

M/S. Cheema Engineering Services vs Rajan Singh on 1 November, 1996

Equivalent citations: AIRONLINE 1996 SC 599, (1996) 23 CORLA 336, (1997) 1 COM LJ 70, (1997) 1 CPR 30, (1997) 1 CTC 170 (SC), (1997) 1 CURCC 6, 1997 (1) SCC 131, (1997) 1 SUPREME 51, (1997) 2 CIV LJ 171, (1997) 2 MAD LW 546, (1997) 3 BOM CR 36, 1997 ALL CJ 1 256, 1997 CCJ 568

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:

M/S. CHEEMA ENGINEERING SERVICES

Vs.

RESPONDENT:

RAJAN SINGH

DATE OF JUDGMENT: 01/11/1996

BENCH:

K. RAMASWAMY, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:

Present:

Hon'ble Mr. Justice K.Ramaswamy Hon'ble Mr. Justice G.B. Pattanaik C.S. Vaidyanathan, Sr. Adv., Rajesh K. Sharma, Rakesh K. Sharma, Ms. Shalu Sharma, Advs. with him for the appellant B.Parthasarthy, Adv. for the Respondent O R D E R
The following order of the Court was delivered:

Leave granted.

We have heard learned counsel on both sides. The only question for consideration is : whether the respondent has been using the machine "Brickman" for clay preparation, brick moulding, brick drying and brick burning, after purchasing the same from the appellant for evening his livelihood within the meaning of Explanation to section 2(1)(d) of the consumer Protection Act, 1986? Section 2(1)(d) reads as under:

"Consumer" means any person who:-

(i) buys any goods for a consideration which has been paid or promised or partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person."

If any goods are purchased for consideration, paid or promised or partly paid or under any system of deferred payment including any user of such goods other than the person who by such goods for the consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, the purchaser is the 'consumer' within the meaning of the Act. But the Act provides for certain exceptions, namely, "does not include a person who obtains such goods for resale or for any commercial purpose; or..."

The Explanation to the definition of 'consumer' has been added by way of an amendment in 1993 which reads as under:-

"Explanation,--For the purpose of sub-clause (i), "Commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment."

In other words, the Explanation excludes from the ambit of commercial purpose in sub-clause (i) if section 2(1)(d), any goods purchased by a consumer and used by him exclusively for the purpose of earning his livelihood by means of self-employment. Such purchase of goods is not a commercial purpose. The question, therefore, is : whether the respondent has been using the aforesaid machine for self-employment? The word 'self-employment' is not defined. Therefore, it is a matter of evidence. Unless there is evidence and on consideration thereof it is included that the machine

was used only for self-employment to earn his livelihood without a sense of commercial purpose by employing on regular basis the employee or workmen for trade in the manufacture and sale of bricks, it would be for self-employment. Manufacture and sale of bricks in a commercial way may also be to earn livelihood, but "merely earning livelihood in commercial business", does not mean that it is not for commercial purpose. Self-employment connotes altogether a different concept, namely, he alone uses the machinery purchased for the purpose of manufacture by employing himself in working out or producing the goods for earning his livelihood. 'He' includes the members of his family. Whether the respondent is using the machine exclusively by himself and the members of his family for preparation, manufacture and sale of bricks or whether he employed any workmen and if so, how many, are matters of evidence. The burden is on the respondent to prove them. Therefore, the Tribunals were not right in concluding that the respondent is using the machine only for self-employment and that, therefore, it is not a commercial purpose. The orders of all the Tribunals stand set aside. The matter is remitted to the District forum. The District Forum is directed to record evidence of the parties and dispose it of in accordance with law within a period of six months from the date of receipt order.

The appeal is accordingly allowed. No costs.