

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 201 OF 2016

(Against the Order dated 15/10/2015 in Appeal No. 273/2012 of the State Commission Rajasthan)

1. M/S. SARJU COLD STORAGE
THROUGH PARTNER MR. K.N. GUPTA A-71, ROAD
NO. 1C, VISHWAKARMA INDUSTRIAL AREA,
JAIPUR
RAJASTHAN

.....Petitioner(s)

Versus

1. M/S. ANIL KUMAR AMIT KUMAR
KIRANA STOCKIST THROUGH PROPRIETOR,
NATHURAM GUPTA, SHRI RAM BHAVAN NEW
MANDI ROAD, DISTT.
DAUSA
RAJASTHAN

.....Respondent(s)

REVISION PETITION NO. 2758 OF 2016

(Against the Order dated 15/10/2015 in Appeal No. 234/2012 of the State Commission Rajasthan)

1. M/S. SHRI GANESH OIL & FLOUR MILLS
THROUGH PROPRIETOR SHRI GANSHYAM
GUPTA S/O. SHRI RAMSWAROOP GUPTA, OLD
SAZI MANDI,
KARAULI
RAJASHTAN

.....Petitioner(s)

Versus

1. M/S. SARJU COLD STORAGE & ANR.
THROUGH PROPRIETOR K.N. GUPTA, R/O. G-155,
UTSAV SOFTECH DEVI MARG, KABIR MARG,
COLLECTRATE CIRCLE,
JAIPUR
RAJASTHAN

2. M/S. RAMDAYAL SHYAMSUNDER GOYAL
THROUGH PROPRIETOR SHYAM SUNDER S/O.
SHRI RAM DAYAL MAHAJAN, C-1, CHANDPOLE
MANDI,
JAIPUR
RAJASTHAN

.....Respondent(s)

REVISION PETITION NO. 2759 OF 2016

(Against the Order dated 15/10/2015 in Appeal No. 626/2012 of the State Commission Rajasthan)

1. M/S. BAJRANGLAL SHYAM SUNDER
THROUGH PROPRIETOR MOHAN LAL, NEAR
GANESH TEMPLE, SADAR MARKET,
KARAULI
RAJASHTAN

.....Petitioner(s)

Versus

1. M/S. SARJU COLD STORAGE & ANR.
THROUGH PROPRIETOR K.N. GUPTA, R/O. G-155,
UTSAV SOFTECH DEVI MARG, KABIR MARG,
COLLECTRATE CIRCLE,
JAIPUR
RAJASTHAN

2. M/S. RAMDAYAL SHYAMSUNDER GOYAL
THROUGH PROPRIETOR SHYAM SUNDER S/O.
SHRI RAM DAYAL MAHAJAN, C-1, CHANDPOLE
MANDI,
JAIPUR
RAJASHTAN

.....Respondent(s)

REVISION PETITION NO. 2760 OF 2016

(Against the Order dated 15/10/2015 in Appeal No. 627/2012 of the State Commission Rajasthan)

1. M/S. MOHAN & BROTHERS
THROUGH PROPRIETOR SMT. SITA DEVI W/O.
SHRI MOHAN LAL GUPTA, NEAR HINDON GATE,
KARAULI
RAJASHTAN

.....Petitioner(s)

Versus

1. M/S. SARJU COLD STORAGE & ANR.
THROUGH PROPRIETOR K.N. GUPTA, R/O. G-155,
UTSAV SOFTECH DEVI MARG, KABIR MARG,
COLLECTRATE CIRCLE,
JAIPUR
RAJASTHAN

2. M/S. RAMDAYAL SHYAMSUNDER GOYAL
THROUGH PROPRIETOR SHYAM SUNDER S/O.
SHRI RAM DAYAL MAHAJAN, C-1, CHANDPOLE
MANDI,
JAIPUR
RAJASTHAN

.....Respondent(s)

REVISION PETITION NO. 297 OF 2016

(Against the Order dated 15/10/2015 in Appeal No. 274/2012 of the State Commission Rajasthan)

1. M/S. SARJU COLD STORAGE
THROUGH THE AUTHORISED REPRESENTATIVE
SHRI KN GUPTA, R/O D-155, KABIR MARG DURGA
MARG
JAIPUR
RAJASTHAN

.....Petitioner(s)

Versus

1. GANESH OIL & FLOUR MILLS & ANR.
THROUGH ITS PROPRIETOR SHRI GHANSHYAM
GUPTA R/O OLD SUBZI MANDI, KARAUJI,
DISTRICT KARAUJI
RAJASTHAN

2. M/S RAM DAYAL SHYAM SUNDER GOYAL
THROUGH ITS PROPRIETOR, SHRI SHYAM
SUNDER R/O C-1, CHANDPOLE MANDI
JAIPUR
RAJASTHAN

.....Respondent(s)

REVISION PETITION NO. 298 OF 2016

(Against the Order dated 15/10/2015 in Appeal No. 275/2012 of the State Commission Rajasthan)

1. M/S. SARJU COLD STORAGE
THROUGH THE AUTHORISED REPRESENTATIVE
SHRI KN GUPTA, R/O D-155, KABIR MARG DURGA
MARG
JAIPUR
RAJASTHAN

.....Petitioner(s)

Versus

1. M/S. KAILA DEVI ENTERPRISES
THROUGH ITS PROPRIETOR, MR. MAHESH
CHAND, NEW CLOTH MARKET
DISTRICT-KARAUJI
RAJASTHAN

.....Respondent(s)

REVISION PETITION NO. 299 OF 2016

(Against the Order dated 15/10/2015 in Appeal No. 595/2012 of the State Commission Rajasthan)

1. M/S. SARJU COLD STORAGE
THROUGH THE AUTHORISED REPRESENTATIVE
SHRI KN GUPTA, R/O D-155, KABIR MARG DURGA
MARG
JAIPUR
RAJASTHAN

.....Petitioner(s)

Versus

1. M/S. MOHAN & BROTHERS
THROUGH ITS PROPRIETOR, SMT. SITA, W/O
MOHAN LAL GUPTA, NEAR HINDON GATE,
DISTRICT-KARAULI
RAJASTHAN

.....Respondent(s)

REVISION PETITION NO. 300 OF 2016

(Against the Order dated 15/10/2015 in Appeal No. 613/2012 of the State Commission Rajasthan)

1. M/S. SARJU COLD STORAGE
THROUGH THE AUTHORISED REPRESENTATIVE
SHRI KN GUPTA, R/O D-155, KABIR MARG DURGA
MARG
JAIPUR
RAJASTHAN

.....Petitioner(s)

Versus

1. M/S. BAJRANGLAL SHYAM SUNDER KAROULI
THROUGH ITS PROPRIETOR SHRI MOHAN LAL
NEAR GANESH MANDIR, SADAR BAZAR
KAROULI
RAJASTHAN

.....Respondent(s)

BEFORE:

HON'BLE MR. PREM NARAIN, PRESIDING MEMBER

For the Petitioner : For the Petitioner in RP/201/2016: Mr. Dhruv Malik, Adv. and
Ms. Madhurima Kapoor, Adv.

For the Petitioner in RP/297/2016,
RP/298/2016, RP/299/2016 &
RP/300/2016 and for the Resp. in
RP/2758/2016, RP/2759/2016 &
RP/2760/2016. : Mr. Abhinav Hansaria, Adv.

For the Respondent : For the Resp. in RP/201/2016,
RP/297/2016, RP/298/2016, RP/299
of 2016, RP/300/2016 and for the
Petitioners in RP/2758/2016,
RP/2759/2016 & RP/2760/2016 : Mr. Shiv Vyas, Adv.
For Respondent No. 2 in RP/297 of
2016, RP/2758/2016, RP/2759/16 &
RP/2760/2016. : Exparte

Dated : 26 Aug 2019

ORDER

These revision petitions Nos. 201 of 2016, 297 of 2016, 298 of 2016, 299 of 2016 & 300 of 2016 have been filed against the separate orders dated 15.10.2015 of the State Consumer Disputes Redressal Commission, Rajasthan, (in short 'the State Commission') passed in First Appeal Nos.273/2012, 274/2012, 275/2012, 595/2012 and 613/2012 respectively.

2. Revision Petition Nos.2758 of 2016, 2759 of 2016 & 2760 of 2016 are cross revision petitions filed against the same impugned order by the original complainants. RP No.2758 of 2016 is cross revision petition of RP No. 297 of 2016. RP No.2759 of 2016 is cross revision petition of RP No.300 of 2016. Similarly RP No.2760 of 2016 is cross revision petition of RP No.299 of 2016.

3. Brief facts in respect of these revision petitions are that the complainants/respondents in RP No.201 of 2016, RP No.297 of 2016, RP No.298 of 2016, RP No.299 of 2016 & RP No.300 of 2016 had put their agricultural commodity as per the following table with the cold storage of opposite party.

File No.	Commodity	When stored	Quantity
RP 201 of 2016	Methi	14.4.2005	220 sacks
RP 297 of 2016 RP 2758 of 2016	Black pepper (Kali mirch)	20.5.2003	35 bags
RP 298 of 2016	Black pepper (Kali mirch)	28.12.2002	11 bags
RP 299 of 2016 RP 2760 of 2016	Kali mirch (Black pepper)	9.8.2005	25 bags
RP 300 of 2016 RP 2759 of 2016	Black pepper (Kali mirch)	17.8.2002	25 bags

4. A fire broke out on 10.6.2006 in the cold storage and there was heavy loss to all the commodities deposited in the cold storage. The complainants filed consumer complaints bearing nos.234/2011 (First 1048/2007), 147/2011 (First 50/2007), 146/2011 (First 51/2007), 1024/2008 & 803/2008 respectively before the District Consumer Protection Forum, Jaipur (in short 'the District Forum'). The specific brief facts of these cases are as follows:-

RP No.201 of 2016

5. Brief facts of the case are that the complainant purchased 220 katta of methi costing Rs.1,44,440/- from M/s. Sha Champalal Jawahar Lal and handed over to the opposite party for keeping under safe preservation in the cold storage on 14.4.2004. The complainant came to know that fire had broken out in the cold storage. In spite of repeated demands, the opposite party neither returned the goods nor gave its value. In spite of giving legal notice, the opposite party did not compensate the loss. Therefore the complaint was filed demanding Rs.2,86,000/- as the value of the goods and compensation for other loss. The opposite party pleaded that the goods were kept at the risk of the complainant. The opposite party was neither uncaredful nor there was any kind of negligence. The matter was investigated by police and it was found that there was no negligence or mistake but the fire was accidental and could be because of short circuit. Scientist from the FSL visited the site on 18.07.2006 and confirmed the findings of the police investigation. As the complainant did not insure his goods as per the instructions mentioned on the receipt of fees given to the complainant, he himself is responsible for the loss. The complainant has kept the goods for four years with the aim of making profit and therefore he does not come under the definition of "consumer" as defined in the Consumer Protection Act, 1986. It was mentioned that the opposite party has committed no deficiency and therefore the complaint should be dismissed.

6. The District Forum allowed the complaint and directed opposite party to pay Rs.1,44,440/- along with 9% interest with Rs.2000/- as cost. The petitioner/opposite party preferred an appeal bearing No.273 of 2012 before the State Commission. The State Commission though dismissed the appeal, but awarded Rs.20,000/- additionally to the complainant as compensation. Hence the present revision petition No.201 of 2016.

RP No.297 of 2016 & RP 2758 of 2016

7. Brief facts are that the complainant purchased 35 bags of black pepper (kalimirsch) at the rate of Rs.8000/- per quintal and kept in the cold storage for safety purposes at the decided rate on 20.05.2003. The complainant came to know that a fire broke out on 10.6.2006 in the cold storage. In spite of repeated demands the opposite party neither returned the goods nor gave its value. In spite of giving legal notice the opposite party did not compensate the loss. Therefore the complaint was presented and the complainant demanded rupees 2,39,449/- as the value of the goods and compensation for other loss.

8. The complaint was resisted by the opposite party on the same grounds as mentioned above in the facts of the RP 201 of 2016. The District Forum allowed the complaint and directed the opposite party to pay Rs.1,67,285/- along with 9% p.a. interest along with 2000/- as cost. In this case, also the opposite party preferred appeal bearing No.274 of 2012 before the State Commission. The complainant also preferred appeal against the order of the District Forum

bearing FA No.273/2012. The State Commission upheld the order of the District Forum, but awarded Rs.20,000/- additionally to the complainant as compensation. Hence the present revision petitions No.297 of 2016 and 2758 of 2016.

RP No.298 of 2016

9. Brief facts are that the complainant purchased 11 bags of black pepper (kalimirsch) on 28.12.2002 at the rate of Rs.5,931/- per quintal and gave for keeping safe in the cold storage to the opposite party. It was the duty of the opposite party to keep the goods safely. The complainant came to know that a fire broke out on 10.6.2006 in the cold storage. In spite of repeated demands, the opposite party neither returned the goods nor gave its value. In spite of giving legal notice, the opposite party did not compensate the loss. Therefore, the complaint was presented demanding rupees 72,457/- as the value of the goods and compensation for other loss.

10. The complaint was resisted by the opposite party on the same grounds as mentioned above in the facts of the RP 201 of 2016. The District Forum allowed the complaint and directed the opposite party to pay Rs.41,003/- along with 9% p.a. interest along with Rs. 2000/- as cost. In this case also, the opposite party preferred appeal bearing No.275 of 2012 before the State Commission. The State Commission though dismissed appeal, but awarded Rs.10,000/- additionally to the complainant as compensation. Hence the present revision petition No.298 of 2016.

RP No.299 of 2016 & RP 2760 of 2016

11. Brief facts of the case are that the complainant purchased 25 katta of kalimirsch valuing 1,27,500/- and handed over to the opposite party for keeping under safe preservation in the cold storage. The goods were destroyed because of fire in the cold storage on 10.06.2006. Neither goods were returned nor the value was given by the opposite party, therefore the complainant filed the consumer complaint No.1024 of 2008 before the District Forum and requested to award the value of the goods amounting to Rs.1,72,500/- and other compensation.

12. The complaint was resisted by the opposite party on the same grounds as mentioned above in the facts of the RP 201 of 2016. The District Forum allowed the complaint and directed the opposite party to pay Rs.1,27,500/- along with 12% p.a. interest in addition to Rs.5000/- for mental agony and Rs.1,500 as cost. In this case also, the opposite party preferred appeal bearing No.595 of 2012 before the State Commission. The complainant also filed appeal against the order of the District Forum being FA No.627 of 2012. The State Commission disposed of the appeals, by awarding Rs.20,000/- additionally to the complainant as compensation. Hence the present revision petition Nos.299 of 2016 and 2760 of 2016.

RP No.300 of 2016 & RP 2759 of 2016

13. Brief facts of the case are that the complainant purchased 25 katta of kalimirsch valuing Rs.1,06,771/- and handed over to the opposite party for keeping under safe preservation in the cold storage. The goods were destroyed because of fire in the cold storage on 10.06.2006. Neither goods were returned nor the value was given by the opposite party, therefore, complainant filed a consumer complaint no. 803 of 2008 before the District Forum and requested to award the value of the goods amounting to Rs.1,75,375/- and other compensation.

14. The complaint was resisted by the opposite party on the same grounds as mentioned above in the facts of the RP 201 of 2016. The District Forum vide its order dated 11.04.2012 allowed the complaint and directed the opposite party to pay Rs.1,06,771/- along with 12% p.a. interest in addition to Rs.5000/- for mental agony and Rs.1,500 as cost. In this case also, the opposite party preferred appeal bearing No.613 of 2012 before the State Commission. The complainant also preferred appeal against the order of the District Forum being FA No.626 of 2012. The State Commission disposed of both the appeals, by awarding Rs.20,000/- additionally to the complainant as compensation. Hence the present revision petition No.300 of 2016 and 2759 of 2016.

15. Heard the learned counsel for the parties and perused the record. Parties will be referred to as the opposite party (petitioner in RP 201 of 2016, 297 of 2016, 298 of 2016, 299 of 2016 & 300 of 2016) and the complainants, (the respondent in RP 201 of 2016, 297 of 2016, 298 of 2016, 299 of 2016 & 300 of 2016) and appellants in RP 2758 of 2016, 2759 of 2016 & RP 2760 of 2016. Learned counsel for the opposite party stated that the goods were kept in the cold storage at the risk of the complainants. It is mentioned on the receipt that the person depositing the agricultural goods in the cold storage should obtain an insurance policy for his goods kept in cold storage. However, the complainants have not taken any policy and thus, the opposite party cannot be burdened with the loss suffered by the complainants. It was further argued by the learned counsel that in most of the cases, the material was kept for more than three years and it must have deteriorated already and therefore, the full price cannot be paid to the complainants even if the opposite party is found deficient in any respect. Learned counsel argued that the role of the opposite party is that of a bailee and as per Section 152 of the Contract Act, bailee cannot be burdened with the recoupment of loss suffered by bailor if the bailee has taken due precautions for safeguarding the goods given by the bailor.

16. It was further argued by the learned counsel that the goods were stored in the cold storage for commercial purpose. The complainants are traders of these commodities and thus clearly the services hired from the opposite party were for commercial purpose. Learned counsel further argued that in the complaints, the complainants have not pleaded that they have availed the services of the opposite party for earning livelihood by means of self-employment. In this regard, learned counsel referred to following judgments:-

(1) **Birla Technologies Limited Vs. Neutral Glass & Allied Industries Limited (2011) 1 SCC 525**

(2) **BSES Rajdhani Power Ltd. Vs. M/s. Saraf Project Pvt. Ltd.**

17. Learned counsel for the opposite party also referred to the judgment of Hon'ble Supreme Court in **Bharathi Knitting Co. Vs. DHL Worldwide Express Courier Division of Air freight Ltd., AIR 1996 SC 2508**, wherein the following has been held:-

“6. It is true that the limit of damages would depend upon the terms of the contract and facts in each case. In Anson's Laws of Contract, 24th Edn. at page 152, on exemption clause with regard to notice of a printed clause, it was stated that a person who signs, a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of their precise legal effect. But if the document is not signed, being merely delivered to him, then the question arises: whether the terms of the contract were adequately brought to his notice? The terms of

the contract have elaborately been considered and decided, The details thereof are not necessary for us to Pursue.....”

18. Learned counsel for the opposite party further stated that the opposite party has taken all the precautions to prevent such incidents, and fire extinguishers were available and they were used, however, the fire was uncontrollable and could only be extinguished by use of fire tenders. Hence, no deficiency can be alleged against the opposite party.

19. On the other hand, learned counsel for the complainants has argued that it is true that the complainants are traders, however, they are small traders and they are doing this trade of commodities for earning their livelihood by means of self-employment and therefore, they are the consumer under the Consumer Protection Act, 1986. In support of his argument learned counsel for the complainants relied upon the judgment of this Commission in **M/s. Sarju Cold Storage Vs. Vinay Malpani, RP No.2780 of 2015, decided on 02.03.2017(NC)** and also stated that SLP against this order of the National Commission was dismissed. This Commission has observed the following:-

“6. Learned Counsel for petitioner submitted that complainant was carrying on business of Kirana Trading and commission Agency so he does not fall within purview of consumer. It is not disputed that complainant was carrying on business and in pursuance to his business; he deposited bags and kattas of Dana Methi with OP on payment of charges. Learned Counsel for the respondent has placed reliance on judgment of this Commission in R.P. No. 4246 of 2008 – M/s. Sarju Cold Storage Vs. M/s. Mohan and Brothers & Anr. in which it was observed that in the light of judgement of this Commission in Harsolia Motors Vs. National Insurance Co. Ltd., complainant by keeping the perishable goods in a cold storage cannot be termed as utilizing services of cold storage for commercial purposes to earn profit. I agree with the aforesaid view because complainant deposit goods with OP for preservation of goods which were required to be kept safely by OP as admitted in para 5 of the written statement and was required to return those goods as and when demanded. So, there was no question of availing services of OP for commercial purpose. This Commission in I (2015) CPJ 597 (NC) – Gati Ltd. Vs. R. Ramesh observed that complainant availing services of OP for transportation of his goods falls within purview of consumer. This Commission in III (2012) CPJ 248 (NC) – Punjab Agri Food Parks Ltd. & Anr. Vs. Gurdeep Singh, III (2008) CPJ 172 (NC) – Bhagwa Cold Storage Vs. Mohan Jee @ Mohan PD and II (2006) CPJ 330 (NC) – Durga ICE & Cold Storage Vs. Garg Stores upheld grant of compensation for damage caused to the goods kept in cold storage. In the light of aforesaid judgments it becomes clear that complainant falls within purview of consumer and complaint filed by him before Fora below was maintainable.”

20. Learned counsel for the complainants also relied upon the judgment of this Commission in **M/s. Sarju Cold Storage Vs. M/s. Rameshwar Dayal Goyal, RP No. 202 of 2016, decided on 06.03.2017, (NC)**, wherein against the same incident of fire in the same cold storage, in a complaint of some other trader namely M/s. Rameshwar Dayal Goyal, this Commission has held that the complainant was a consumer by observing the following:-

“7. Learned Counsel for OP submitted that complainant was carrying on business of purchase and sale of kalimirsch so he does not fall within purview of consumer. It is not disputed that complainant was carrying on business and in pursuance to his business; he deposited kattas of kalimirsch with OP on payment of charges. Learned Counsel for the respondent has placed reliance on judgment of this Commission in R.P. No. 4246 of 2008 – M/s. Sarju Cold Storage Vs. M/s. Mohan and Brothers & Anr. in which it was observed that in the light of judgement of this Commission in Harsolia Motors Vs. National Insurance Co. Ltd., complainant by keeping the perishable goods in a cold storage cannot be termed as utilizing services of cold storage for commercial purposes to earn profit. I agree with the aforesaid view because complainant deposit goods with OP for preservation of goods which were required to be kept safely by OP and was required to return those goods as and when demanded. So, there was no question of availing services of OP for commercial purpose. This Commission in I (2015) CPJ 597 (NC) – Gati Ltd. Vs. R. Ramesh observed that complainant availing services of OP for transportation of his goods falls within purview of consumer. This Commission in III (2012) CPJ 248 (NC) – Punjab Agri Food Parks Ltd. & Anr. Vs. Gurdeep Singh, III (2008) CPJ 172 (NC) – Bhagwa Cold Storage Vs. Mohan Jee @ Mohan PD and II (2006) CPJ 330 (NC) – Durga ICE & Cold Storage Vs. Garg Stores upheld grant of compensation for damage caused to the goods kept in cold storage. In the light of aforesaid judgments it becomes clear that complainant falls within purview of consumer and complaint filed by him before Fora below was maintainable.”

21. Learned counsel further stated that both the fora below have given concurrent finding and therefore, the scope under the revision petition is quite limited and is restricted to the jurisdictional aspects only. Accordingly, revision petitions filed by the opposite party are liable to be dismissed.

22. In fact, the compensation awarded by the District Forum in each case is on the basis of the purchase price of the commodities that were kept in the cold storage. It was argued by the learned counsel that goods were kept in the cold storage between 2002 and 2005, and the decision of the District Forum has come in the year 2012. The District Forum has not considered the price of the commodities that was prevailing in the year 2012. Thus, the three complainants namely M/s. Shri Ganesh Oil & Flour Mills, M/s. Bajrang Shyam Sunder & M/s. Mohan & Brothers have also filed the revision petition bearing No.2758 of 2016, 2759 of 2016 & 2760 of 2016 for enhancement of the compensation. The State Commission has also not considered this aspect and has just dismissed the appeals filed by the opposite party as well as by the complainants.

23. It was further argued by the learned counsel for the complainants that when the opposite party is running a big cold storage, it was the duty of the opposite party to have insured all the goods kept in the cold storage. The complainants are small traders and therefore, it was not possible for each of them to take separate policy for their commodities. The material was kept in the cold storage for storing the material with safety and if any loss occurs, the opposite party is responsible for the same as the fees for keeping material in cold storage has been taken from the complainants. To support his arguments, learned counsel referred to the judgment of **M/s. Sarju Cold Storage Vs. M/s. Rameshwar Dayal Goyal** (supra) wherein this Commission has given the following finding:

“8..... No doubt, it has been printed on front side of deposit receipt that owners are advised in their own interest to have their goods insured before putting the same in the storage, but by this advice it cannot be inferred that in the absence of insurance coverage, OP is not bound to return goods in the same condition in which it was deposited by complainant and OP should have taken insurance policy for coverage of loss.”

24. Learned counsel for the complainants further stated that the argument advanced by the learned counsel for the opposite party that the commodities were kept for more than two years and therefore, they would have become rotten in any case is not tenable because the fact is that these commodities can remain in the cold storage for a long time as they have large shelf life also.

25. Learned counsel for the complainants further pointed out that it is wrong to say that the opposite party had all the necessary equipments to extinguish fire and he had taken due precaution for such an accident. In this regard, this Commission in the matter of **M/s. Sarju Cold Storage Vs. M/s. Rameshwar Dayal Goyal** (supra) has observed the following:-

“ 9. Learned Counsel for petitioner submitted that all firefighting equipments were working and there was no deficiency on their part in trying to extinguish fire immediately. This argument is devoid of force because no evidence has been lead that any effort was made by OP to extinguish fire. In such circumstances, it cannot be presumed that any firefighting equipment were put in operation by OP for extinguishing fire. How fire was caused is also disputed because in the final report it was observed that it could not be ruled out that cause of fire was short circuit whereas FSL report dated 30.9.2009 opines that no evidence of electric short circuit was detected. ”

26. It was contended by the learned counsel for the complainants that when this Commission has already given its finding in a similar case arisen in respect of the same fire incident in the same cold storage, the points raised by the opposite party cannot be reconsidered again by single bench of this Commission and the findings of this Commission have already attained finality.

27. I have carefully considered the arguments advanced by both the learned counsels and have examined the material on record. Both the fora below have given concurrent finding of fact that the commodities were kept in the cold storage of opposite party and the goods have been lost in the fire that broke out in the cold storage and for this loss the opposite party is liable to compensate the complainants. In this context, the facts cannot be reassessed by this Commission at the stage of revision petition and only the jurisdictional aspects can be seen. In taking this view, I am supported by the judgment of Hon’ble Supreme Court in **Mrs. Rubi (Chandra) Dutta vs. United India Insurance Company, 2011 (3) Scale 654**, wherein the following has been observed:-

“Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order,

and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view that what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken, by setting aside the concurrent finding of two fora.”

28. In the matter of **M/s. Sarju Cold Storage Vs. M/s. Rameshwar Dayal Goyal** (supra), this Commission has already decided various points raised by the opposite party in the present revision petitions as detailed above by the learned counsel for the complainants. Thus, there is no need to examine the same issues again. Only two law points have been raised. The first point relates to “whether the complainants are consumers”. It has been argued that the complainants are not consumers as they are involved in trading activity and had kept their goods in the cold storage for making profit by selling the commodities at appropriate time at a higher price. On the other hand learned counsel for the complainants has stated that the complainants are small traders and are earning their livelihood only by this activity. Hence they are covered under explanation attached to Section 2(1)(d) of the Consumer Protection Act, 1986. It is clear that the complainants have not specifically pleaded in their complaints that they are earning their livelihood by means of self-employment in this activity. Hon’ble Supreme Court in **Paramount Digital Color Lab & Ors. etc., Vs. Afga India Pvt. Ltd. & Ors. etc. III (2018) CPJ 12 (SC)** has held the following:-

“13. Thus, in our considered opinion, each case ought to be judged based on the peculiar facts and circumstance of that case. Whether the assistance of someone is required to handle the machine, is a question of fact and necessity? Ultimately, if it is purely for a “commercial purpose” and not for “self-employment”, the complainant may not get the benefit of the Explanation to [Section 2\(1\)\(d\)](#) of the Act. The buyers of the goods or commodities for “self-consumption” in economic activities in which they are engaged would be “consumers” as defined in the Act. Furthermore, there is nothing on record to show that the appellants wanted to use the machine in question for purposes other than “self-employment”.

Therefore, the point to be considered is whether the appellants have purchased the machine in question for “commercial purpose” or exclusively for the purposes of earning their livelihood by means of “self-employment”. There cannot be any dispute that the initial burden is on the appellants to prove that they fall within the definition of “consumer”. It is pertinent to mention that respondent No. 4, who is a contesting party, did not choose to file a counter affidavit before the State Commission. In other words, he did not deny any of the claims made by the appellants. None of the parties have led their evidence. Based on the material on record before the State Commission, it proceeded to decide on merits. As the litigation is being fought since 2006 in different Forums, we do not wish to remand the matter, particularly, when there is sufficient material available on record for arriving at the conclusion.”

29. Clearly in the present cases, no other purpose has been mentioned in the complaints which may be construed as commercial purpose. Keeping agricultural commodity in a cold storage

cannot be considered as commercial purpose particularly when the complainants have not mentioned any other purpose for doing so in their complaints therefore, as held in **Paramount Digital Color Lab & Ors. etc., Vs. Afga India Pvt. Ltd. & Ors. etc.** (supra) the complainants would be treated to be consumers.

30. The second law point raised by the petitioner is that the petitioner is not responsible for any loss to the goods kept in the cold storage as the petitioner has only acted as bailee. Though this argument has not been taken in the grounds of the revision petitions by the opposite party, however, the same has been argued at the time of final hearing. This Commission in **M/s. Sarju Cold Storage Vs. M/s. Rameshwar Dayal Goyal**, (supra) has dealt with this aspect and has observed the following:-

9.As cause of fire was also not definite and as OP being bailee was bound to return deposited goods to the complainant in same condition, order passed by learned State Commission directing refund of price as per bill with 9% p.a. interest is in accordance with law and I do not find any illegality, irregularity or jurisdictional error in the impugned order and Revision Petition No. 202 of 2016 filed by OP is liable to be dismissed. Revision Petition No. 2761 of 2016 filed by complainant being barred by limitation is also liable to be dismissed.”

31. Section 151 and 152 of the Indian Contract Act, 1872 deal with the liability of the bailee. These Sections read as under:-

“151. Care to be taken by bailee. —In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quantity and value as the goods bailed.”

152. Bailee when not liable for loss, etc., of thing bailed. —The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.”

32. From the Section 151 of the Indian Contract Act, it is clear that the bailee is responsible for the loss suffered to the goods of bailment if the bailee has not taken steps to protect the bailed goods in a similar manner as a normal prudent person could have taken for his own goods. If as a bailee, the petitioner was expecting that every person who was putting his goods in the cold storage will obtain an insurance policy for his own goods, then being bailee, the petitioner was also responsible to have taken the insurance policy for the goods of bailment. Clearly the petitioner has failed in doing so. Clearly Section 152 of the Indian Contract Act, 1872 is not applicable in the present case as the bailee has not taken care as prescribed in Section 151 of the Indian Contract Act, 1872 and this Commission has already given finding in this regard in **M/s. Sarju Cold Storage Vs. M/s. Rameshwar Dayal** (supra) as observed above.

33. So far as the question of enhancement of compensation is concerned in RP No.2758 of 2016, RP No.2759 of 2016 & RP No.2760 of 2016, it is seen that the award was made on the price of purchase, but the District Forum has already allowed interest @9% p.a. and 12% p.a. (in some cases) on the amount of payment and therefore, the request for enhancement of the awarded amount on the basis of the price existing at the time of award by the District Forum cannot be accepted.

34. In view of the above, I do not find any merit in the revision petitions and consequently, the revision petition Nos.201 of 2016, 297 of 2016, 298 of 2016, 299 of 2016, 300 of 2016, 2758 of 2016, 2759 of 2016 & 2760 of 2016 are dismissed.

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PREM NARAIN
PRESIDING MEMBER