

Marine Container Services South Pvt. ... vs Go Go Garments on 23 January, 1998

Equivalent citations: 1998VIAD(SC)12, AIR1999SC80, JT1998(4)SC322, (1998)IIMLJ65(SC), RLW1999(1)SC3, (1998)3SCC247, AIR 1999 SUPREME COURT 80, 1998 (2) ALL CJ 904

Bench: S.P. Bharucha, V.N. Khare

ORDER

1. Special leave granted.

2. The respondent has been served and has put in an appearance and filed a counter. It was not represented when the SLP had been called out on an earlier date, when it was adjourned due to its absence. It is not represented today, even after the SLP has been passed over once.

3. The order that is under appeal was passed by the National Consumer Disputes Redressal Commission. It says: "In our opinion, Section 230 of the Contract Act in terms will apply only to suits instituted before a regular civil court and not to complaints filed under the Consumer Protection Act which is a special legislation intended to protect consumers in India against the exploitation of manufacturers, traders and providers of service by supply of defective goods or by deficiency in service resulting in loss to the consumer."

The National Commission took the view that, inasmuch as the respondent was pursuing the remedy available to it under the provisions of the Consumer Protection Act and had claimed that it had hired the services of the appellant and there was deficiency in rendering such services, its complaint was maintainable, for the protection given to an agent under Section 230 of the Contract Act was available only when the action arose out of or in relation to the enforcement of a contract.

4. We are not a little surprised to read that the Contract Act does not apply to complaints filed under the Consumer Protection Act. The Contract Act applies to all the litigants before the Commission under the Consumer Protection Act included. Whether in proceedings before the Commission or otherwise, an agent is entitled to invoke the provisions of Section 230 of the Contract Act and, if the facts found support him, his defence based thereon cannot be brushed away.

5. The District Consumer Disputes Redressal Forum, Madras, before whom the respondent had instituted the claim, had found in favour of the appellant, both on the basis of Section 230 of the Contract Act as also on the issue of limitation. The State Consumer Disputes Redressal Commission, Madras, in appeal, upheld the decision of the District Forum based on Section 230 of the Contract Act and, therefore, found it unnecessary to consider the aspect of limitation. The National Forum, as aforesaid, took the contrary view on the applicability of Section 230 of the Contract Act on the mistaken basis referred to above as also by reliance on the third clause of the presumptions to the

contrary in Section 230, that is to say that an agent is bound by a contract entered into by his principal who, though disclosed, cannot be sued. That the principal here is "some company in Taiwan situated far outside the jurisdiction of the consumer courts in India" does not mean that it could be inferred, for it had not been so found by the District or State Commissions, that it could not be sued.

6. The judgment and order of the National Commission is erroneous. It must be set aside and the order of the State Commission restored.

7. The appeal is, accordingly, allowed with no order as to costs.