

Pecuniary Jurisdiction of Consumer Forum Shall Include Consideration Plus Compensation and Interest - NCDRC

written by Latha Shanmugam | July 17, 2019

National Consumer Dispute

Redressal Forum in the case Ambrish Kumar Shukla and ors. Vs. Ferrous Infrastructure Pvt. Ltd., Consumer Case No.97 of 2016, decided on 07.10.2016 has elaborately elucidated the pecuniary jurisdiction of the consumer forum wherein

the Single Bench referred

issues raised by it to the Larger Bench of National Consumer Disputes

Redressal

Commission to be decided. The larger bench further came

up with the assumption that for determining the pecuniary jurisdiction the value of the goods or services, as the case may be is to be considered and not

the value or cost of removing that deficiency in the service, further the commission

also notified that the interest claimed is to be taken into consideration for the purpose of determining the pecuniary jurisdiction.

FACTS

OF THE CASE

The complainant

have booked an apartment with respondent No.1 (builder), Ferrous Infrastructures

based on the reason that the balance sale consideration was not paid by the complainant the allotment was cancelled by the builder, being aggrieved, the complainant approached the concerned consumer District Forum seeking restoration of the flat with possession and compensation.

The Respondent

contested the complaint and filed preliminary objection that the particular complaint does not fall within the purview of the District consumer forum for not having the pecuniary jurisdiction, the district consumer forum noticed that

the price of the apartment exceeds the pecuniary jurisdiction of the district consumer forum, dismissed the complaint vide its order dated 22.01.2013.

On

fresh complaint being filed before the State Commission, the State Commission dismissed

the complaint after noticing that the claim of the complainant was Rs.10,00,000/-

as compensation, further opined that while

deciding whether the said Commission had pecuniary jurisdiction to hear the complaint or not, the complainant has to assess the deficiency in the service availed by him and not the actual value of the flat.

Being aggrieved by the order of the state commission,

the complainant has approached National Consumer Redressal Forum wherein the single member bench of this forum after noticing a variance in opinion expressed

by the district and state consumer forum on the same subject, raised the issues

on pecuniary jurisdiction and referred the same to a larger Bench vide its

order dated 11.03.2016.

ISSUES RAISED

The single Member

Bench of National Consumer Disputes Redressal Commission vide order dated 11.08.2016 referred the following issues to the larger Bench:

1. In a situation,
where the possession of a housing unit has already been delivered to the complainants and may be, sale deeds etc. also executed, but some deficiencies are pointed out in the construction/ development of the property, whether the pecuniary jurisdiction is to be determined, taking the value of such property as a whole, OR the extent of deficiency alleged is to be considered for the purpose of determining such pecuniary jurisdiction.
- Whether the
interest claimed on such value by way of compensation or otherwise, is to be taken into account for determining the pecuniary jurisdiction of a particular consumer forum.
- Whether “the value
of the goods or services and compensation, if any, claimed” is to be taken as per the original value of such goods, or service at the time of purchase of such goods or hiring or availing of such service, OR such value is to be taken
at the time of filing the claim, in question.
- In complaints
proposed to be filed under section 12(1)(c) of the Act with the permission of Consumer Forum, whether the pecuniary jurisdiction is to be determined taking the value of goods or service for individual consumer, OR the aggregate value of the properties of all consumers getting together to file the consumer complaint is to be taken into consideration.
- For filing the
consumer complaints u/s 12(1)(c), whether a group of cooperative societies could join hands to file a joint complaint.
- Whether the term
‘consumer’ given in section 12(1)(c) includes the term ‘Person’ as defined in section 2(m) of the Act, meaning thereby that groups of firms, societies, association, etc. could join hands to file the joint complaints, u/s 12(1)(c) of the Act.
- Many a time, it is
seen that more than one joint complaint are already pending in respect of one particular housing project. There is a view that while applying section 12(1)(c) of the Act, only one of these complaints should be allowed to continue
as a lead case, and all other complaints should be dismissed and the parties in
these dismissed complaints should be directed to become parties in the lead case. Whether the above view is correct, OR in such cases, all complaints should be clubbed and heard together.

OBSERVATION

On observing, the

larger bench of the NCDRC gave reference over the issues raised by the single member bench stating on perusal of sections 21, 17 and 11 of the Consumer Protection Act it is clear that determination of the pecuniary jurisdiction

of
the consumer forum is based on the value of the goods or services together with
the compensation claimed and not on the cost of removing the deficiency in goods purchased or services hired.
While deciding for
the issue No. 2 larger bench relying on observation made by the Hon'ble Supreme
Court in Ghaziabad Development Authority Vs. Balbir Singh¹, gave reference based on the provisions contained in Sections 21, 17 and 11 of the Consumer Protection Act that the amount of the interest which can be paid as compensation, must be necessarily taken into consideration for determining the pecuniary jurisdiction.,
While looking into
the issue no. 3 larger bench decided that the pecuniary jurisdiction of the Consumer Forum varies with the market price of the goods or services initially
when the goods purchased or services availed and at the time the complaint is instituted. On the other hand, no such difficulty arises if the sale consideration
agreed to be paid by the consumer is taken as the value of the goods or services determine the pecuniary jurisdiction of the Consumer Forum.
The issue No. 4, the
aggregate value of the goods purchased or the services availed by all the consumers together filing the complaint added to the total compensation claimed
would determine the pecuniary jurisdiction of the Consumer Forum and not the claim of the individual consumer.
Deciding on issue
no. 5 & 6 larger bench of NCDRC held that a complaint under the Section 12(1)(c) of the Consumer Protection Act can be filed only by one or more consumers
and a Cooperative Society is not entitled to file a complaint under Section 12(1)(c) of the Consumer Protection Act unless the cooperative society itself is a consumer as defined in Section 2(1)(d) of the Consumer Protection Act.
Whereas on issue
no. 7, NCDRC was with the view that the Act does not appreciate more than one complaints on behalf of consumers in a representative character. The complaint filed in a representative
capacity will bind all the consumers as provided under Order I Rule 8(6) of the
Code of Civil Procedure and the second complaint having the same interest and seeking same relief would not be maintainable under the section 12(1)(c) of the
Consumer Protection Act.

DECISION

BY NCDRC

Based on the reference on all the issues raised by
the single member bench of the NCDRC the larger bench has passed the decision as follows:

1. It is the value of the goods or services, as the case may be, and not the value or cost of removing the deficiency in the service which is to be considered for the purpose of determining the pecuniary jurisdiction of national commission.
2. The interest has to be taken into account for the purpose of determining the pecuniary jurisdiction of a Consumer court.
3. The consideration paid or agreed to be paid by the consumer at the time of purchasing the goods or hiring or availing of the services, as the case may be, is to be considered, along with the compensation, if any, claimed in the complaint, to determine the pecuniary jurisdiction of a Consumer Forum.
4. In a complaint instituted under Section 12(1)(c) of the Consumer Protection Act, the pecuniary jurisdiction is to be determined on the basis of aggregate of the value of the goods purchased or the services hired or availed by all the consumers on whose behalf or for whose benefit the complaint is instituted and the total compensation claimed in respect of such consumers.
5. A complaint filed under Section 12(1)(c) of the Consumer Protection Act can be instituted only by one or more consumers, as defined in Section 2(1)(d) of the Consumer Protection Act. Therefore, a group of Cooperative societies, Firms, Association or other Society cannot file such a complaint unless such society etc. itself is a consumer as defined in the aforesaid provision.
6. More than one complaints under Section 12(1)(c) of the Consumer Protection Act are not maintainable on behalf of or for the benefit of consumers having the same interest i.e. a common grievance and seeking the same / identical against the same person. In case more than one such complaints have been instituted, it is only the complaint instituted first under Section 12(1)(c) of the Consumer Protection Act, with the requisite permission of the Consumer Forum, which can continue and the remaining complaints filed under Section 12(1)(c) of the Consumer Protection Act are liable to be dismissed with liberty to join in the complaint instituted first with the requisite permission of the Consumer Forum.

CONCLUSION:

"In the first blush, if we look into the ratio of the judgment, referred to above, it appears that except State Commission and National Commission for Dispute Redressal, District Commission will not have pecuniary jurisdiction to entertain any of the complaint regarding the property issues. Further, on deep analysis, judgment in the case of Ambrish Kumar Shukla² (supra) was rendered by Three Judges Bench of the National Commission, without reference to its earlier view on the subject. The issue that for determining pecuniary jurisdiction of the State Commission whether interest need to be added with

other relief claimed came up for consideration before the Three Judges Bench of the National Commission in Shahbad Cooperative Sugar Mills Ltd. Vs. National Insurance Co. Ltd. And Ors.,³ and further this Commission, in the case of Surjit Singh Thadwal Vs. M/s Emaar MGF Land Pvt. Ltd. and another⁴, by relying upon the ratio of judgment in Shahbad's case⁵, held that when determining pecuniary jurisdiction component of interest claimed is not to be added in the relief sought, which is contradictory to the judgement in the present case. It was further necessary to mention that though this present case overrules Shahbad's case but the issue continues to persist as the interest should not be allowed to decide the jurisdiction at the earlier stage because that shall create a anarchy to decide the jurisdiction. The inclusion of interest should remain at the discretion of the particular Consumer Fora, and the stage for exercise of such discretion would be the time, when final order is passed.

Contributed By - Latha Shanmugam

Designation - Associate

Footnote:

1. Ghaziabad Development Authority Vs. Balbir Singh MANU/SC/0282/2004 : (2004) 5 SCC 65
2. Ambrish Kumar Shukla and Ors. vs. Ferrous Infrastructure Pvt. Ltd. (07.10.2016 - NCDRC)
: MANU/CF/0499/2016
3. Shahbad Cooperative Sugar Mills vs National Insurance Co. Ltd II (2003) CPJ 81 NC
4. Surjit Singh Thadwal Vs. M/s Emaar MGF Land Pvt. Ltd. and another, Consumer Case no. 484 of 2016 decided on 15.12.2016,
5. Ibid
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Tel: [+91 11 41032969](#) | Email: [info@ksandk.com](#)