

## **Cci Chambers Co-Op. Hsg. Society Ltd vs Development Credit Bank Ltd on 29 August, 2003**

**Equivalent citations: AIR 2004 SUPREME COURT 184, 2003 (7) SCC 233, 2003 AIR SCW 5887, 2003 (4) COM LJ 238 SC, 2003 (8) ACE 33, 2003 (7) SCALE 34, 2003 (5) SLT 185, 2004 (1) UJ (SC) 295, 2004 UJ(SC) 1 295, (2003) 5 ALL WC 4505, (2003) 4 COM LJ 238, 2003 (9) SRJ 402, (2004) 1 ALLMR 47 (SC), (2003) 11 ALLINDCAS 749 (SC), (2003) 3 EASTCRIC 196, (2003) 7 SCALE 34, (2004) 2 BANKJ 408, (2003) 117 COMCAS 118, (2003) 2 WLC(SC)CVL 561, (2003) 3 MAD LJ 181, (2003) 10 INDLD 76, (2003) 4 JCR 20 (JHA), (2003) 4 JLJR 183, (2003) 4 MAD LW 739, (2004) 1 MAH LJ 651, (2004) 1 MPLJ 368, (2003) 4 PAT LJ 194, (2003) 3 PUN LR 739, (2003) 6 SUPREME 513, (2004) 1 UC 88, (2003) 53 ALL LR 429, (2004) 1 BANKCLR 270, (2003) 3 CPJ 9, (2004) 4 BOM CR 453**

**Author: R.C. Lahoti**

**Bench: R.C. Lahoti, Ashok Bhan**

CASE NO.:

Appeal (civil) 7228 of 2001

PETITIONER:

CCI CHAMBERS CO-OP. HSG. SOCIETY LTD.

RESPONDENT:

DEVELOPMENT CREDIT BANK LTD.

DATE OF JUDGMENT: 29/08/2003

BENCH:

R.C. LAHOTI & ASHOK BHAN

JUDGMENT:

JUDGMENT 2003 Supp(3) SCR 139 The Judgment of the Court was delivered by R.C. LAHOTI, J. The appellant, who was maintaining a Savings Bank Account with the respondent-Bank filed a complaint alleging deficiency of service by the respondent, submitting that the Bank had wrongly debited an amount of Rs. 75,70,352 in the account of the complainant by honouring such cheques as bore forged signatures of the complainant and in some of the cheques the figures had been altered. Photocopies of such cheques were filed with the complaint. As many as 72 cheques were issued on such dates when one of the two persons purportedly drawing the cheques was already dead. The other one denied his signatures and such disputed signatures did not at all tally with the standard specimen signatures. Suspicion was raised against an official of the respondent-Bank. The complaint

was filed after serving notice on the respondent-Bank, which was not complied with.

The National Consumer Distputes Redressal Commission, New Delhi (hareinafter, NCDRC, for short), formed an opinion as under :

"...considering the allegations in the comaplainit and the time that will require to decide the matter, it cannot be perhaps possible for this Commission to take up this matter. Numerous documents would be required to be proved including about 150 cheques. Service of the experts will have to be requisitioned for proof of the signatures and the writings wherein the figures in cheques have been altered. Under the Consumer Protection Act, 1986, this Commission is expected to decide the matter within a set frame of time. In *Bharthi Knitting Co. v. DHL Worldwide*, [1996] 4 SCC 704, Supreme Court has said, "Each case depends upon its own facts. In an appropriate case where there is an acute dispute of facts necessarily a Tribunal has to refer the parties to original civil suit established under CPC or appropriate State law to have the claims dealt with between the parties". Present is certainly a case involving an acute dispute.

"We feel reluctant to require the complainant to knock the door of civil court but considering the constraint of time required to decide this matter, this Commission has its limitations. With these observations this compalint is returned."

The complainant has filed this appeal under Section 23 of the Consumer Protection Act, 1986 (hereinafter, the Act for short).

Having heard the learned counsel for the parties we are of the opinion that the appeal deserves to be allowed and the matter sent back to the NCDRC for hearing and decision afresh.

Shri Harish N. Salve, the learned senior counsel for the appellant has submitted, placing reliance one three-Judge Bench decision of this Court *Dr. J.J Merchant & Ors. v. Shrinath Chaturvedi*, [2002] 6 SCC 635, *Indian Medical Association v. V.P. Shantha and Ors.*, [1995] 6 SCC 651 and *Amar Jwala Paper Mills (India) and Am. v. State Bank of India*, [1998] 8 SCC 387 that the approach adopted by NCDRC does not deserve to be countenanced. Shri P. Chadambaram, the learned senior counsel for the respondent-Bank has supported the impugned order placing reliance on *Synco Industries v. State Bank of Bikaner & Jaipur and Ors.*, [2002] 2 SCC 1.

It cannot be denied that fora at the National Level, the State level and at the District level have been constituted under the Act with the avowed object of providing summary and speedy remedy in conformity with the principles of natural justice, taking care of such grievances as are amenable to the jurisdiction of the fora established under the Act. These fora have been established and conferred with jurisdiction in addition to the conventional courts. The principal object sought to be achieved by establishing such fora is to relieve the conventional courts of their burden which is ever-increasing with the mounting arrears and whereat the disposal is delayed because of the complicated and detailed procedure which at times is accompanied by technicalities. Merely because

recording of evidence is required, or some questions of fact and law arise which would need to be investigated and determined, cannot be a ground for shutting the doors of any forum under the Act to the person aggrieved.

In the Indian Medical Association case (supra) this Court noticed the powers conferred on the several fora under the Act, the procedure applicable (including the exercise of some powers of the Civil Court under the Code of Civil Procedure having been made available to the fora under the Act) and held that the nature of averments made in the complaint is not by itself enough to arrive at a conclusion that the complaint raises such complicated questions as cannot be determined by the NCDRC. It is only when the dispute arising for adjudication is such as would require recording of lengthy evidence not permissible within the scope of a summary enquiry that a forum under the Act may ask the complainant to approach the Civil Court. The fora made available under the Act are in addition to, and not in derogation of the provisions of any other law for the time being in force and the jurisdiction of the conventional courts over such matters as are now cognizable under the Act has not been taken away. A three-Judge Bench of this Court recently in Dr. J.J.Merchant & Ors. 's case (supra) specifically dealt with the issue as to the guidelines which would determine the matter being appropriately dealt with by a forum under the Act or being left to be heard and decided by Civil Court. This Court noticed that the fora under the Act are specifically empowered to follow such procedure which may not require more time or delay the proceedings. A forum under the Act is entitled, and would be justified, in evolving a procedure of its own and also by effectively controlling the proceedings so as to do away with the need of a detailed and complicated trial and arrive at a just decision of the case by resorting to the principles of natural justice and following the procedure consistent with the principles thereof, also making use of such of the powers of Civil Courts as are conferred on it. The decisive test is not the complicated nature of the questions of fact and law arising for decision. The anvil on which entertainability of a complaint by a forum under the Act is to be determined is whether the questions, though complicated they may be, are capable being determined by summary enquiry i.e. by doing away with the need of a detailed and complicated method of recording evidence. It has to be remembered that the fora under the Act at every level are headed by experienced persons. The National Commission is headed by a person who is or has been a Judge of the Supreme Court. The State Commission is headed by a person who is or has been a Judge of the High Court. Each District Forum is headed by a person who is, or has been, or is qualified to be a District Judge. We do not think that mere complication either of facts or of law can be a ground for the denial of hearing by a forum under the Act. In Synco Industries case (supra) this Court upheld that order of NCDRC holding the complaint before it not a fit case to be tried under the Act and allowing liberty to the complainant to approach the Civil Court because this Court agreed with the opinion formed by the Commission that "very detailed evidence would have to be led, both to prove the claim and thereafter to prove the damages and expenses". The Court concluded that in any event it was "not appropriate case to be heard and disposed of in a summary fashion."

In Amar Jwala Paper Mills (India) and Anr. 's case (supra) this Court set aside the order of NCDRC relegating a complainant to a Civil Court in spite of the complexity of the matter because the hearing had almost concluded before the Commission.

In Dr. J.J. Merchant & Ors. 's case (supra) this Court dealing with the contention that complicated questions of facts cannot be decided in summary proceedings held - "this submission also requires to be rejected because under the Act, for summary or speedy trial, exhaustive procedure in conformity with the principles of natural justice is provided. Therefore, merely because it is mentioned that the Commission or Forum is required to have summary trial would hardly be a ground for directing the consumer to approach the civil court. For the trial to be just and reasonable, a long- drawn delayed procedure, giving ample opportunity to the litigant to harass the aggrieved other side, is not necessary. It should be kept in mind that the legislature has provided an alternative, efficacious, simple, inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would also be a totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of fact are required to be dealt with or decided. The Act provides sufficient safeguards."

In our opinion the decision arrived at by the NCDRC is premature. The Commission ought to have issued notice to the respondent and taken its pleadings on record. Only when the pleadings for both parties were available should the Commission have formed an opinion as to the nature and scope of enquiry, i.e., whether the questions arising for decision in the light of the pleadings of the parties required a detailed and complicated investigation into the facts which was incapable of being undertaken in a summary and speedy manner. Then the Commission could have justifiably formed an opinion on the need of directing away the complainant to the Civil Court. Mere complicated nature of the facts and law arising for decision would not be decisive.

The appeal is allowed. The impugned decision of the National Commission is set aside. The case is sent back to the Commission for hearing afresh consistently with the observations made hereinabove. No order as to the costs.