

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3169 OF 2016

(Against the Order dated 09/08/2016 in Appeal No. 200/2015 of the State
Commission Maharashtra)

1. CHOLAMANDALAM INVESTMENT &
FINANCE LTD.

THROUGH ITS AUTHORISED REPRESENTATIVE
SHRI SUNIL GRIWAN, HAVING ITS REGISTERED
OFFICE AT DARE HOUSE, FIRST FLOOR, 2, N.S.C.
BOSH, ROAD, PARRYS,
CHENNAI-600002

.....Petitioner(s)

Versus

1. UTTAM RAO PAWADE & ANR.
S/O. KISHAN RAO PAWADE, R/O. PAWDEWADI,
NANDED, TQ &
DISTRICT-NANDED
MAHARAHSTRA
2. SHREE MOTORS,
THROUGH ITS MANAGER, SAPTAGIRI
COMPLEX, JAWAHAR NAGAR, AKOLA, TQ &
DISTRICT-AKOLA
MAHARASHTRA.

.....Respondent(s)

BEFORE:

**HON'BLE MR. JUSTICE A. P. SAHI, PRESIDENT
HON'BLE DR. INDER JIT SINGH, MEMBER**

FOR THE PETITIONER : MR. AVINASH, ADVOCATE (VC)

FOR THE RESPONDENT NEMO

:

Dated : 27 August 2024

ORDER

1. This Revision Petition raises a very short issue regarding the dismissal of FA/200/2015 filed by the Petitioner on the ground of non-joinder of necessary party.
2. The background in which the dispute arose was that the Respondent/Petitioner had filed a complaint alleging deficiency in service regarding a loan extended by the Petitioner for the purchase of a vehicle. The contention raised was that in spite of the loan having been repaid, the Petitioner had not issued the No Objection Certificate to the Complainant.

A further prayer was also made for adjustment of Rs.1 lakh which the Petitioner alleges that it was paid directly to the dealer with which the Petitioner had no concern.

3. The District Commission by a detailed judgment partly allowed the complaint directing the Petitioners to issue a No Objection Certificate to the Complainant within 15 days. It further directed the dealer M/s Shree Motors to deposit a sum of Rs.10,000/- to be payable to the complainant as damages and a sum of Rs.20,000/- payable by the Petitioners coupled with Rs.3,000/- as costs for litigation.
4. Thus, the dealer of the vehicle M/s Shree Motors was saddled with damages only to the tune of Rs.10,000/- which appears to have been paid by him and no further contest was put forth by the said Opposite Party.
5. The Petitioner Finance Company aggrieved by the order filed an appeal against the order of the District Commission dated 07.01.2015 being FA/200/2015. Since the dealer, M/s Shree Motors, had not chosen to contest the order, and since the Petitioner was not claiming any relief as against the said Opposite Party, the Appeal was filed only impleading the Complainant and not the dealer.
6. The Appeal filed by the Petitioner has been dismissed on the ground of non-joinder of necessary party namely M/s Shree Motors and the order passed by the District Commission has been confirmed. A sum of Rs.10,000/- as cost was also imposed on the Petitioner. The Relevant extract of the impugned order dated 09.08.2016 passed by the State Commission while dismissing the Appeal is extracted hereinunder:-

“8. We thus heard both the counsel and perused the record. It reveals that, appellant did not make original respondent no.1 Shree Motors party to this appeal. In our view, therefore appeal to be dismissed on the ground of non-joinder of necessary party.

*It is seen from the record that, complainant had deposited amount of Rs.2,78,290/- as repayment of loan excluding the amount of Rs.1,00,000/- deposited as a margin money. The account statement in that respect and receipts are produced on record by the complainant. **District Forum rightly appreciated facts and evidence and allowed the complaint.** Therefore no interference is required in the order passed by Forum. Hence the following order.*

ORDER

- 1. The appeal is dismissed.*

*2. Appellant is to pay **cost of Rs.10,000/-** in this appeal to the respondent/complainant.*

3. rest of the order of District Forum is maintained. ”

7. It is against the said order that the present Revision Petition has been filed. The service was effected and the Respondent No.1 was served on whose behalf one Mr. P R Adkine is recorded to have appeared on 17.04.2017. It may be mentioned that notices were issued on 24.11.2016 and the following interim order was passed.

“Dated:24.11.2016

ORDER

Heard the learned counsel for the petitioner.

Issue notice to the respondents, subject to payment of Rs. 10,000/- to respondent no. 1 to cover to and fro and allied expenses.

The Registry may ensure that the notice is issued and dispatched within a period of ten days.

The operation of the impugned order is stayed till the next date of hearing.

List the matter for further hearing on 17.04.2017.”

8. The notice on Respondent No.2 had not been served but later on Mr. PB Dharmadhikari Advocate appeared for the Respondent No.2 as recorded on 16.07.2018. It is also indicated that Ms. Prachiti Deshpande has appeared on behalf of the Respondent. The Covid intervened thereafter and fresh notices were issued and office report indicated that the first Respondent has been delivered notice whereas the second Respondent could not be served. The case was adjourned again from time to time and the Respondent No.1 seems to have been represented by MS. Srishty Pandey/ Mr. Amol Suryawanshi whose name also appeared in the order sheet dated 28.03.2024. None have appeared for the Respondents today and therefore we are constrained to proceed ex parte against them.

9. Even though the order of the District Commission has been confirmed on merits, the Appeal has been dismissed on the ground of non-joinder of a necessary party namely M/s Shree Motors, the dealer. Learned Counsel for the Appellant contends that the dismissal of the Appeal is unjustified on the ground of not impleading M/s Shree Motors.
10. Having considered the submissions raised, the Respondents remain unrepresented and no one has appeared on their behalf to contest this Revision Petition today. The matter is therefore proceeded exparte.
11. Learned Counsel contends that once no relief was being claimed against M/s Shree Motors, the dealer, who had already satisfied the decree passed against it, the non-impleadment of such a party could not have been fatal for the disposal of the Appeal as it was only the Complainant who had to contest the matter.
12. It is evident that M/s Shree Motors were the Opposite Party No.1 in the Original Complaint therefore they ought not to have been formally deleted from the array of the memo of Appeal and should have been arrayed as a performa Respondent. Nonetheless, the Complainant does not seem to be aggrieved any further against M/s Shree Motors and therefore did not file any appeal for enhancement of the amount of Rs.10,000/- awarded against them or any other relief.
13. On the other hand, M/s Shree Motors paid off the amount of Rs.10,000/- and did not prefer to appeal against the same and therefore nothing remained to be contested between the Complainant and M/s Shree Motors.
14. In such circumstances non-impleadment of the said party should not have been treated to be fatal keeping in view the law laid down by the Apex court in the case of ***Udit Narain Singh Malpaharia vs Additional Member, Board Of Revenue, AIR 1963 Supreme Court 786*** illustratively explained in Ch42 of a book titled “High and Law” by Sanjay Pinto published by Thompson Reuter extracted hereinunder:-

““CHAPTER 42

THE BATTLE OF VERSUS: CONSUMERS' CHOICE

If you buy a mobile phone or a television set or furniture from a retail shop, which ends up being defective, and you decide to file a complaint before a Consumer Disputes Redressal Commission, should you necessarily sue the manufacturer as well? Can the dealer pass the buck on to the manufacturer? Not at all. The retailer of a company, acts as an agent of the Principal, who is the manufacturer; and his transactions involving company products are deemed to have been duly ratified by the Principal. When there is no privity of contract

between the purchaser and the manufacturer, the dealer cannot shrug off his liability and insist on impleading the manufacturer as well, over what in legal parlance is called 'non-joinder' of a 'necessary' party.

It is a settled position of law. The National Consumer Disputes Redressal Commission in Radio Time Vs. Sri Lila Ram Borah, Revision Petition No. 1197 of 2012, decided on 01.08.2012 in a case involving a defective mobile handset, had championed the rights of the consumer. "The purchaser is not supposed to know the terms and conditions entered into between the retailer/dealer and the manufacturer. It is for the dealer/retailer to take steps with the manufacturing company in case of discovering the sale of a defective handset to a consumer, and ask for replacement." This decision was upheld by the Supreme Court.

Non-joinder of a party is a standard tactic adopted by dealers to frustrate consumers. In a similar transaction, this time of a defective computer, the National Commission in Blue Chip India v. Chandrashekara Patial, 2006 SCC OnLine NCDRC 154 had held that in the absence of "privity of contract with the manufacturer of the computer, joinder of the manufacturer as a party in the complaint was not at all necessary." Ditto, in the case of a defective video camera, where the National Commission in City Electronics v. Sanjay Dewangan, 2016 SCC OnLine NCDRC 1934 took an identical view.

*This consistent stand by the highest consumer body in the country is not restricted only to consumer durables but also applies to groceries. Not shedding tears for the dealer of defective chilli seeds, the National Commission in M. Subba Rao v. Avula Venkata Reddy, 2007 SCC OnLine NCDRC 23 reasoned that it was always "open" to the dealer "to recover the amount ordered from the manufacturer by filing appropriate proceedings, but it cannot be said that the dealer, who has sold the seeds, is not liable." **Quite strangely, District and State Commissions have dismissed complaints on the score of non-joinder of parties. These are erroneous decisions and will not stand scrutiny in a higher tier.***

Although Consumer Commissions are not bound by provisions of the Civil Procedure Code (CPC), Order 1 Rule 9 of the Code states that "no suit shall fail because of misjoinder or non-joinder of parties." This was also followed by the Supreme Court in a landmark medical negligence case of Savita Garg v. Director, National Heart Institute, (2004) 8 SCC 56.

Courts have also used their discretion to add or remove parties in suits by invoking Order 1 Rule 10(2) of the CPC. Who exactly is a necessary party? A four-judge Bench of the Supreme Court in Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar & Anr., AIR 1963 SC 786 had enunciated the legal principle. "A necessary party is one without whom no order can be made effectively'; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding." Mercifully, consumer fora are expected to eschew a hyper-technical approach in these matters, and to lean in favour of consumers.

At the heart of such questions is the doctrine of 'dominus litus' which means the master of the suit. On this point, the Supreme Court in Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd., (2010) 7 SCC 417 had made it clear that "the general rule in regard to impleadment of parties is that the plaintiff may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief."

When technicality is pitted against justice, it must give way to the latter. Retailers and dealers cannot do a Pontius Pilate with customers by washing their hands off."

15. Even though the provisions of CPC are not to be invoked in view of Regulation 26 of the Consumer Protection (Consumer Commission Procedure Regulations 2020), yet the underlying principles of the code on such issues can be of assistance as they are nothing else but codified and embodied principles of natural justice. For example in the present case the principles of Order 1 Rule 9 read with Section 107 of CPC can be referred to. As indicated hereinabove and hereinafter, even if M/s Shree Motors had not been impleaded, the appeal could not have failed simply for non-joinder and any error of non-impleadment could have been directed to be rectified.
16. Even otherwise the proceedings before a Consumer Forum are summary in nature and therefore on the facts as have emerged in the present case, the appeal deserved to be heard on merits.
17. In the instant case the aforesaid tests seem to be satisfied, but this procedural mistake on the part of the Petitioner if any, could have been corrected by allowing the impleadment of M/s Shree Motors as a performa Respondent before disposing of the appeal finally. It is not the case that the Petitioner had refused to implead M/s Shree Motors or had purposely or

malafidely avoided doing so. In the background that M/s Shree Motors had already been absolved of their liability with the satisfaction of the decree by them, and the Complainant was also satisfied, the non-impleadment of M/s Shree Motors caused no prejudice to either of the parties. Thus, this was not such a gross error so as to dismiss the Appeal when the same could have been corrected under the directions of the State Commission for proceeding further. No objections of that sort also does not have been taken by the Respondent in the Appeal. M/s Shree Motors have been impleaded in this revision, and in spite of service of notice, they have chosen not to contest.

18. In the given circumstances of the case we find it just and expedient to allow this appeal on this short ground and we accordingly set aside the order dated 09.08.2016 directing the Appellant to implead M/s Shri Motors in the Appeal FA/200/2015 that shall stand revived. The State Commission shall permit the impleadment of M/s Shree Motors as a performa Respondent and then proceed to decide the dispute after putting the Respondent/Complainant Mr. Uttam Rao to notice.
19. It is made clear that allowing of this Appeal does not in any way permit the Petitioner or the Complainant to reopen the issue regarding the imposition of damages of Rs.10,000/- on M/s Shree Motors vide order dated 07.01.2015 that has already been complied with and to that extent the order of the District Commission is final.

20. The remand is to the limited extent of the contest between the Appellant and the Original Complainant Mr. Uttam Rao only. The Revision is accordingly allowed and the appeal before the State Commission shall stand restored. The Petitioner shall appear before the State Commission on 30.09.2024 where after the State Commission shall proceed to dispose of the matter after putting the Complainant to notice in the light of the observations made hereinabove.

.....J
A. P. SAHI
PRESIDENT

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DR. INDER JIT SINGH
MEMBER