

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 3812 OF 2011

SHRI MANGILAL SONI

Appellant (s)

VERSUS

T. MARAPPA AND OTHERS

Respondent(s)

O R D E R

This appeal is directed against order dated 25.3.2011 of the National Consumer Disputes Redressal Commission whereby the complaint filed by the appellant for issue of a direction to the respondent to pay damages in terms of clause 12 of the agreement for sale dated 23.11.2007 was dismissed as not maintainable.

Learned counsel for the appellant relied upon some of the observations made in the judgment of this Court in "Lucknow Development Authority versus M.K. Gupta [(1994) 1 SCC 243] and argued that breach of an agreement for sale of property is covered by the definition of 'service' under section 2(o) of the Consumer Protection Act, 1986.

In paragraph 4 of the aforesaid judgment, the Court analyzed the definition of the term 'service' in the following words:

"4. What is the meaning of the word 'service'? Does it extend to deficiency in the building of a house or flat? Can a complaint be filed under the Act against the statutory authority or a builder or contractor for any deficiency in respect of such property. The answer to all this shall depend on understanding of the word

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'service". The term has variety of meanings. It may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory etc. The concept of service thus is very wide. How it should be understood and what it means depends on the context in which it has been used in an enactment. Clause (o) of the definition section defines it as under:

" 'service' means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;"

It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause. The main clause itself is very wide. It applies to any service made

available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude. The word 'any' dictionaryally means 'one or some or all'. In Black's Law Dictionary it is explained thus,

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"word 'any' has a diversity of meaning and may be employed to indicate 'all' or 'every' as well as 'some' or 'one' and its meaning in a given statute depends upon the context and the subject-matter of the statute". The use of the word 'any' in the context it has been used in clause (o) indicates that it has been used in wider sense extending from one to all. The other word 'potential' is again very wide. In Oxford Dictionary it is defined as 'capable of coming into being, possibility'. In Black's Law Dictionary it is defined as "existing in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future installments or payments on a contract or engagement already made." In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users. But the legislature did not stop there. It expanded the meaning of the word further in modern sense by extending it to even such facilities as are available to a consumer in connection with banking, financing etc. Each of these are wide-ranging activities in day to day life. They are discharged both by

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statutory and private bodies. In absence of any indication, express or implied there is no reason to hold that authorities created by the statute are beyond purview of the Act. When banks advance loan or accept deposit or provide facility of locker they undoubtedly render service. A State Bank or nationalised bank renders as much service as private bank. No distinction can be drawn in private and public transport or insurance companies. Even the supply of electricity or gas which throughout the country is being made, mainly, by statutory authorities is included in it. The legislative intention is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility."

In our view, the ratio of the aforesaid judgment does not have any bearing on the appellant's case, who had filed complaint for enforcing one of the clauses of the agreement for

