

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(s). 4980 OF 2007

JAMMU & KASHMIR BANK LTD.

Appellant (s)

VERSUS

M/S. HINDUSTAN PETROLEUM CORP. LTD. &ORS

Respondent(s)

Date: 10/11/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY  
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s)

Mr. Vijay Hansaria, Sr.Adv.  
Mr. G.M. Kawoosa, Adv.  
Ms. Sneha, Adv.  
Ms. Manjula Gupta,Adv.

For Respondent(s)

Mr. Abhishek Kumar, Adv.  
Mr. Sanjay Kapur,Adv.

Mr. Ashok Mathur ,Adv

UPON hearing counsel the Court made the following  
O R D E R

This appeal is allowed in terms of the signed  
order.

(Sukhbir Paul Kaur)  
Court Master

(Renuka Sadana)  
Court Master

(Signed order is placed on the file)  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4980 OF 2007

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M/S. HINDUSTAN PETROLEUM CORPORATION LTD. &  
ORS.

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O R D E R

A short question that arises for our  
consideration in the present appeal is as to whether  
the Consumer Protection Act, 1986 (Central Act 68 of

1986) is applicable to the State of Jammu and Kashmir.

The respondent Hindustan Petroleum Corporation filed a complaint before the Consumer Disputes Redressal Commission, Union Territory, Chandigarh against the appellant alleging deficiency of service on the part of the appellant Bank that the appellant did not transfer their account from Srinagar Branch to Jammu Branch as requested by them but transferred the same after a lapse of 102 days. The respondent, accordingly, claimed a sum of Rs.11,71,706 as interest alleging that this was the amount at the rate of 22-1/2 admissible for the period in question.

The appellant Bank having entered its appearance raised a preliminary objection as regards the very

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applicability of the Central Act 68 of 1986 to the State of Jammu and Kashmir. The objection as to the territorial jurisdiction of the Forum at Chandigarh was also raised. As regards the territorial jurisdiction, the respondent placed reliance on Section 11(2)(b) of the Central Act 68 of 1986 as amended on 18.6.1993 wherein it is provided that

"(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or (carries on business or has a branch office), or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or (carry on business or have a branch office), or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises"

The State Commission found that the entire transaction and dispute between the parties had arisen at Srinagar and Jammu and since there is a separate Jammu and Kashmir Consumer Protection Act, 1987, the complaint could not be entertained at Chandigarh.

The respondent challenged the said order before

the National Commission. The National Commission having set aside the order passed by the Commission at Chandigarh remitted the matter for fresh consideration on merits. The Commission, for the reasons which we are unable to discern from the order held that the

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complaint filed by the respondent at Chandigarh was maintainable in law.

There cannot be any second opinion that the cause of action and the dispute between the parties had arisen squarely within the territorial jurisdiction of State of Jammu & Kashmir. The question is whether the dispute at all could be raised before the Forums at Srinagar or Jammu under the provisions of the Central Act 68 of 1986. Sub-section 2 of Section 1 declares that the Act extends to the whole of India except the State of Jammu and Kashmir. Therefore, no proceedings could have been possibly entertained under the provisions of the Central Act before any Forum either at Srinagar or Jammu. Precisely to meet such a situation the State of Jammu and Kashmir enacted Jammu and Kashmir Consumer Protection Act, 1987 (State Act No. XVI of 1987) which is in complete pari materia with the Central Act 68 of 1986. Like the Central Act, this Act provide for better protection for the interests of consumers and for that purpose to make provision for establishment of Consumer Councils, and other authorities for the settlement of Consumers Disputes and for matters connected therewith.

The respondents instead of filing a complaint under the provisions of the State Act XVI of 1987 for the settlement of dispute, if any, that may have arisen

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between the parties had chosen to file the complaint at Chandigarh. Section 11(2)(b) of Central Act 68 of 1986

would not be available to the respondent for the simple reason that the whole of the Central Act of 1986 is not applicable to settle the disputes that may have arisen within the territorial limits of State of Jammu and

Kashmir. It needs no emphasis that when the Act 68 of 1986 is not applicable to the State of Jammu and Kashmir, the question of relying upon Section 11(2)(b) does not arise.

For the aforesaid reasons we hold that the complaint before the State of Chandigarh was not maintainable since the Act is not applicable to the State of Jammu and Kashmir. No doubt a complaint if at

all could have been filed by the respondent complainant under the provisions of Jammu & Kashmir Consumer Protection Act, 1987 in the State of Jammu and Kashmir but for whatever reasons the respondent complainant had chosen to file the complaint at Chandigarh.

We accordingly, hold that the complaint filed at Chandigarh is not maintainable in law. That impugned order of the National Commission is accordingly, set aside.

However, liberty is granted to the respondent to avail the remedies, if any, that may be available in

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law in which event the matter shall be decided on its own merits uninfluenced by the order passed by this Court.

The appeal is accordingly, allowed.

.....J.  
(B.SUDERSHAN REDDY)

.....J.  
(SURINDER SINGH NIJJAR)

New Delhi,  
November 10, 2010