



November 2023

Supreme Court reiterates the 'dominant purpose' test to hold that if goods are purchased for a profit motive, the purchaser will not be a consumer

The Supreme Court of India ("Supreme Court") in the case of *Rohit Chaudhary & Anr. V. M/s. Vipul Ltd.*,¹ has upheld the 'dominant purpose' test and held that if the dominant purpose for purchasing the goods or services is for a profit motive and this fact is evident from the record, such purchaser will not fall within the definition of the term 'Consumer'.

Brief Facts

1. The appellants acquired shares in Vipul World Commercial's commercial unit from the original allottees. It was agreed between the parties that the appellants will pay INR 18,07,100 (Indian Rupees eighteen lakh seven thousand and one hundred) to the original allottees and INR 34,27,050 (Indian Rupees thirty four lakh twenty seven thousand and fifty) to the respondent, as and when demanded. The appellants paid the agreed sum to the original allottees and communicated this to the respondent.
2. Subsequently, the respondent raised its demand on the appellants. The appellants duly paid the amount demanded by the respondent. The respondent also issued receipt and allotment letter to the appellants. In the course of time and after certain intervening exchanges (not relevant to the discussion herein), the respondent forwarded a buyer's agreement to the appellants, requiring the latter to sign and return the same. The respondent agreed to deliver possession of the office unit to the appellants within 24 (twenty four) months of the execution of the buyer's agreement.
3. The sale consideration for the commercial unit was INR 51,51,415 (Indian Rupees fifty one lakh fifty one thousand four hundred and fifteen). Out of this amount, the appellants paid to the respondent INR 50,28,122 (Indian Rupees fifty lakh twenty eight thousand one hundred and twenty two), which was also acknowledged by the respondent. A further amount of INR 2,47,148 (Indian Rupees two lakh forty seven thousand one hundred and eight) was to be paid by the appellants to the respondent from the date of possession notice (which was not issued by the respondent).
4. After the lapse of 24 (twenty four) months and on account of non-intimation of delivery of possession of the office unit, the appellants first issued a legal notice to the respondent and then approached the National Consumer Disputes Redressal Commission ("NCDRC"). Before the NCDRC, the appellants prayed for the refund of the amounts paid by them along with interest at the rate of 18% per annum and a sum of INR 50,00,000 (Indian Rupees fifty lakhs) towards mental agony.

¹ Civil Appeal No. 5858 of 2015 decided on September 6, 2023 decided by Justice S. Ravindra Bhat and Justice Aravind Kumar.

5. The NCDRC dismissed the appellants' complaint *vide* an order dated May 11, 2015 on the ground that it was not maintainable since the appellants were not found to be 'Consumers' within the definition contained in Section 2 (1)(d) of the Consumer Protection Act, 1986 ("CPA 1986"). The basis of the dismissal of the complaint by NCDRC was two-fold – first, that the appellants were already carrying on business for the purpose of earning livelihood and therefore, it could not be said that the commercial unit was being purchased for earning livelihood through self-employment. Second, the purchase of the commercial unit was for earning profits and not for earning livelihood through self-employment.
6. Aggrieved by NCDRC's Order dated May 11, 2015 dismissing the appellants' complaint, the appellants preferred an appeal before the Supreme Court.

Issue

Whether the appellants are consumers as defined in Section 2 (1)(d) of the CPA 1986?

Decisions and Observations of the Supreme Court

1. In deciding this issue, the Supreme Court noted the definition of the term 'Consumer' as contained in Section 2(1)(d) of the CPA 1986. It also noted discussions concerning this definition in earlier precedents of the apex court as well as the dictionary meaning of the term 'commercial purpose' (since this has not been defined in the CPA 1986).
2. In particular, the Supreme Court noted the landmark decision in *Laxmi Engineering Works v. P.S.G. Industrial Institute*², wherein, after an extensive discussion by way of reference to various examples, it was held that:
 - a) whether the purpose for which a person has bought goods is a 'commercial purpose' as contained in the definition of the term 'Consumer' has to be decided on the facts and circumstances of each case;
 - b) a person who has purchased goods and uses it for the purpose of earning his livelihood through self-employment, will be covered by the definition of the term 'Consumer'.
3. Since the term 'commercial purpose' has not been defined in the CPA 1986, the Supreme Court relied on its dictionary meaning. 'Commercial purpose' was held to mean "*connected' with or engaged in commerce; mercantile; having profit as the main aim*". The Supreme Court also took note of the explanation to Section 2(1)(d) of CPA 1986³. Going by the plain dictionary meaning of the term 'commercial purpose', the Supreme Court held that the intention of the Parliament was to exclude any person who buys goods for the purpose of such goods being used in any activity engaged on a large scale for the purpose of earning profit.
4. With reference to the decision in *Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers*⁴, the Supreme Court reiterated the principle that there cannot be any straight-jacket formula for determining whether a particular activity or transaction is for a commercial purpose; it will have to be based on the facts and circumstances of each case. Therefore, if the dominant purpose for purchasing goods or services is for a profit motive and this fact is ascertainable from the records, then the purchaser will not fall within the definition of 'Consumer'. Therefore, the averments in the complaint have to be examined to see whether the goods have been purchased by the purchaser for earning their livelihood through self-employment; if yes, then the complaint cannot be dismissed at the outset.
5. Applying the aforesaid principles to the facts of the present case, the Supreme Court held that the complaint filed by the appellants indicated that the appellants were in search of office space "for their self-employment and to run

² (1995) 3 SCC 583

³ The explanation added to Section 2(1)(d) of CPA 1986 reads as follows – "*Explanation – For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment*".

⁴ (2020) 2 SCC 265

their business and earn their livelihood". The Supreme Court also noted that the appellants have nowhere stated that they proposed to purchase the office space for the purpose of either selling off the same at a higher price in the future. Therefore, the commercial unit purchased by the Appellants could be for the purpose of earning their livelihood, opening an office for dealing in the existing business, or potentially to use the premises as a corporate, branch or head office for their existing business. Such possibilities are backed by the averment contained in the complaint to the effect that the commercial unit was for the appellants' self-employment.

6. Therefore, the Supreme Court found the appellants' complaint to be maintainable and the conclusion arrived at in the Order dated May 11, 2015 by the NCDRC to be unsupported. However, since the disputes between the parties dated back to the year 2006 and the appellants had repudiated the contract, instead of remitting the matter back to the NCDRC to decide, the Supreme Court allowed the claim of the appellants pertaining to the refund of the amounts paid (although at a reduced rate of interest – 12% as against the rate of 18% claimed in the complaint by the appellants).

Conclusion

1. In coming to its conclusion, the Supreme Court took note that there cannot be any defined formula with mathematical precision to examine on facts whether a complainant is falling within the definition of the term 'Consumer'. Each case has to be examined on its own facts and circumstances. This view is in keeping with a long line of precedents of the apex court. While each of these decisions agrees with the view that no single straight-jacket formula can be developed, some judicial precedents have developed tests other than the 'dominant purpose' test. For instance, in another recent case, the apex court relied on the 'close and direct nexus' test along with the 'dominant purpose' test to arrive at the conclusion that the act of taking out policy of insurance did not have a close and direct nexus with the profit generating activity and therefore, the insured will qualify as a 'consumer'⁵.
2. The decision in the present case was rendered under the CPA 1986. Noticeably, the definition of the term 'Consumer' under the Consumer Protection Act, 2019⁶ ("**CPA 2019**") is akin to that under the CPA 1986. Even the CPA 2019 does not define the term 'commercial purpose'.
3. While the facts in the present case were fairly simple, it will be interesting to see:
 - a) how the courts apply these tests in a more complex factual matrix, one where there is no clear delineation of the purpose for which the goods purchased were being used; and
 - b) how this test is applied in cases where consumer complaints are filed by corporations using goods in the course of their business or other profit generating activity.

⁵ National Insurance Co. Ltd. v. Harsolia Motors and Others, 2023 SCC Online SC 409.

⁶ See Section 2(7) of the Consumer Protection Act, 2019.

Consumer Protection Practice

JSA has a vast experience on matters relating to consumer protection laws and related matters. We have advised clients (both domestic and global), across sectors and industries on complex queries around consumer protection laws and rules thereunder, and its interplay with other related legislations, like data privacy and exchange control laws.

We have developed a leading consumer protection practise supported by a group of extraordinarily gifted and experienced solicitors with knowledge of the essential consumer law sector. Our team has experience in managing complex consumer cases at the national level in India. We are renowned for our proficiency in successfully defending the interests of our clients.

Our key areas of advice include:

- Analysis of business activities from consumer protection laws perspective including import regulations and foreign trade policy of India;
- Advise on registration and licensing requirements;
- Advising on e-commerce rules;
- Advise on single brand retail and multi-brand retail from foreign exchange laws perspective;
- Advise on product liability issues and compliances;
- Advising on standards issued by the BIS and quality control orders including advisory in relation to inspection and enquiries by authorities;
- Advising on advertisement, packaging and labelling requirements.









This Prism has been prepared by:



Sidharth Sethi
Partner



Avinash Das
Senior Associate

		
<p>17 Practices and 24 Ranked Lawyers</p>	<p>16 Practices and 11 Ranked Lawyers</p>	<p>19 Practices and 19 Ranked Lawyers</p>
		
<p>11 Practices and 39 Ranked Partners IFLR1000 APAC Rankings 2022</p> <p>-----</p> <p>Banking & Finance Team of the Year</p> <p>-----</p> <p>Fintech Team of the Year</p> <p>-----</p> <p>Restructuring & Insolvency Team of the Year</p>	<p>Among Top 7 Best Overall Law Firms in India and 9 Ranked Practices</p> <p>-----</p> <p>11 winning Deals in IBLJ Deals of the Year</p> <p>-----</p> <p>10 A List Lawyers in IBLJ Top 100 Lawyer List</p>	<p>Banking & Financial Services Law Firm of the Year 2022</p> <p>-----</p> <p>Dispute Resolution Law Firm of the Year 2022</p> <p>-----</p> <p>Equity Market Deal of the Year (Premium) 2022</p> <p>-----</p> <p>Energy Law Firm of the Year 2021</p>
		
<p>7 Practices and 2 Ranked Lawyers</p>	<p>Ranked #1 The Vahura Best Law Firms to Work Report, 2022</p> <p>-----</p> <p>Top 10 Best Law Firms for Women in 2022</p>	

For more details, please contact km@jsalaw.com

www.jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This prism is not an advertisement or any form of solicitation and should not be construed as such. This prism has been prepared for general information purposes only. Nothing in this prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this prism disclaim all and any liability to any person who takes any decision based on this publication.