

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 7037 of 2004

Ethiopian Airlines

...Appellant

Versus

Ganesh Narain Saboo
Respondent

...

JUDGMENT

Dalveer Bhandari, J.

1. This appeal is directed against the judgment and order of the National Consumer Disputes Redressal Commission, New Delhi, dated 7.1.2004 passed in First Appeal No. 190 of 1996.

2. A two-Judge bench of this Court by its order dated 10.11.2009 referred this matter to a larger Bench. The said order reads as under:

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"The questions in this case is whether proceedings before the Consumer Forum are suits. It appears that there are two conflicting judgments on this point - E.I.C.M. Exports Ltd. v. South Indian Corporation (Agencies) Ltd. and Another 2009 (10) SCALE 22 and Patel Roadways Limited v. Birla Yamaha Limited (2000) 4 SCC 91. Hence we are referring the matter to a larger Bench to resolve this conflict, to be constituted by Hon'ble the Chief Justice of India."

BRIEF FACTS:

3. The respondent booked a consignment of Reactive Dyes with the appellant Ethiopian Airlines to be delivered at the Dar Es. Salaam, Tanzania on 30.9.1992. The airway bills were duly issued by the appellant from its office in Bombay at the Taj Mahal Hotel for the said consignment. According to the

respondent there was gross delay in arrival of the consignment at the destination, which led to deterioration of the goods.

4. The respondent filed a complaint on 11.5.1993 before the Maharashtra State Consumer Dispute Redressal Commission (hereinafter referred to as 'the State Commission'). Pursuant to the notice issued by the State Commission, the appellant filed a written statement in which the appellant raised a preliminary objection regarding maintainability of the complaint.

5. On 17.1.1996, the State Commission held that the complaint filed by the respondent was not maintainable. The respondent aggrieved by the said order preferred an appeal before the National Consumer Disputes Redressal Commission (hereinafter referred to as 'the National Commission'). The National Commission categorically observed in the impugned judgment that Section 86 of the Code of Civil Procedure (for short 'C.P.C.') was not applicable since the case in dispute is covered under the provisions of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act').

6. The National Commission further held that Section 13(4) of the Act makes the CPC applicable only for the limited purpose. As such, the National Commission took the view that the judgment of the High Court of Delhi delivered in the case of Deepak Wadhwa v. Aeroflot 24 (1983) Delhi Law Times 1 had no bearing and application in deciding the complaint filed by the respondent.

7. The National Commission set aside the order passed by the State Commission and remitted it to the State Commission so that the State Commission could decide it afresh in accordance with law.

8. The appellant, aggrieved by the said order, has preferred this appeal on the ground that a foreign State or its instrumentality cannot be proceeded against under the Act without obtaining prior permission from the Central Government. The appellant contends that a foreign State or its instrumentality can legitimately claim sovereign immunity from being proceeded against under the Act in respect of a civil claim.

9. It is submitted that, in India, it is clear that there is presumption that sovereign immunity is absolute, but that a foreign sovereign can still be sued in India under certain circumstances with the permission of the Government of India. The Central Government may give consent for such a suit if:

- (a) the foreign State has instituted a suit in the Court against the person desiring to sue it; or
- (b) the foreign State trades within the legal limits of the jurisdiction of the Court or;
- (c) the foreign State is in possession of immovable property situated within those limits and is to be sued with reference to such property or for money charged thereon or;
- (d) the foreign State has expressly or impliedly waived the privilege of immunity.

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Relevant case law and submissions

10. Reliance was placed on a judgment of the Constitution Bench delivered in the case of *Mirza Ali Akbar Kashani v.*

The United Arab Republic and Another AIR 1966 SC 230.

This Court in para 30 of the said judgment observed as under:

"The effect of the provisions of section 86(1) appears to be that it makes a statutory provision covering a field which would otherwise be covered by the doctrine of immunity under International Law. It is not disputed that every sovereign State is competent to make its own laws in relation to the rights and liabilities of foreign States to be sued within its own municipal Courts. Just as an independent sovereign State may statutorily provide for its own rights and liabilities to sue and be sued,

so can it provide for the rights and liabilities of foreign States to sue and be sued in its municipal Courts. That being so, it would be legitimate to hold that the effect of section 86(1) is to modify to a certain extent the doctrine of immunity recognised by International Law. This section provides that foreign States can be sued within the municipal Courts of India with the consent of the Central

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Government and when such consent is granted as required by section 86(1), it would not be open to a foreign State to rely on the doctrine of immunity under International Law, because the municipal Courts in India would be bound by the statutory provisions, such as those contained in the Code of Civil Procedure. In substance, section 86(1) is not merely procedural; it is in a sense a counter-part of section 84. Whereas section 84 confers a right on a foreign State to sue, section 86(1) in substance imposes a liability on foreign States to be sued, though this liability is circumscribed and safeguarded by the limitations prescribed by it. ...
... .."

11. Reliance was also placed on another judgment of this Court in the case of *Veb Deutfracht Seereederei Rostock (D.S.R. Lines) a Department of the German Democratic Republic v. New Central Jute Mills Co. Ltd. and Another* (1994) 1 SCC 282. In para 5 of the judgment this Court held that:

"One of the principles of International Law is that sovereign State respects the independence of every other foreign State. This absolute independence and the international comity underlines the relationship between sovereign States.

The object of Section 86 of the Code is to give effect to the principles of International Law. But, in India it is only a qualified privilege because a suit can be brought with the consent of the Central Government in certain circumstances. Just as an independent sovereign State may statutorily provide for its own rights and liabilities to sue and be sued

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so can it provide rights and liabilities of foreign States to sue and be sued in its Courts. It can be said that effect of Section 86 thus is to modify the extent of doctrine of immunity recognised by the International Law. If a suit is filed in Indian Courts with the consent of the Central Government as required by Section 86, it shall not be open to any foreign State to rely on the doctrine of immunity. Sub-section (1) of Section 86 says in clear and unambiguous terms that no foreign State may be sued in any court, except with the consent of the Central Government certified in writing by the Secretary to that Government. Sub-section (2) prescribes that such consent shall not be given unless it appears to the Central Government that

the case falls within any of the clauses (a) to (d) of sub-section (2) of Section 86. Sub-section (6) enjoins that where a request is made to the Central Government for the grant of any consent referred to in sub-section (1), the Central Government shall before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard.

On a plain reading of different sub-sections of Section 86, it is apparent that no foreign State may be sued in any court in India, except with the consent of the Central Government which has to be certified in writing by the Secretary to that Government. In view of the provisions aforesaid, before any action is launched or a suit is filed against a foreign State, person concerned has to make a request to the Central Government for grant of the necessary consent as required by sub-section (1) of Section 86 and the Central Government has to accede to the said request or refuse the same after taking into consideration all the facts and circumstances of the case."

12. It was submitted by the learned counsel for the

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appellant, Mr. K.G. Presswala, that when interpreting Section 86 of the CPC, it should always be kept in view that the said Section gives effect to the principles of international law.

13. The learned counsel for the appellant placed reliance on the judgment of this court delivered in the case of

H.H.

The Maharana Sahib Shri Bhagwat Singh Bahadur of Udaipur v. State of Rajasthan and Others AIR 1964 SC 444, where an ex-ruler contended that under section 86 of the CPC, a reference made by the Government under the Industrial Disputes Act in respect of employees' wages was not maintainable without the prior consent of the Central Government. This Court in para 5 of the said judgment held:

"The appellant is recognised under Article 363(22) of the Constitution as a Ruler of an Indian State, but Section 86 in terms protects a Ruler from being "sued" and not against the institution of any other proceeding which is not in the nature of a suit. A proceeding which does not commence with a plaint or petition in the nature of plaint, or where the claim is not in respect of a dispute ordinarily triable in a civil court, would prima facie not be regarded as falling within Section 86 Code of Civil Procedure."

14. The learned counsel for the appellant submitted that the Act specifically states in Section 3 that "the provisions of

this Act shall be in addition to and not in derogation to any other law for the time being in force." The learned counsel for the appellant also submitted that this Court in the case of State of Karnataka v. Vishwabharathi House Building Co-operative Society and Others (2003) 2 SCC 412 in paragraphs 46 and 47 observed as under:

"46. By reason of the provisions of Section 3 of the Act, it is evident that remedies provided thereunder are not in derogation of those provided under other laws. The said Act supplements and not supplants the jurisdiction of the civil courts or other statutory authorities.

47. The said Act provides for a further safeguard to the effect that in the event a complaint involves complicated issues requiring recording of evidence of experts, the complainant would be at liberty to approach the civil court for appropriate relief. The right of the consumer to approach the civil court for necessary relief has, therefore, been provided under the Act itself."

15. The learned counsel for the appellant further submitted that a claim which is ordinarily triable in a Civil Court can also be tried in the Consumer Court if:

- (i) an Unfair Trade Practice or a restrictive trade practice has been adopted by any trader or service provider;
- (ii) the goods bought by a person or agreed to be bought by him suffer from one or more defects;

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- (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
- (iv) a Trader or a Service Provider as the case may be has charged for the goods or the services a price in excess of the price:
 - (a) fixed by or under any law for the time being in force;
 - (b) displayed on the goods or any package containing such goods;
 - (c) displayed on the price list exhibited by him or under any law for the time being in force;
 - (d) agreed between the parties
- (v) goods which would be hazardous to life and safety when used are being offered for sale to

the public

(a) in contravention of any standards relating to safety of such goods as required to be complied with by or under any law for the time being in force;

(b) if the trader could have known with due diligence that the goods so offered are unsafe to the public.

(vi) services which are hazardous or likely to be hazardous to the life and safety of the public when used are being offered by the Service Provider could have known with due diligence injurious to life and safety.

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16. Mr. Presswala also submitted that a Complaint and a Plaint is one and the same thing and a proceeding in the Consumer Court, though not a suit under the Civil Procedure Code, is still a proceeding which is in the nature of a suit and is commenced by a proceeding in the nature of a Plaint (i.e. a Complaint and is in respect of a claim which is ordinarily triable by a Civil Court). It is submitted by Mr. Presswala that Section 86 of the CPC would be squarely applicable to the proceedings under the Act.

17. The learned counsel for the appellant further submitted that the provisions of the CPC are not applicable to the proceedings under the Act. Mr. Presswala also submitted that the District Forums, the State Commission and the National Commission have all the trappings of a Civil Court. Consequently, the proceedings before these fora are legal proceedings.

18. According to the appellant, the interpretation given by the National Commission is totally untenable and cannot be sustained.

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19. Mr. Rakesh Kumar Khanna, the learned senior counsel for the respondent submitted that this appeal not only involves the applicability of section 86 of the CPC and the Act,

affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the

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examination of any witness; and

(vi) any other matter which may be prescribed.

(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of Section 195 and chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of Section 2, the provisions of rule 8 of Order 1 of the first Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon."

21. This Court in Savita Garg v. Director, National

Heart Institute (2004) 8 SCC 56 para 7 has observed that:

"... ..Therefore, as far as the Commission is concerned, the provisions of the Code of Civil Procedure are applicable to a limited extent and not all the provisions of the Code of Civil Procedure are made applicable to the proceedings of the National Forum.... .."

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22. In para 10 of the said judgment the Court further

observed as under:

"The Consumer Forum is primarily meant to provide better protection in the interest of the consumers and not to short-circuit the matter or to defeat the claim on technical grounds."

23. The respondent contends that a bare perusal of Section 13(4), (5) and (6) clearly demonstrate that as far as the fora created under the Consumer Protection Act, 1986 for deciding consumer disputes are concerned, the provisions of the CPC

are applicable to a limited extent only and not all provisions of CPC are made applicable thereto.

24. In exercise of powers conferred by Section 30A of the Consumer Protection Act, 1986, the Consumer Protection Regulations, 2005 have been framed. Regulation 26 of these Regulations specifically provides that in all the proceedings before the consumer forum endeavour shall be made by the parties and their counsel to avoid the use of provisions of CPC. Regulation 26 of these Regulations reads as under:

"26. Miscellaneous: (1) In all proceedings before the Consumer Forum, endeavour shall be made by the

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parties and their counsel to avoid the use of provisions of Code of Civil Procedure, 1908 (5 of 1908).

Provided that the provisions of the Code of Civil Procedure, 1908 may be applied which have been referred to in the Act or in the rules made thereunder."

25. The aforesaid view of the specific provisions of Section 13(4) of the Consumer Protection Act read with Regulation 26, makes it clear that the provisions of the CPC in general are not applicable in the proceedings under the Consumer Protection Act, except to the extent provided for under Section 13 of the Act.

26. Mr. Khanna also submitted that the controversy involved in this case is no longer res integra, as evidenced by Savita Garg (supra).

27. Mr. Khanna further submitted that the provisions of the CPC are not applicable to the proceedings under the Consumer Protection Act, 1986 and consequently, the bar under Section 86 of the CPC likewise does not apply to the proceedings initiated under the Consumer Protection Act,

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1986.

28. Mr. Khanna contended that the impugned order passed by the National Commission is in consonance with the legal position crystallized in a series of judgments of this Court and calls for no interference.

29. Mr. Khanna gave the historical background of the enactment of the Consumer Protection Act, 1986. He submitted that the interests of consumers around the world had drawn the attention of the United Nations for a long time and that after long deliberations and continued consultations, the United Nations in its General Assembly adopted guidelines for consumer protection. The relevant portion of the guidelines is given as under:

"1. Taking into account the interests and needs of consumers in all countries, particularly in developing countries, recognize that consumers often face imbalances in economic terms, educational levels, and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development. These guidelines for consumer protection have the following objectives:

(a) To assist countries in achieving or maintaining adequate protection for their

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population as consumers;

- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international cooperation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choices at lower prices.

5. All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. (hereinafter references to international standards in the guidelines should be viewed in the context of this

paragraph).
28. Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low income consumers."

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30. Mr. Khanna submitted that these guidelines were considered by this Court in the case of Vishwabharti House Building Cooperative Society and others (supra).

31. Mr. Khanna also submitted that the framework for the Consumer Protection Act, 1986 was provided by a resolution dated 9.4.1985 of (the General Assembly of the United Nations Organisation) which is commonly known as "Consumer Protection Resolution No. 39/248". India is a signatory to the said resolution. The Act was enacted in view of the aforementioned resolution of General Assembly of the United Nations.

32. The learned counsel for the respondent contended that the Act was enacted to provide better protection for the consumers and their interests. By this Act, the legislature sought to constitute quasi judicial Tribunals/Commissions as an alternative system of adjudicating consumer disputes via summary proceedings. That is the whole purpose of providing for a separate three tiered system comprised of a District Forum, State Commission and the National Commission which would provide inexpensive and speedy remedies to

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consumers. In creating those fora, the legislature required the fora to arrive at conclusions based on reasons following the rules of natural justice. He also submitted that while enacting the Consumer Protection Act, Parliament was fully aware that the provisions of the CPC were available for the trial of a claim of a consumer dispute, yet, in its wisdom, Parliament decided not to apply the procedure provided in the CPC to the

proceedings under the Act. Instead, Parliament chose to apply only limited provisions of the Code of Civil Procedure to the complaints to be entertained under the Act. Specifically, in Sections 13 (4), (5) and (6), the Act explicitly provided for limited applicability of the provisions of Code of Civil Procedure.

33. Mr. Khanna further submitted that the Act is a special statute enacted to provide remedies to a special class of litigants, namely the consumers, by a special procedure provided for under the statute, instead of the usual procedure set forth under the Code of Civil Procedure.

34. The learned counsel for the respondent also submitted that the general legal principle of statutory interpretation of *generalia specialibus non-derogant* and *generalibus specialia* 21

derogant applied. That is, if a special provision is made on a certain matter, that matter is excluded from the general provision. Mr. Khanna also stated that these principles have been applied by this Court in resolving the disputes between two Acts as well as in the construction of statutory rules and statutory orders. Mr. Khanna referred this Court's decision in the case of *Ghaziabad Zila Sahkari Bank Ltd. v. Addl.*

Labour Commissioner and Others (2007) 11 SCC 756. In para 61 of that judgment, this Court held that the Uttar Pradesh Cooperative Societies Act, which is a complete code in itself regarding employment in cooperative societies, and its machinery and provisions will have overriding effect on the general Act, the Uttar Pradesh Industrial Disputes Act, 1947. Thus, the Industrial Disputes Act was held to have no applicability and to be excluded after enforcement of the Uttar Pradesh Cooperative Societies Act, which was a later and a special Act. Similarly, this Court in the case of *Maruti Udyog Limited v. Ram Lal and Others* (2005) 2 SCC 638 in para 42 observed as under:

"42. In *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. and Others* [(2001) 3 SCC

9. It is clear that both these Acts are special Acts. This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail. The decisions cited in the above context are as follows: Maharashtra Tubes Ltd. v. State Industrial & Investment Corpn. of Maharashtra Ltd., Sarwan Singh v. Kasturi Lal; Allahabad Bank v. Canara Bank and Ram Narain v. Simla Banking & Industrial Co. Ltd.

10. We may notice that the Special Court had in another case dealt with a similar contention. In Bhoruka Steel Ltd. v. Fairgrowth Financial Services Ltd. it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the 1985 Act. Rejecting this contention, the Special Court had come to the conclusion that the Special Court Act being a later enactment would prevail. The headnote which brings out succinctly the ratio of the said decision is as follows:

Where there are two special statutes which contain non obstante clauses the later statute shall prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the

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earlier enactment would continue to apply."

35. Mr. Khanna also submitted that the Act is a special and a later Act which will prevail over the provisions of the CPC, which is a general and previous statute. He submitted that the Act is a complete Code in itself as regards the disputes covered under it. As such, the general statute i.e. CPC can have no applicability and stands excluded after the enactment of the Act.

36. Mr. Khanna further contended that the Carriage by Air Act, 1972 (hereinafter referred to as 'Air Act') again is a special

Act regarding international carriage. The Air Act was enacted to give effect to the Convention for unification of Rules relating to international carriage by air signed at Warsaw on 12.10.1929, as amended by Hague Protocol dated 28.9.1955 and the Montreal Convention dated 28.9.1999. India enacted this Act as it is a signatory to the Warsaw Convention of 1929 governing the liabilities of air carrier in respect of international carriage of passengers, baggage and cargo by air. The preamble of the Air Act reads as under:

"An Act to give effect to the convention for the

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unification of certain rules relating to international carriage by air signed at Warsaw on the 12th day of October, 1929 and to the said Convention as amended by the Hague Protocol on the 28th day of May, 1999 and to make provision for applying the rules contained in the said Convention in its original form and in the amended form (subject to exceptions, adaptations and modifications) to non-international carriage by air and for matters connected therewith."

37. Section 2 (ii) of the Air Act defines "Convention" to mean Convention for unification of certain rules relating to international carriage by air signed at Warsaw on 12.10.1929. Section 2 (ii) reads as under:

"2 (ii) Convention means the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on the 12th day of October, 1929."

38. Section 3 of the Air Act provides that the Rules contained in the first schedule (the provisions of the Convention relating to the rights and liability of the carriers, passengers, consignors and other persons), shall have the force of law in India with respect to any carriage by air to which these rules apply, irrespective of the nationality of the air craft performing the carriage. Sub-Section 2 of section 3 provides that the high contracting parties to the Convention

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and date of enforcement of the said Convention shall be such as are included in Part-I of the Annexure. Section 3 reads as

under:

"3. Application of Convention to India:

- (1) The rules contained in the First Schedule, being the provisions of the Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons shall, subject to the provisions of this act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.
- (2) For the purpose of this Act, the High Contracting Parties to the Convention and the date of enforcement of the said Convention shall be such as are included in part-I of the Annexure-1.
- (3) Any reference in the first schedule to the territory of any High Contracting Party to the Convention shall be construed as a reference to all the territories in respect of which he is a party.
- (4) Any reference in the first schedule to agents of the carrier shall be construed as including a reference to servants of the carrier.
- (5) The Central Government may, having regard to the objects of this act, and if it considers necessary or expedient so to do, by notification in the official gazette, add to, or, as the case may be, omit from, Part I of the Annexure, any High Contracting Party and on such addition, or as the case may be,

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omission, such High Contracting Party shall be or shall cease to be, a High Contracting Party."

39. Section 7 of the Air Act provides that every high contracting party to the Convention, shall for the purpose of any suit brought in a court in India in accordance with the provisions of rule 28 of the first schedule or of the second schedule as the case may be to enforce a claim in respect of the carriage undertaken by him be deemed to have submitted to the jurisdiction of that Court and to be a person for purpose of Code of Civil Procedure, 1908. Section 7 reads as under:

"7. Provisions regarding suits against High Contracting Parties who undertake carriage by Air: (1) Every High Contracting Party to the Convention or the amended Convention, as the case may be, who has not availed himself of the provisions of the Additional Protocol thereto shall,

for the purpose of any suit brought in a Court in India in accordance with the provisions of rule 28 of the First Schedule, or of the Second Schedule, as the case may be, to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court and to be a person for the purpose of the Code of Civil Procedure, 1908.

(2) The High Court may make rules of procedure providing for all matters which may be expedient to enable such suits to be instituted and carried on.

(3) Nothing in this section shall authorize any

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Court to attach or sell any property of a High Contracting Party to the Convention or to the amended Convention."

40. The First Schedule to the Act vide Rule 1 provides that the Rules under this Schedule shall apply to all international carriage of persons, luggage or goods, performed by aircraft for reward. Sub Rule 2 defines the "High Contracting Party". Sub Rule 3 defines International Carriage. The provisions of Rule 1 read as under:

"Rule1: (1) These rules apply to all international carriage of persons, luggage or goods, performed by aircraft for reward. They apply also to such carriage when performed gratuitously by an Air Transport undertaking.

(2) In these rules, "High Contracting Party" means a High Contracting Party to the Convention.

(3) For the purposes of these rules the expression, "international carriage" means any carriage in which according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another power, even though that power is not a party to the Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the

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same High Contracting Party is not deemed to be international for the purposes of these Rules."

41. Rule 2 of these Rules, provides that these rules apply to carriage performed by the State or by legally constituted

public bodies. Rule 2 reads as under:

"2. (1) These rules apply to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in rule 1.

(2) These rules do not apply to carriage performed under the terms of any International Postal Convention."

42. Rule 18 provides for liability of the carrier for damages and Rule 19 provides for liability of the carrier for damages occasioned by delay. Rule 18 and 19 read as under:

"18. (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of sub-rule (1) comprises the period during which the luggage or goods are in charge of the carrier, whether in any aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome in any place whatsoever.

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(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contract, to have been the result of an event which took place during the carriage by air.

19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods."

43. Rule 28 provides for Territorial Jurisdiction for suing for damages which reads as under:

"28. An action for damages must be brought at the option of the plaintiff either before the Court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination."

44. As per the Annexure to the Air Act under Section 3 sub Section 2, Part-I, vide entry 47, Ethiopia is a High Contracting

Party to the Convention w.e.f. 12.11.1950.

45. A bare perusal of the aforesaid rules in the First Schedule, which has the force of law as per Section 3 of the Air Act, read with Section 7 leaves no room or doubt that a state carrier or legally constituted public body of the international carrier is deemed to have submitted to the jurisdiction of the courts in India, including for the purpose of the Code of Civil Procedure, 1908.

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46. Mr. Khanna also submitted that even otherwise Section 86(2) of the CPC provides that the consent of the Central Government can be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes. Section 86 of the CPC reads as under:

"86. Suits against foreign Rulers, Ambassadors and Envoys: (1) No foreign state may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government:

Provided that a person may, as a tenant of immovable property, sue without such consent as aforesaid (a foreign State) from whom he holds or claims to hold the property.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case

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of any suit or class of suits, the court in which (the foreign state) may be sued, but it shall not be given, unless it appears to the Central Government that (the foreign State) -

- (a) has instituted a suit in the Court against the person desiring to sue (it), or
- (b) by (itself) or another, trades within the local limits of the jurisdiction of the Court, or
- (c) is in possession of immovable property situated within those limits and is to be sued with reference to such property or for money charged thereon, or
- (d) has expressly or impliedly waived the

privilege accorded to (it) by this section."

47. Thus, the provisions of Section 7 of the Air Act read with Rules in the first schedule makes it clear that there is a consent deemed to be granted by the central government contemplated under Section 86(1) of Code of Civil Procedure for a specified class of suits under the Air Act.

48. Mr. Khanna also referred to Section 3 of the Act and submitted that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other laws for the time being in force.

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49. This Court in the case of Patel Roadways Limited (supra) has considered this question and has laid down that the Disputes Redressal Agency provided for in the Act will have jurisdiction to entertain complaints in which the claim for loss or damage of goods entrusted to a carrier for transportation is in dispute. This Court also noted that the term "suit" in Section 9 of the Carriage Act was applicable both the cases filed in the Civil Court and to proceedings before the National Commission that decides the complaints by consumers following summary procedure. Mr. Khanna further contended that the view taken by this Court in Patel Roadways Limited (supra) has been affirmed by the Constitution Bench of this Court in the case of Economic Transport Organisation, Delhi v. Charan Spinning Mills Private Limited and Another (2010) 4 SCC 114. In paras 53 to 57 of that case, this Court observed as under:

"53. Section 14(1)(d) of the Act provides that the Forum under the Act can direct payment of compensation awarded by it to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party. This, according to the appellant, makes it mandatory for the complainant to establish negligence on the part of the opposite party i.e. the carrier. It is further contended that

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presumption of negligence under Section 9 of

the Carriers Act, 1865 (which provides that in any suit brought against a common carrier for the loss, damage or non-delivery of the goods entrusted to him for carriage, it shall not be necessary for the plaintiff to prove that such loss, damage or non-delivery of goods was owing to the negligence or criminal act of the carrier, his servants and agents) is applicable only to a civil suit, and not to a complaint under the Act which specifically contemplates establishment of negligence by evidence. It is submitted that in this case the compensation has been awarded even though no evidence was led by the complainants about negligence of the driver of the appellant.

54. It is no doubt true that Section 14(1)(d) of the Act contemplates award of compensation to the consumer for any loss suffered by the consumer due to the negligence of the opposite party (the carrier). Section 9 of the Carriers Act does not lay down a proposition that a carrier will be liable even if there was no negligence on its part. On the other hand, it merely raises a presumption that when there is loss or damage or non-delivery of goods entrusted to a carrier, such loss, damage or non-delivery was due to the negligence of the carrier, its servant and agents. Thus where the consignor establishes loss or damage or non-delivery of goods, it is deemed that negligence on the part of the carrier is established. The carrier may avoid liability if it establishes that the loss, damage or non-delivery was due to an act of God or circumstances beyond its control. Section 14(1)(d) of the Act does not operate to relieve the carrier against the presumption of negligence created under Section 9 of the Carriers Act.

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55. The contention of the appellant that the presumption under Section 9 of the Carriers Act is available only in suits filed before civil courts and not in other civil proceedings under other Acts, is not tenable. This Court in Patel Roadways Ltd. (supra) has observed: (SCC pp. 106-07, paras 47, 48 & 49)

The principle regarding the liability of a carrier contained in Section 9 of the Carriers Act, namely, that the liability of a carrier is that of an insurer and that in a case of loss or damage to goods entrusted to the carrier the plaintiff need not prove negligence, are applicable in a proceeding before the Consumer Forum. The term "suit" has not been defined in the Carriers Act nor is it provided in the said Act that the term "suit" will have the same meaning as in the Civil Procedure Code. Therefore, the term "suit" has to be understood in its ordinary dictionary meaning. In that sense, term "suit" is a generic term taking within its sweep all proceedings initiated by a party for realisation of a right vested in him under law. It is true that a proceeding before Consumer Forum is ordinarily a

summary proceeding and in an appropriate case where the Commission feels that the issues raised are too contentious to be decided in summary proceedings it may refer parties to a civil court. That, however, does not mean that proceedings before the Consumer Forum is to be decided by ignoring the express statutory provisions of the Carriers Act in a proceeding in which a claim is made against a common carrier. A proceeding before the Consumer Forum comes within the sweep of term "suit".

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56. Again, in Economic Transport Organization v. Dharwad District Khadi Gramudyog Sangh (2000) 5 SCC 78 this Court reiterated the principle stated in Patel Roadways and added the following: (Economic Transport case (supra) SCC p. 79, para 2)

"2. ... Even assuming that Section 9 of the Carriers Act, 1865 does not apply to the cases before the Consumer Fora under the Consumer Protection Act, the principle of common law abovementioned gets attracted to all these cases coming up before the Consumer Fora. Section 14(1)(d) of the Consumer Protection Act has to be understood in that light and the burden of proof gets shifted to the carriers by the application of the legal presumption under the common law. Section 14(1)(d) has to be understood in that manner. The complainant can discharge the initial onus, even if it is laid on him under Section 14(1)(d) of the Consumer Protection Act, by relying on Section 9 of the Carriers Act. It will, therefore, be for the carrier to prove absence of negligence."

57. We reiterate the said settled position and reject the contention of the appellant that the presumption under Section 9 of the Carriers Act is not available in a proceeding under the Consumer Protection Act and that therefore, in the absence of proof of negligence, it is not liable to compensate the respondents for the loss."

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50. Mr. Khanna further submitted that in the case of E.I.C.M. Exports Ltd. v. South Indian Corporation (Agencies) Ltd. and Another 2009 (10) SCALE 22, this Court has held firstly that the cases filed before the consumer forum are not suits within the meaning of Section 9 of CPC and secondly the limitation of two years for filing a case under the Act as provided vide Section 24 (A) of the Act will be applicable

instead of Article III, Clause 6 of the schedule of the Indian Carriage of Goods by Sea Act, 1925, which provides for limitation of one year extendable by three months at the discretion of the Court. According to learned counsel for the respondent there is no conflict between the judgments of this Court in the cases of E.I.C.M. Exports (supra) and Patel Roadways Limited (supra). According to him the provisions of Carriage by Air Act, 1972 have to be read into the provisions of the Act.

51. We have heard learned counsel for the parties and carefully perused relevant cases cited at the Bar. The Central Question which requires adjudication is whether the appellant Ethiopian Airlines is entitled to sovereign immunity in this case?

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52. The short question which falls for our adjudication is whether the proceedings before the Consumer Forum are suits.

53. The term "suit" has not been defined in the Carriage by Air Act, 1972 nor is it provided in the said Act that the term "suit" will have the same meaning as in the Civil Procedure Code. Therefore, the term "suit" has to be understood in its ordinary dictionary meaning. In that sense, the term "suit" is a generic term taking within its sweep all proceedings initiated by a party for realisation of the right vested in him in law. In this view of the matter, we have to look to the dictionary meaning of the word "suit".

54. According to Black's Law Dictionary, the word "suit" means "any proceeding by a party or parties against another in a court of law."

55. In common parlance, the term "suit" is taken to include all proceedings of a judicial or quasi-judicial nature in which

the disputes of aggrieved parties are adjudicated before an impartial forum. Proceedings before the Consumer fora fall squarely within that definition.

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56. It has been held in Patel Roadways Limited (supra) that proceedings before the Consumer Forums come within the sweep of the term "suit". This judgment has been approved by a Constitution Bench of this Court in Economic Transport Organization (supra). Therefore, the controversy involved in this case is finally settled and we are bound by the decision of the Constitution Bench and this case has to be ruled in terms of what has been decided by the Constitution Bench in Economic Transport Organisation (supra).

57. In the same vein, the U.S. Supreme Court has read the term "suit" broadly, finding that a "suit" is "any proceeding in a court of justice by which a person pursues therein that remedy which the law affords him," *Upshur County v. Rich*, 135 US 467 (1890). Likewise, "the modes of proceeding may be various, but if a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought is a suit." *Id.* The Michigan Supreme Court similarly found that "the word ["suit"], as applied to legal controversies, both by the legal profession and others, is now used and

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recognized as a generic term of broad significance, often understood and used, even by legislatures and courts, to designate almost any proceeding." *Patterson v. Standard Accident Insurance Co.*, 178 Mich. 288. The proceedings held before the consumer redressal fora easily fall within the aforementioned definitions : these are proceedings in which consumers may pursue the remedies afforded to them by the Consumer Protection Act and other laws and where the rights of the parties are fully litigated by an organ of justice.

58. However, notwithstanding the fact that proceedings of the National Commission are "suits" under the Carriers Act, vide the expressio unius principle, The Consumer Protection Act, 1986 clearly enumerates those provisions of the CPC that are applicable to proceedings before the consumer fora. Such provisions include 13(4), in which the Consumer Protection Act, 1986 vests those powers vested in a civil court under the CPC to the District Forum. However, according to the principle of expressio unius, because the legislature expressly made the aforementioned provisions of the CPC applicable to the consumer proceedings, the legislature is, therefore, 40 deemed to have intentionally excluded all other provisions of the CPC from applying to the said proceedings. This is particularly true since, as explained above, the Consumer Protection Act, 1986 sets forth an exhaustive list of procedures, distinguishable from those required under the CPC, that the consumer redressal fora must follow. Therefore, since the Consumer Protection Act does not state that Section 86 applies to the consumer fora's proceedings, that Section of the CPC should be held to be not applicable.

59. Likewise, the CPC itself does not claim to make Section 86 applicable to proceedings before the consumer fora. Instead, the CPC includes a saving clause, providing that "in the absence of any specific provision to the contrary, nothing in [the CPC] shall be deemed to limit or otherwise affect any special.... law ... or any special form of procedure prescribed, by or under any other law..." In addition, Section 86 only applies to a "suit in any Court". This term should be understood differently than the term "court" discussed above because the CPC refers exclusively to Civil Courts. In particular, the CPC specifically refers to the District Courts,

the High Courts, and the Supreme Court and makes little if any reference to other, quasi-judicial fora like the consumer

redressal bodies at issue here. This interpretation has been approved by the Supreme Court, in H.H. The Maharana Sahib Shri Bhagwat Singh Bahadur of Udaipur (supra). In that case, the Apex Court found that the phrase "sued in any Court" must be strictly construed and confined to "suits proper" and thus held that Section 86 did not bar adjudication of an industrial dispute in an industrial Tribunal. Similarly, in Nawab Usmanali Khan v. Sagarmal, AIR 1965 SC 1798, this Court found that Section 87(B) does not apply to proceedings under the Arbitration Act. Similarly, Section 86 and 87 should be found inapplicable to the consumer redressal fora's proceedings at issue here.

60. Moreover, Section 86 of the CPC is inapplicable because the legislative intent is deemed to exclude older and more general statute by more recent and special statutes : the Consumer Protection Act, 1986 and the Carriage by Air Act, 1972. And, under these Acts, Ethiopian Airlines is not entitled to sovereign immunity in a suit like that at issue here. Thus,

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consent of the Central Government is not required to subject Ethiopian Airline to suit in an Indian court, let alone in a consumer redressal forum.

61. In Ratan Lal Adukia and Another v. Union of India, AIR 1990 SC 104, the Apex Court found that Section 80 of the Railways Act, 1890, substituted 1961, was a special provision and self-contained code and that it impliedly repealed in respect of suits covered by it the general provisions of the CPC. The Railways Act provides for a forum in which a suit for compensation for loss of life of, or personal injury to, a passenger for loss, destruction, damage, deterioration or non-delivery of animals or goods against a railway administration may be brought. This is very much akin to the fora created by the Consumer Protection Act. Thus, a similar finding should

be made here : the Consumer Protection and Carriers Acts must be deemed special Acts bypassing Section 86 of the CPC, with respect to suits covered by those special Acts.

62. That is, the Consumer and Carriage Acts, which came long after the CPC, are more focused and specific statutes, and therefore should be held to exclude Section 86. The

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Supreme Court has previously found as such, holding that in the fora created by the Consumer Act, "the provisions of the Code of Civil Procedure are applicable to a limited extent and not all the provisions of the Code of Civil Procedure are made applicable to the proceedings of the National Forum." Rather, rules created pursuant to the Consumer Act itself govern the procedure to be followed in the consumer fora. Similarly, a Constitutional Bench of this Court, in Economic Transport Organisation (supra) found that even though the consumer redressal fora utilized summary proceedings, that "does not mean that proceedings before the Consumer Forum [are] to be decided by ignoring the express statutory provisions of the Carriers Act in a proceeding in which a claim is made against a common carrier."

63. In view of the Constitution Bench judgment in Economic Transport Organisation (supra) the view which has been taken by the two-Judge Bench of this Court in E.I.C.M. Exports (supra) is wholly untenable and unsustainable in law.

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64. Section 86 of the Code of Civil Procedure is inapplicable to the present case because the older and more general statute has been excluded by more recent special statute, namely, Consumer Protection Act, 1986 and the Carriage by Air Act, 1972. Ethiopian Airlines is not entitled to sovereign immunity in the suit at issue in the present case. Therefore, any other consent of the Central Government is not required

to subject the appellant, Ethiopian Airlines, to a suit in an Indian Court.

65. It is settled principle of statutory interpretation that specific statutes that come later in time trump prior general statutes. Both the Consumer Protection Act, 1986 and the Carriage by Air Act, 1972, which came long after the Code of Civil Procedure, 1908, are more focused and specific statutes and therefore should be held to supersede Section 86 of the Code. This Court in Savita Garg (supra) has clearly laid down that the principle that in fora created by the Consumer Act, the provisions of the Code of Civil Procedure are applicable only to a limited extent, therefore, the provisions of the Code of Civil Procedure have not been made applicable to
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the proceedings of the National Consumer Forum.

66. This court in Vishwabharathi House Building Coop. Society and Others (supra) dealt with the object of the Consumer Protection Act, 1986 : to provide expeditious adjudication of consumers' complaints by adopting summary procedure. The Consumer Protection Act, 1986 is a comprehensive and self-contained piece of legislation, and its object is to decide consumers' complaints expeditiously, via summary procedure. The Consumer Protection Act, 1986 also permits authorized agents to appear on behalf of the complainants in order to ensure that they are not burdened with the heavy professional fees of lawyers.

67. Similarly, the Carriage by Air Act, 1972 explicitly provides that its rules apply to carriage performed by the State or by legally constituted public bodies under Chapter 1, Section 2, Sub-section 1. Thus, it is clear that according to the Indian Law, Ethiopian Airlines can be subjected to suit under the Carriage Act, 1972. It may be pertinent to mention

that the Carriage by Air Act, 1972 (69 of 1972) is an Act to

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give effect to the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on the 12th day of October, 1929 and to the said Convention as amended by the Hague Protocol on the 28th day of September, 1955 and to make provision for applying the rules contained in the said Convention in its original form and in the amended form (subject to exceptions, adaptations and modification) to non-international carriage by air and for matters connected therewith.

68. In effect, by signing onto the Warsaw Convention, Ethiopia had expressly waived its Airlines' right to immunity in cases such as that sub judice. Therefore, the Central Governments of both India and Ethiopia have waived that right by passing the Carriage by Air Act, 1972 and by signing onto the Warsaw Convention.

69. In accordance with the interpretation set forth above, the Bombay High Court has noted that Section 86 is of only limited applicability and can be overcome in cases of even implied waiver. For example, in *The German Democratic Republic v. The Dynamic Industrial Undertaking Ltd.*,

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AIR 1972 Bombay 27, the Bombay High Court found that Section 86 does not supplant the relevant doctrine under International Law. Rather, Section 86 "creates another exception" to immunity (emphasis added), in addition to those exceptions recognized under International Law. Likewise, in *Kenya Airways v. Jinibai B. Kheshwala*, AIR 1998 Bombay 287, the Bombay High Court found that, while Kenya Airways was a state entity prima facie entitled to immunity under Section 86, it had nevertheless waived that immunity by, in its written statements, failing to raise a plea of sovereign immunity under Section 86 of the CPC.

Therefore, in that case, the Bombay High Court found that Kenya Airways was not entitled to sovereign immunity and could be subjected to suit in an Indian court.

70. Ethiopian Airlines is not entitled to sovereign immunity with respect to a commercial transaction is also consonant with the holdings of other countries' courts and with the growing International Law principle of restrictive immunity.

For instance, in England, in *Rahimtoola v. H.E.H. The Nizam of Hyderabad and Others* (1957) 3 All E.R. 441, Lord Denning found that "there was no reason why [a country]

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should grant to the departments or agencies of foreign governments an immunity which [the country does] not grant [its] own, provided always that the matter in dispute arises within the jurisdiction of [the country's] courts and is properly cognizable by them." Lord Denning also held that "if the dispute concerns... the commercial transactions of a foreign government... and it arises properly within the territorial jurisdiction of [a country's] courts, there is no ground for granting immunity," finding implicitly that it would not "offend the dignity of a foreign sovereign to have the merits of such a dispute canvassed in the domestic courts of another country."

71. Likewise, in *Trendtex Trading Corporation Ltd. v. Central Bank of Nigeria* (1977) 1 All E.R. 881, the Court held that the Central Bank of Nigeria was not entitled to plead sovereign immunity because, according to International Law Principle of restrictive immunity, a state-owned entity is not entitled to immunity for acts of a commercial nature, *jure gestionis*. The Court noted that "if a government department goes into the market places of the world and buys boots or cement - as a commercial transaction - that government

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department should be subject to all the rules of the market place." The Court also noted an "important practical

consideration." stating that foreign sovereign immunity, "in protecting sovereign bodies from the indignities and disadvantages of that process, operates to deprive other persons of the benefits and advantages of [the judicial] process in relation to rights which they possess and which would otherwise be susceptible to enforcement." As the court stated, the principle of restrictive immunity is "manifestly better in accord with practical good sense and with justice."

72. On careful analysis of the American, English and Indian cases, it is abundantly clear that the appellant Ethiopian Airlines must be held accountable for the contractual and commercial activities and obligations that it undertakes in India.

73. It may be pertinent to mention that the Parliament has recognized this fact while passing the Consumer Protection Act, 1986 and the Carriage by Air Act, 1972. Section 86 was itself, a modification and restriction of the principle of foreign

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sovereign immunity and thus, by limiting Section 86's applicability, the Parliament through these acts, further narrowed a party's ability to successfully plead foreign sovereign immunity. In the modern era, where there is close interconnection between different countries as far as trade, commerce and business are concerned, the principle of sovereign immunity can no longer be absolute in the way that it much earlier was. Countries who participate in trade, commerce and business with different countries ought to be subjected to normal rules of the market. If State owned entities would be able to operate with impunity, the rule of law would be degraded and international trade, commerce and business will come to a grinding halt. Therefore, we have no hesitation in coming to the conclusion that the appellant cannot claim sovereign immunity. The preliminary objection

raised by the appellant before the court is devoid of any merit and must be rejected.

74. The controversy involved in this case is no longer res-integra. This Court in Patel Roadways Limited (supra) clearly observed that a proceeding before the Consumer

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Forum comes within the sweep of term "suit". Again this Court in Economic Transport Organization (supra) reiterated the principle stated in Patel Roadways Limited (supra). Both these judgments have been specifically approved by the Constitution Bench of this Court in Economic Transport Organization (supra). The view which has been taken in E.I.C.M. Exports (supra) is clearly contrary to the view taken by the Constitution Bench judgment in Economic Transport Organization (supra) and the same cannot be sustained.

75. We are of the considered view that the impugned order passed by the National Commission is untenable so far it held that the proceeding before the Consumer Forum does not come within the sweep of term "suit" because it is contrary to the judgment of the Constitution Bench of this court in Economic Transport Organization (supra). The finding of the National Commission is accordingly set aside to that extent. However, we agree with the findings of the National Commission so far as it has remitted the matter to the State Commission for adjudication. In the facts and circumstance of this case, we direct the State Commission to dispose of the

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case as expeditiously as possible.

76. This appeal is accordingly disposed of, leaving the parties to bear their own costs.

.....J.
(Dalveer Bhandari)

.....J.
(Dr. Mukundakam
Sharma)

.....J.
(Anil R. Dave)

New Delhi;
August 9, 2011

ITEM NO.1A
(For Judgment)

COURT NO.4

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 7037 OF 2004

ETHIOPIAN AIRLINES

Appellant (s)

VERSUS

GANESH NARAIN SABOO

Respondent(s)

Date: 09/08/2011 This Appeal was called on for pronouncement

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of judgment today.

For Appellant(s) Mr. Shiv Kumar Suri,Adv.

For Respondent(s) Mr. Surya Kant,Adv.

Hon'ble Mr. Justice Dalveer Bhandari
pronounced the judgment of the Bench comprising of
His Lordship, Hon'ble Dr. Justice Mukundakam Sharma
and Hon'ble Mr. Justice Anil R. Dave.

The finding of the National Commission so far
as it held that the proceeding before the Consumer
Forum does not come within the sweep of term "suit",
is set aside, the findings so far as it has remitted
the matter to the State Commission for adjudication
is upheld and the appeal is disposed of in terms of
the signed judgment, leaving the parties to bear
their own costs.

(A.S. BISHT)
COURT MASTER

(NEERU BALA VIJ)
ASSISTANT REGISTRAR

(Signed reportable judgment is placed on the file)