract strictly and expressly without construing or making an attempt to bring out a second meaning of the contract.

As per the facts of the case, since the appellant/complainant took adequate and immediate steps to seek their contractual relief and there was no formal novation or rescission of the contract by either party and the appellants were not duly informed about any delay arising out of the actions of the seller, it cannot be said that there existed any fault or error on part of the complainant to file such suit.

Conclusion

Based upon the analysis of the facts and findings of the NCDRC, the Hon'ble Court concluded that the Commission exceeded its power and scope by taking a completely different interpretation of the contract which was not only against the interest of the parties but also violated the fundamental tenets of mercantile and contractual law. Therefore, the Apex Court not only directed the delinquent party to pay a settlement to the complainant but also set aside the order of NCRDC.

The entire judgment can be accessed here: [\[1\]](#)

[\[1\] https://ksandk.com/wp-content/uploads/2024/03/supreme-court-1206156.pdf](https://ksandk.com/wp-content/uploads/2024/03/supreme-court-1206156.pdf)

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