M/S Citicorp Finance (India) Limited vs Snehasis Nanda on 20 March, 2025

Author: Sudhanshu Dhulia

Bench: Sudhanshu Dhulia

REPORTABLE

2025 INSC 371

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.14157 OF 2024

M/S CITICORP FINANCE (INDIA) LIMITED …APPELLANT

VERSUS

SNEHASIS NANDA …RESPONDENT

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

The present appeal impugns the Final Judgment and Order dated 19.01.2023 [2023 SCC OnLine NCDRC 19] in Consumer Complaint No.919 of 2018 (hereinafter referred to as the 'Impugned Order') passed by the learned National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the 'NCDRC'), whereby the complaint filed by the respondent was allowed and the appellant was directed to refund Rs.13,20,000/- (Rupees Thirteen Lakhs Twenty Thousand) with interest @ 12% per annum and pay Rs.1,00,000/- (Rupees One Lakh) as litigation cost.

VARSHA MENDIRATTA Date: 2025.03.20 17:23:33 IST Reason:

FACTUAL BACKGROUND:

2. The respondent-complainant purchased Flat No.701, B-Wing, 7 th Floor, Riddhi Siddhi Heritage, Plot Nos.56 & 57, Sector-19, Airoli, Navi Mumbai (hereinafter referred to as the 'flat') on 30.05.2006. The respondent had availed a housing loan of Rs.17,64,644/- (Rupees Seventeen Lakhs Sixty-Four Thousand Six Hundred Forty-Four) from ICICI Bank, Malad, East Mumbai Branch. In February 2008, one Mr. Mubarak Vahid Patel (hereinafter referred to as the 'borrower') approached the respondent to purchase the flat for a consideration of Rs.32,00,000/- (Rupees Thirty-Two Lakhs). On 09.02.2008, the respondent and the borrower entered into a

Memorandum of Understanding (hereinafter referred to as the 'MoU') for sale of the flat.

On the same day, a Tripartite Agreement was purportedly entered into between the respondent, borrower and the appellant. Subsequently, the respondent and the borrower entered into an Agreement for Sale dated 12.02.2008 for the sale of the flat for a consideration of Rs.32,00,000/- (Rupees Thirty-Two Lakhs). Out of the total consideration of Rs.32,00,000/- (Rupees Thirty-Two Lakhs), Rs.1,00,000/- (Rupees One Lakh) was paid through a post-dated cheque dated 12.02.2008 and for the remaining Rs.31,00,000/- (Rupees Thirty-One Lakhs), the borrower approached the appellant for a housing loan.

3. The appellant and borrower entered into a Home Loan Agreement dated 28.02.2008, by which the appellant agreed to grant a loan of Rs.23,40,000/- (Rupees Twenty-Three Lakhs Forty Thousand) to the borrower. As the flat was already mortgaged with ICICI Bank, the borrower requested the appellant to disburse an amount of Rs.17,80,000/- (Rupees Seventeen Lakhs Eighty Thousand) directly to the respondent's ICICI Bank account, in order to secure the release of the flat. On 11.04.2008, the appellant granted in-principle approval for the loan. The above payment was made by the appellant and thereafter an amount of Rs.5,09,311/- (Rupees Five Lakhs Nine Thousand Three Hundred Eleven) remained to be disbursed to the borrower. The appellant issued a cheque for the balance sanctioned amount of Rs.5,09,311/- (Rupees Five Lakhs Nine Thousand Three Hundred Eleven) in favour of the borrower in 2009. However, the borrower did not encash this cheque and closed the loan account.

4. On 16.04.2018, the respondent filed Consumer Complaint No.919 of 2018 before the NCDRC, inter alia, praying for directions to the appellant to pay compensation due to the loss caused to him for non- payment of the balance Rs.13,20,000/- (Rupees Thirteen Lakhs Twenty Thousand) under an alleged Tripartite Agreement dated 09.02.2008. Vide Order dated 06.09.2018 [2018 SCC OnLine NCDRC 1416], the NCDRC, after hearing both parties, dismissed the complaint at the pre-

admission stage holding that the respondent cannot be said to be a 'consumer' within the meaning of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act'). The respondent then filed Review Application No.326 of 2018 in Consumer Complaint No.919 of 2018, which came to be dismissed by the NCDRC vide Order dated 20.09.2018. Thereafter, the respondent approached this Court by filing Civil Appeals No.10408-10409 of 2018.1 By Order dated 06.09.2019, this Court allowed the said civil appeals and set aside the Orders of the NCDRC. It restored the matter back to the file of the NCDRC for the complaint to be decided on merits.

5. On remand, the NCDRC considered the matter and vide the Impugned Order allowed the complaint filed by the respondent. The appellant was directed to refund Rs.13,20,000/- (Rupees Thirteen Lakhs Twenty Thousand) with interest @ 12% per annum from 14.04.2008 till the date of actual payment along with Rs.1,00,000/- (Rupees One lakh) towards litigation cost. The respondent preferred Civil Appeal No.1593 of 20232 in this Court against the Impugned Order seeking enhancement of the amount awarded, which was dismissed on 17.04.2023. SUBMISSIONS BY THE APPELLANT:

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6. Learned senior counsel Mr. Ritin Rai, for the appellant, submitted that the Impugned Order suffers from several infirmities and ought to be set aside. It was argued that the NCDRC failed to consider that the respondent is not a 'consumer' of the appellant within the meaning of Section 2(1)(d) of the Act. The MoU and the Agreement for Sale were purportedly entered into between the respondent and the borrower. The appellant is admittedly not a party to these and has undertaken no obligations thereunder. Similarly, the respondent is not a party to the Home Loan Agreement entered into between the appellant and the borrower. It was submitted that no service was ever provided by the appellant to the respondent and hence the respondent does not fall under the definition of 'consumer' under the Act.

7. It was argued that in such scenario, the NCDRC had concluded, without any evidence, that the appellant and the respondent were 'possibly' parties to a Tripartite Agreement under which the appellant was directly responsible for paying the total sale consideration to the respondent. The existence of such a 'Tripartite Agreement' has been denied by the appellant. Pertinently, no such 'Tripartite Agreement' signed by the appellant was ever filed by the respondent. The respondent, as the party averring the existence of such agreement, bears the burden of proving the existence of the same. The NCDRC erred by presuming the existence of a Tripartite Agreement and placing the burden of producing the same on the appellant.

8. It was further submitted that the appellant only had privity of contract with the borrower. It is on the instruction of the borrower - Mr. Mubarak Vahid Patel - that the appellant transferred an amount of Rs.17,80,000/- (Rupees Seventeen Lakhs Eighty Thousand) to the ICICI Bank for foreclosing the loan account of the respondent, as part of the sale consideration for the flat. This payment does not evidence the existence of any relationship between the appellant and the respondent, as it was made on the request of the appellant's customer viz. the borrower.

9. Without prejudice to the aforesaid submissions, it was submitted that the appellant also took an objection before the NCDRC that the borrower was a necessary and proper party for the purpose of adjudication of the complaint. The NCDRC in the Impugned Order failed to adjudicate upon this objection raised by the appellant. Further, the NCDRC allowed the complaint without any reasoning on the appellant's objection regarding the complaint being barred by limitation. Prayer was made to allow the appeal by the learned senior counsel. SUBMISSIONS BY THE RESPONDENT-IN-PERSON:

10. Mr. Snehasis Nanda, respondent-in-person, submitted that the Impugned Order has correctly taken note of the evidence and materials on record and allowed the complaint, which does not require any interference by this Court. It was submitted that the NCDRC, in a well- reasoned order, has rightly found the appellant to be guilty of deficiency in service and engaging in unfair trade practices, after going into the entirety of the complaint and the supporting documents.

11. It was submitted that the Home Loan of the borrower was approved by the appellant based on the Tripartite Agreement dated 09.02.2008 and the registered Agreement for Sale dated 12.02.2008, without which the appellant was not supposed to process the home loan application on the flat, as the said flat was mortgaged with another bank, i.e., ICICI Bank. The NCDRC has rightly upheld the existence of the Tripartite Agreement, after finding supporting evidence in the complaint. On the question raised by the appellant on the respondent's status as a 'consumer' under the Act, the submission is that this Court in Order dated 06.09.2019 passed in Civil Appeals No.10408-10409 of 2018 held in his favour on this point.

12. It was argued that the appellant has deliberately misled all fora in order to hide the existence of the Tripartite Agreement dated 09.02.2008 and to escape the liability to pay. Prayer was made to dismiss the appeal by the respondent.

ANALYSIS, REASONING & CONCLUSION:

13. We have heard learned senior counsel for the appellant and the respondent-in-person at length.

14. The lis before this Court basically can be broadly classified under two distinct heads. Firstly, as to whether the complainant would come under the definition of 'consumer' in terms of the Act. Secondly, assuming the first question is answered in the affirmative, whether any liability rested on the appellant to disburse the entire amount of Rs.31,00,000/- (Rupees Thirty-One Lakhs) i.e., the remaining consideration amount for sale of the flat payable to the complainant-respondent by the borrower. Ancillary issues arising are considered at the appropriate place infra. At the outset, it would be useful to reproduce Section 2(1)(d) of the Act:

> '2. Definitions.—(1) In this Act, unless the context otherwise requires,— ...
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> (d) "consumer" means any person who,—
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> (i) buys any goods 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 user of such goods other than the person who buys such goods for 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, but does not include a person who obtains such goods for resale or for any commercial purpose; or
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> (ii) hires or avails of 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 or avails of 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 but does not include a person who avails of such services for any commercial purpose;

Explanation.—For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;'

15. The respondent contends that this Court vide Order dated 06.09.2019 passed in Civil Appeals No.10408-10409 of 2018 has held that he is a 'consumer' under the Act. We reproduce the relevant discussion from the said Order:

> 'xxx At this stage, we are considering whether prima facie there is material available on record to support and substantiate the plea that the appellant is a consumer within the meaning of the Act.
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> The documents referred to above prima facie do show and support the case of the appellant. The matter shall of course be gone into and if there are submission(s) to the contrary from the other side, they will also be considered before arriving at the final decision. However, the National Commission ought not to have disposed of the matter at the admission stage.
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> We, therefore, allow these appeals, set-aside the orders of the National Commission and restore the matter back to the file of the National Commission, which shall be decided in accordance with law.
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> We have considered the matter only from the perspective whether prima facie it is evident that the appellant is a consumer or not. The entire matter has to be gone into and our prima facie view shall not debar any of the parties to submit material and prove it to the contrary. The entirety of the matter shall be gone into by the National Commission on merits at the appropriate stages.
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> xxx' (emphasis supplied)
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> 16. A bare glance at the Order dated 06.09.2019 passed in Civil Appeals No.10408-10409 of 2018 makes it clear that this Court had nowhere conclusively held that the respondent-complainant was a 'consumer' under the Act. All that this Court did was to observe, upon perusing the documents produced before it, that it was of the prima facie view that the appellant was a 'consumer'; that such view was only prima facie; that the other side could submit and show to the contrary; that the NCDRC ought not to have disposed of the matter at the admission stage;

that the entirety of the matter be gone into, and; that the NCDRC should decide in accordance with law. Even at that time, the respondent had not produced a copy of the purported Tripartite Agreement before this Court. That apart, usage of the term 'prima facie' and its import is obvious – namely, that the NCDRC was left free to decide the issue, after hearing the parties. The NCDRC in the Impugned Order has offered no reasoning on how the respondent was a 'consumer' under the Act. As per the complainant-respondent, there was a Tripartite Agreement and an Indemnity Bond

between the appellant, the complainant-respondent and the borrower intervened by a Home Loan agreement between the appellant and the borrower as also a MoU and an Agreement for Sale between the complainant-respondent and the borrower. Though the existence of the Tripartite Agreement was specifically denied by the appellant, the NCDRC has drawn an adverse inference against the appellant only because a specific affidavit was not filed before it. Pausing here, we may note that such statement re denial of the existence of the purported Tripartite Agreement was made in the appellant's reply only, in the NCDRC, which was itself supported by an affidavit and thus, no separate/special affidavit was required in this behalf. Moreover, and more importantly, the onus is on the person who asserts a fact to prove it. In the present case, where the respondent himself is a signatory to the purported Tripartite Agreement, the presumption will be that he has retained a copy of the same. Thus, non-production of the (complete) Tripartite Agreement, if at all there was one, would lead to an adverse inference, and under normal circumstances as also in the present case, against the complainant-respondent, and not against the appellant. What the complainant produced before the NCDRC was an unsigned, unstamped and partly blank document, which he asserts is the Tripartite Agreement between the appellant, the borrower and him.

17. Coming to the main merits, even if it is accepted that all the afore- mentioned agreements were validly there, primarily the Tripartite Agreement, as contended by the respondent, a conjoint reading of all would lead to the obvious conclusion that the essential transaction of sale was between the complainant-respondent and the borrower who was the buyer of the flat of the complainant-respondent for an agreed consideration of Rs.32,00,000/- (Rupees Thirty-Two Lakhs). In the specific factual setting, the respondent, having no privity of contract with the appellant, cannot be termed a 'consumer' under the Act. This alone was sufficient to dismiss the complaint. In Indian Oil Corporation v Consumer Protection Council, Kerala, (1994) 1 SCC 397, it was held that as there was no privity of contract between the concerned parties therein, no 'deficiency' would arise and the action (complaint) would not be maintainable before the concerned Consumer Forum. In Janpriya Buildestate Pvt. Ltd. v Amit Soni, 2021 SCC OnLine SC 1269, the Court held:

> '25. We have indicated the scheme of the Act. A claim can succeed in a case of this nature if the consumer establishes deficiency of service. No doubt, the law giver contemplates other elements as contemplated in the definition of the word 'complaint'. The word 'deficiency' has been widely worded. Equally so, is the word 'service'. A statute of this nature must, indeed, if possible, be construed in favour of the consumer. However, that is a far cry from holding that if deficiency is not established, yet the opposite party must bear the liability which cannot be thrust on its shoulders. We would clarify that by making it clear that what we intend to say is that when there is no privity between the complainant and the opposite party, the opposite party could not become liable under the Act. In other words, if there is no law under which a person is to provide a service and if it does not fall within the residuary clause, namely, 'otherwise' as defined under the word 'deficiency', it is necessary for a consumer to succeed, that there must be a contract. It is in that context, we indicated that the existence of an obligation under a contract is a sine qua non for a consumer to successfully prosecute a case under the Act.' (emphasis supplied)

18. Ultimately, the loan which was sanctioned by the appellant to the borrower was only for a sum of Rs.23,40,000/- (Rupees Twenty-Three Lakhs Forty Thousand). Thus, here also we find that the Impugned Order of the NCDRC holding that the appellant was bound to pay the entire amount of Rs.31,00,000/- (Rupees Thirty-One Lakhs) and directing it to pay the balance consideration of Rs.13,20,000/- (Rupees Thirteen Lakhs Twenty Thousand), appears to be wholly without basis. In Tata Motors Limited v Antonio Paulo Vaz, (2021) 18 SCC 545, the Court stated:

> '28. The record establishes the absolute dearth of pleadings by the complainant with regard to the appellant's role, or special knowledge about the two disputed issues i.e. that the dealer had represented that the car was new, and in fact sold an old, used one, or that the undercarriage appeared to be worn out. This, in the opinion of this Court, was fatal to the complaint. No doubt, the absence of the dealer or any explanation on its part, resulted in a finding of deficiency on its part, because the car was in its possession, was a 2009 model and sold in 2011. The findings against the dealer were, in that sense, justified on demurrer. However, the findings against the appellant, the manufacturer, which had not sold the car to Vaz, and was not shown to have made the representations in question, were not justified. The failure of the complainant to plead or prove the manufacturer's liability could not have been improved upon, through inferential findings, as it were, which the District, State and National Commission rendered. The circumstance that a certain kind of argument was put forward or a defence taken by a party in a given case (like the appellant, in the case) cannot result in the inference that it was involved or culpable, in some manner. Special knowledge of the allegations made by the dealer, and involvement, in an overt or tacit manner, by the appellant, had to be proved to lay the charge of deficiency of service at its door. In these circumstances, having regard to the nature of the dealer's relationship with the appellant, the latter's omissions and acts could not have resulted in the appellant's liability.' (emphasis supplied)

19. Further, the purported Tripartite Agreement, relied upon by the complainant-respondent himself, states that the appellant would only pay the foreclosure amount, out of the total loan amount sanctioned to the borrower, to ICICI Bank for or on behalf of the borrower towards foreclosure of respondent's loan facility with it. No further liability to pay any amount directly to the complainant-respondent was even envisaged in the Tripartite Agreement. Thus, arguendo the Agreement for Sale did mention that the loan amount of Rs.17,80,000/- (Rupees Seventeen Lakhs Eighty Thousand) would be paid to ICICI Bank towards foreclosure of the respondent's loan account and the remaining would be paid to the complainant-respondent by the appellant, it cannot be lost sight of that such stipulation was only mentioned in the Agreement for Sale, which is only between the complainant-respondent and the borrower. This is clear even from that fact that ultimately the amount which was sanctioned by the appellant to the borrower was only Rs.23,40,000/- (Rupees Twenty-Three Lakhs Forty Thousand) and not Rs.31,00,000/- (Rupees Thirty-One Lakhs).

20. In the aforesaid background, we find that the appellant, assuming any liability in this regard existed at all, taking the respondent's case at the highest, could not have been saddled with having to pay more than what was envisaged under the Home Loan Agreement between the borrower and the

appellant. In any event, the appellant's liability under the Agreement for sale was restricted only to satisfying the dues of the complainant-respondent with ICICI Bank which sum was in fact quantified at Rs.17,87,763/- (Rupees Seventeen Lakhs Eighty Seven Thousand Seven Hundred Sixty-Three) and, in any view of the matter, could not have exceeded Rs.23,40,000/- (Rupees Twenty-Three Lakhs Forty Thousand). Thus, the NCDRC could not have, under any circumstance, taken a view that the appellant was liable to pay Rs.31,00,000/- (Rupees Thirty-One Lakhs) both to ICICI Bank as well as to the complainant-respondent, who was not a party to the ultimate sanction of the loan by the Home Loan Agreement, which was between the appellant and the borrower. Hence, even the second question is answered in the negative.

21. As has been discussed above, it is clear that the complainant- respondent cannot be said to be a 'consumer' under the Act as it had no privity of contract with the appellant, due regard being had to the totality of the factual matrix. The purported Tripartite Agreement is dated 09.02.2008. The cause of action statedly had arisen in/by April/May, 2008. The respondent filed a complaint under the Act on 16.04.2018. The Act provides as under:

> '24-A. Limitation period.—(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. (2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:
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> Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.' (emphasis supplied)
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> 22. Therefore, while the NCDRC is competent to condone any period of delay in filing a complaint beyond two years from the date when the cause of action arises, the discretion is circumscribed by twin conditions:
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> (i) that the complainant satisfy the NCDRC that he had sufficient cause for not filing his complaint within such period, and; (ii) that the NCDRC record the reasons for condoning such delay. We have perused the ordersheets of the NCDRC pertaining to the complaint at hand. Neither reasons nor a formal order condoning delay is forthcoming, either in the ordersheets or in the Impugned Order. Despite the appellant raising the issue of limitation, the Impugned Order is silent on the said score. On a probe into the pleadings, it transpires that the respondent was agitating the dispute before, inter alia, the Banking Ombudsman, Reserve Bank of India and even the High Court of Orissa by way of Writ Petition (Civil) No.18429 of 2017. In this backdrop, at the initial stage(s) of hearing, the respondent ought to have satisfied/attempted to satisfy the NCDRC on the delay, and the NCDRC ought to have passed a reasoned order condoning the delay or refusing to condone the delay. Be

that as it may.

23. Another specific plea by the appellant, that the borrower should have been joined in the proceedings before the NCDRC has also gone unanswered. If the borrower had been arrayed as an Opposite Party in the NCDRC, the question of whether a Tripartite Agreement was duly executed and existed or not, could perhaps have been answered. It is too late in the day to plug such non-joinder. In view of the borrower being the purchaser of the flat in question and party to the MoU, the Agreement for Sale, the Home Loan Agreement and the purported Tripartite Agreement, he was, at the very least a proper party, but looked at from the lens where the appellant denied the very existence of the Tripartite Agreement, the borrower being the sole link between the respondent and the appellant, the borrower would be a necessary party in the complaint. We need only refer to the dicta in Udit Narain Singh Malpaharia v Additional Member Board of Revenue, Bihar, 1963 Supp (1) SCR 676, where the Court explained:

> '7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.
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> 8. The next question is, what is the nature of a writ of certiorari. What relief can a petitioner in such a writ obtain from the Court. Certiorari. lies to remove for the purpose of quashing the proceedings of inferior courts of record or other persons or bodies exercising judicial or quasi-judicial functions. It is not necessary for the purpose of this appeal to notice the distinction between a writ of certiorari and a writ in the nature of certiorari: in either case the High Court directs an inferior tribunal or authority to transmit to itself the record of proceedings pending therein for scrutiny and, if necessary, for quashing the same. It is well settled law that a certiorari lies only in respect of a judicial or quasi-judicial act as distinguished from administrative act. The following classic test laid down by Lord Justice Atkin, as he then was, in King v. Electricity Commissioners [(1924) 1 KB 171] and followed by this Court in more than one decision clearly brings out the meaning of the concept of judicial act:
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> "Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs." Lord Justice Slesser in King v. London County Council [(1931) 2 KB 215, 243] dissected the concept of judicial act laid down by Atkin, L.J., into the following heads in his judgment: "Wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority — a writ of certiorari may issue". It will be seen from the ingredients of judicial act that there must be a duty to act judicially. A tribunal, therefore, exercising

> a judicial or quasi-judicial act cannot decide against the rights of a party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-

judicial acts, ex hypothhesi it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it. It is implicit in such a proceeding that a tribunal or authority which is directed to transmit the records must be a party in the writ proceedings, for, without giving notice to it, the record of proceedings cannot be brought to the High Court. It is said that in an appeal against the decree of a subordinate court, the court that passed the decree need not be made a party and on the same parity of reasoning it is contended that a tribunal need not also be made a party in a writ proceeding. But there is an essential distinction between an appeal against a decree of a subordinate court and a writ of certiorari to quash the order of a tribunal or authority: in the former, the proceedings are regulated by the Code of Civil Procedure and the court making the order is directly subordinate to the appellate court and ordinarily acts within its bounds, though sometimes wrongly or even illegally, but in the case of the latter, a writ of certiorari is issued to quash the order of a tribunal which is ordinarily outside the appellate or revisional jurisdiction of the court and the order is set aside on the ground that the tribunal or authority acted without or in excess of jurisdiction. If such a tribunal or authority is not made party to the writ, it can easily ignore the order of the High Court quashing its order, for, not being a party, it will not be liable to contempt. In these circumstances whoever else is a necessary party or not the authority or tribunal is certainly a necessary party to such a proceeding. In this case, the Board of Revenue and the Commissioner of Excise were rightly made parties in the writ petition.

9. The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen, a tribunal or authority performs a judicial or quasi- judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari the defeated party seeks for the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said order without the successful party being before it. Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any or that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party.

10. In addition, there may be parties who may be described as proper parties, that is parties whose presence is not necessary for making an effective order, but whose persence may facilitate the settling of all the questions that may be involved in the controversy. The question of making such a

person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may apply for the impleading of such a parry or such a party may suo motu approach the court for being impleaded therein.

11. The long established English practice, which the High Courts in our country have adopted all along, accepts the said distinction between the necessary and the proper party in a writ of certiorari. The English practice is recorded in Halsbury's Laws of England, Vol. 11, 3rd Edn. (Lord Simonds') thus in para 136:

> "The notice of motion or summons must be served on all persons directly affected, and where it relates to any proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any act in relation to the proceedings or to quash them or any order made therein, the notice of motion or summons must be served on the clerk or registrar of the court, the other parties to the proceedings, and (where any objection to the conduct of the judge is to be made) on the judge...". In para 140 it is stated:
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> "On the hearing of the summons or motion for an order of mandamus prohibition or certiorari, counsel in support begins and has a right of reply. Any person who desires to be heard in opposition, and appears to the court or Judge to be a proper person to be heard, is to be heard notwithstanding that he has not been served with the notice or summons, and will be liable to costs in the discretion of the court or Judge if the order should be made ...". So too, the Rules made by the Patna High Court require that a, party against whom relief is sought should be named in the petition. The relevant Rules read thus:
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> Rule 3. Application under Article 226 of the Constitution shall be registered as Miscellaneous Judicial Cases or Criminal Miscellaneous Cases, as the case may be.
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> Rule 4. Every application shall, soon after it is registered, be posted for orders before a Division Bench as to issue of notice to the respondents. The Court may either direct notice to issue and pass such interim order as it may deem necessary or reject the application.
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> Rule 5. The notice of the application shall be served on all persons directly affected and on such other persons as the Court may direct.
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> Both the English rules and the rules framed by the Patna High Court lay down that persons who are directly affected or against whom relief is sought should be named in the petition, that is all necessary parties should be impleaded in the petition and notice served on them. In "The Law of Extra-ordinary Legal Remedies" by Ferris, the procedure in the matter of impleading parties is clearly described at p. 201 thus:

> "Those parties whose action is to be reviewed and who are interested therein and affected thereby, and in whose possession the record of such action remains, are not only proper, but necessary parties. It is to such parties that notice to show cause against the issuance of the writ must be given, and they are the only parties who may make return, or who may demur. The omission to make parties those officers whose proceedings it is sought to direct and control, goes to the very right of the relief sought. But in order that the court may do ample and complete justice, and render a judgment which will be binding on all persons concerned, all persons who are parties to the record, or who are interested in maintaining the regularity of the proceedings of which a review is sought, should be made parties respondent." xxx' (emphasis supplied)
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> 24. Further, the so-called Tripartite Agreement provides for the matter being resolved by arbitration under the provisions of the (Indian) Arbitration and Conciliation Act, 1996. In this context, we notice the judgment in M Hemalatha Devi v B Udayasri, (2024) 4 SCC 255, authored by one of us (Sudhanshu Dhulia, J.), where this Court held, inter alia:
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> '17. The exclusion of a dispute from arbitration may be express or implied, depending again upon the nature of the dispute, and a party to a dispute cannot be compelled to resort to arbitration merely for the reason that it has been provided in the contract, to which it is a signatory. The arbitrability of a dispute has to be examined when one of the parties seeks redressal under a welfare legislation, in spite of being a signatory to an arbitration agreement. "The Consumer Protection Act" is definitely a piece of welfare legislation with the primary purpose of protecting the interest of a consumer. Consumer disputes are assigned by the legislature to public fora, as a measure of public policy. Therefore, by necessary implication such disputes will fall in the category of non-arbitrable disputes, and these disputes should be kept away from a private fora such as "arbitration", unless both the parties willingly opt for arbitration over the remedy before public fora.
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> xxx
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> 22. The question, however, is of election, or of choice, and not of which party had approached the court first.

More importantly it would be the nature of the dispute, which would determine the forum for its redressal. The law gives this choice to the consumer to either avail a remedy under the Consumer Protection Act, by filing a complaint before the judicial authority, or go for arbitration. This option is not available to the builder, as they are not "consumers", under the 2019 Act. It is the respondent here Smt B. Udayasri who has to make a "choice" between submitting before the private fora i.e. the Arbitration Tribunal or to make a complaint before the Consumer Forum, which is a public fora. She has chosen to go to the latter. Her reply before the Telangana High Court on the Section 11 application of the builder is not her submission to the arbitration process. In her reply, she informs

the High Court of the complaint made by her as a consumer before the District Consumer Forum, which is a "judicial authority" and hence Section 8 of the Arbitration Act, 1996 would come into play and not an application under Section 11 of the Arbitration Act, 1996.

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35. It was held that the 1986 Act was enacted to provide better protection of the interest of consumers and for providing a redressal mechanism, which is cheaper, easier, expeditious and effective. For this purpose, various quasi-judicial forums were set up at district, State and national level with a wider range of powers vested in these Judicial Authorities. These Judicial Authorities were vested with the powers to give relief of a specific nature and to award compensation to the consumer wherever it was felt necessary to impose penalty for non- compliance of their orders, and the judicial authorities were vested with such powers. Now compare this with the power of the arbitrator. An arbitrator does not have the power to impose a penalty. This is also one of the essential differences between the two forums. It was finally held that the provisions given under the 1986 Act were in addition to, and not in derogation to, any other provisions or any other law for the time being in force. xxx

38. This Court in a series of decisions, while considering both the provisions in the Consumer Protection Act, 1986 and the Arbitration Act, 1996, has held that the Consumer Protection Act being a special and beneficial legislation, the remedies provided therein are special remedies and a consumer cannot be deprived of them should he choose to avail such a remedy, in spite of an arbitration agreement between the parties. It is a remedy provided to the consumer where the consumer finds a defect in either goods or services provided to him and therefore seeks a redressal of his grievances before the consumer forum provided to him by the legislature. xxx

47. This Court ultimately held that the main purpose of bringing an amendment inter alia in Sections 8 and 11 of the Arbitration Act, 1996 was to minimise the scope of judicial authority, which was to refuse reference to arbitration only on the ground when it prima facie finds that there was no valid arbitration agreement. The legislative intent for the amendment was confined to limiting judicial intervention, and once the Court finds that there is a valid arbitration agreement, it has no option but to refer the matter for arbitration. But this would not mean that where the matter itself is non-arbitrable, or is covered by a special legislation such as the Consumer Protection Act, it still has to be referred for arbitration. In para 59 of Emaar-3 [Emaar MGF Land Ltd. v Aftab Singh, (2019) 12 SCC 751: (2018) 5 SCC (Civ) 652], it was stated as under: (SCC pp. 781-82) "59. The amendment in Section 8 cannot be given such expansive meaning and intent so as to inundate entire regime of special legislations where such disputes were held to be not arbitrable.

Something which legislation never intended cannot be accepted as side wind to override the settled law. The submission of the petitioner that after the amendment the law as laid down by this Court in National Seeds Corpn. [National Seeds Corpn. Ltd. v M. Madhusudhan Reddy, (2012) 2 SCC 506:

> (2012) 1 SCC (Civ) 908] is no more a good law cannot be accepted. The words 'notwithstanding any judgment, decree or order of the Supreme Court or any court'

> were meant only to those precedents where it was laid down that the judicial authority while making reference under Section 8 shall be entitled to look into various facets of the arbitration agreement, subject-matter of the arbitration whether the claim is alive or dead, whether the arbitration agreement is null and void.

The words added in Section 8 cannot be meant for any other meaning." Emaar-3 [Emaar MGF Land Ltd. v. Aftab Singh, (2019) 12 SCC 751: (2018) 5 SCC (Civ) 652] though ends with a caveat, where it leaves the option with the party who may have an option to choose between a public or private forum, may consciously choose to go for private fora. This is what it says: (SCC p. 783, para 63) "63. We may, however, hasten to add that in the event a person entitled to seek an additional special remedy provided under the statutes does not opt for the additional/special remedy and he is a party to an arbitration agreement, there is no inhibition in disputes being proceeded in arbitration. It is only the case where specific/special remedies are provided for and which are opted by an aggrieved person that judicial authority can refuse to relegate the parties to the arbitration."' (emphasis supplied)

25. As vivid from Emaar MGF Land Ltd. v Aftab Singh, (2019) 12 SCC 751 and M Hemalatha Devi (supra), even in a consumer dispute under the Act, or for that matter, the Consumer Protection Act, 2019, arbitration, if provided for under the relevant agreement/document, can be opted for/resorted to, however, at the exclusive choice of the 'consumer' alone. As the appellant is not a 'consumer' in terms of the Act and the existence of the Tripartite Agreement is doubtful, we need not dwell further hereon.

26. On an overall circumspection of the facts and circumstances of the case coupled with a survey of the precedents, we find that the Impugned Order cannot be sustained. Accordingly, in view of the discussions in the preceding paragraphs, the Impugned Order is set aside.

27. The appeal is allowed. Parties to bear their own costs.

28. However, this Judgment shall not impact proceedings, if any, inter-se borrower and respondent. This shall not ipso facto relax/extend any period of limitation for resort to lawful remedies, as may be applicable.

29. In view of the appeal being allowed, no order is required to be passed in I.A. No.117048/2023 and I.A. No.188226/2023.

30. I.A. No.166893/2023 is the respondent's application seeking permission to appear and argue in person; as we have already heard him, hence this application is formally allowed.

……J. [SUDHANSHU DHULIA] ……..J. [AHSANUDDIN AMANULLAH] NEW DELHI MARCH 20, 2025