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CONSUMER RESERVES THE RIGHT TO CHOOSE THE FORUM FOR REDRESSAL- ARBITRATION V CONSUMER FORUM

The Supreme Court in the recent judgement of *Citicorp Finance v Snehasis Nanda* [2025 SCC OnLine SC 594], has reaffirmed that existence of an arbitration agreement shall not take away the right of a consumer to approach the consumer forum for redressal of his grievances. The decision was passed while hearing the appeal challenging the decision of National Consumer Disputes Redressal Commission (for short NCDRC) directing Citicorp Finance (for short appellant) to pay Rs. 13.2 Lakhs along with interest to Snehasis Nanda (for short respondent).

FACTUAL BACKGROUND

The respondent had purchased a flat by taking a house loan, thereafter entered into an MoU with the third party i.e. Mr. Mubarak Wahid Patel (for short borrower) for sale of the flat. A purported Tripartite Agreement was also executed between the respondent, the borrower and the appellant, by which a loan was sanctioned to the borrower by the appellant.

The appellant transferred part of the loan amount directly to the bank to foreclose the mortgage created by the respondent. The remaining amount was allegedly not paid to the respondent. The respondent filed a complaint in NCDRC which directed the appellant to pay a sum of Rs. 13.2 Lakhs with interest and Rs. 1 lakh as litigation cost. The impugned judgement was challenged before the Apex Court.

HELD

The court found that there was no direct contractual relationship between the respondent and the appellant, as the loan existed only between the borrower and appellant, therefore the respondent cannot be deemed to be a 'consumer' under the act.

Further, the parties failed to prove a binding Tripartite Agreement due to incomplete document offered in the court, before the issue of approaching arbitration cannot be considered.

However, the court specified that even if the

agreement was proved to be binding, the consumer had the right to approach the consumer forum, as the choice of forum would lie exclusively with the consumer.

1. Consumer is King:

- i. The court emphasized that in a consumer dispute, if the option of resorting to arbitration is provided by an agreement, it can only be opted at the exclusive choice of the consumer alone.
- ii. The court referring to the SC judgement in *M Hemalatha Devi v B. Udayasri* [(2024) 4 SCC 255] reaffirmed that a party cannot be compelled to resort to arbitration merely because they have signed an agreement.
- iii. The Consumer Protection Act, 2019 is a piece of welfare legislation with the primary purpose of protecting the interests of a consumer. Since consumer disputes were assigned by the legislature to public for a as a measure of public policy then such disputes should be kept away from private forum, such arbitration, unless both parties willing opt for it, over the remedy before the public forum.

2. Arbitrability of Disputes:

- i. The SC bench also clarified that the arbitrability of the disputes is to be examined when one of the parties seek redressal under a welfare legislation despite being a signatory to an arbitration agreement. In the case of *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. & Others* (AIR 2011 SC 2507) by the Supreme Court tried give an answer for the question.
- ii. It was deduced that arbitrability of a dispute depends upon the 'nature of rights' involved in the dispute. So, if the dispute involved a *right in personam*, i.e. right against specific individuals then it is arbitrable (eg. Contracts) but if it involves a *right in rem*, i.e., right against the world at large then dispute is not arbitrable (eg. Criminal offences).



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- iii. In the case *Emaar MFG Land Ltd v Aftab Singh* [(2019) 12 SCC 751] and *M Hemalatha Devi [supra]* the court emphasized on the kinds of disputes arising between parties which involve public interest element cannot be decided in arbitration, such as testamentary disputes, disputes relating to trust or insolvency and consumer disputes.
- iv. It was held that the Consumer Protection Act, offers socially beneficial remedies that are in addition to and different from the remedies offered in civil courts or arbitration. Thereby, consumer dispute was also determined to be a non-arbitrable dispute.
- v. In the case of *Vidya Drolia v Durga Trading Corporation* [AIR 2020 SC 929] the SC brought more clarity around the question of what are arbitrable disputes and propounded a four-fold test for consideration. So, a dispute is not arbitrable when the cause of action and/or subject matter of the dispute:
- Relates to actions in rem, and when it doesn't include a subordinate right in personam arising from rights in rem.
 - Affects the third party rights and has *erga omnes* effect (towards everyone), require centralized adjudication and mutual adjudication would not be appropriate.
 - Relates to inalienable sovereign and public interest functions of the state.
 - Is expressly or by necessary implication non-arbitrable under a specific statute.

CONCLUSION

It is now firmly established that an arbitration agreement does not automatically exclude the jurisdiction of consumer courts if a consumer chooses to seek redress through such forums after a dispute arises. The Court emphasized in the *M Hemalatha Devi (supra)* that consumers are given this discretion primarily because consumer courts have more authority than arbitral tribunals, enabling them to offer specialized remedies and enforce adherence to their rulings.

Arbitration may not be the best option for settling some consumer disputes, despite the fact that arbitral tribunals can penalize non-compliance with their rulings and grant many of the remedies available under the Consumer Protection Act, including compensation, refunds, and injunctions. Cases involving potentially dangerous products or services, for example, might have wider ramifications for public welfare. Although arbitration proceedings are not always confidential, the private character of arbitration in India may also keep such facts from becoming public knowledge.

In order to reduce the inherent disparities of such agreements, consumer courts permit consumers to file a complaint after a conflict has occurred. This guarantees that customers are not unilaterally bound by prior arbitration agreements that they may have made under duress or without the capacity to bargain for more equitable terms.