

Kalpavaruksha Charitable Trust

Vs

Toshniwal Brothers (Bombay) Pvt. Ltd. and Another

IA No. 2. in Civil Appeal No. 9737 of 1996

S. Saghir Ahmad, R. P. Sethi JJ)

12.09.1999

JUDGMENT

S. SAGHIR AHMAD, J.:-

1. This appeal was disposed of by us by our judgment dated 12-8-1999.
2. Mr. R.N. Keswani, appearing on behalf of the appellant has filed the instant application stating the he was the only counsel appearing on behalf of the appellant on 12-8-1999, but since he was busy in some other court when the matter was taken up by us, he could not come and argue the appeal. He also stated that the counsel who was deputed to make a mention that he (Mr. R.N. Keswani) was busy in some other court was not entitles to argue the appeal.
3. The appeal was heard by us in detail and elaborate arguments were made on behalf of the appellant also, but having regard to the fact that other counsel was not entitled to argue the appeal, we have heard Mr. Keswani as also Mr. S. P. Mithal.
4. The main reliance on behalf of the appellant has been places on the decision of this Court in Laxmi Engg. Works v. P.S. G. Industrial Institute [(1995)3 SCC 583] in support of the contention that the appellant was held that since the machinery in question was installed by the appellant for commercial purpose, it would not be a "consumer".
5. It is contended by the counsel for the appellant that the term "commercial purpose" has been considered by this Court in the case of Laxmi Engg. Works [(1995) 3 SCC 583] and the observation of the national Commission that "commercial purpose" would mean Profit-making activity on a large scale" was approved and, therefore, the activity of the present appellant would not be a commercial activity as no "profit- making on a large scale" is involved. We do not agree. This Court in that decision had further held in para 21 as under: (SCC p. 599)

"21. We must, therefore, hold that:

(i) The explanation added by the consumer Protection (Amendment) Act., 50 of 1993 (replacing Ordinance 24 of 1993) with effect from 18-6-1993 is classificatory

in nature and apples to all pending proceedings.

(ii) whether the purpose for which a person bas bought goods is a 'commercial purpose' within the meaning of the definition of expression 'consumer' in Section 2(d) of the Act is always a question of fact to be decided in the facts and

circumstances of each case.

(iii) A person who buys goods and uses them himself, exclusively for the purpose of earning his livelihood, by means of self-employment is within the definition of the expression 'consumer'."

Applying those tests, the Court in the case of *Laxmi Engg. Works* [(1995)3 SCC 583] held that the appellant was not "consumer" as the machinery in that case was not purchased for self-employment, but was purchased for "commercial purposes."

6. It is, therefore, clear that in spite of the commercial activity, whether a person would fall within the definition of "consumer" or not would be a question of fact in every case. The National commission had already held on the basis of the evidence on record that the appellant was not a "consumer" as the machinery was installed for "commercial purpose" We have been again referred to various documents, including the "project document", submitted by the appellant itself to the bank for a loan to enable it to purchase the machinery in question, but we could not persuade ourselves to take a different view.

7. Learned counsel for the appellant the referred to the case of *CIT v. Surat Art silk Cloth Manufacturer's Assn.* [(1980) 2SCC31: 1980 SCC (Tax) 170:1980) 121 ITR 1] wherein the activity of a charitable institution, thought commercial in nature, was held to be a part of the charitable activity. This decision does not help the appellant as it was a decision rendered under the Income Tax Act and the question which we are considering here had not arisen in that case.

8. Learned counsel for the appellant then referred to the decision of this Court in *CIT v. Federation of Indian Chambers of Commerce & Industries* [(1981) 3SCC 156: 1981 SCC (Tax) 210 : (1981) 3 SCR 489] and contended that if the dominant object of the trust or institution is charitable, the activity carried on by it would not be treated as an activity of r profit. It is contended on the basis of the above decision that the activities carried on by the appellant were not profit-oriented nor was there any intention or object to carry on those activities to earn profit. This again was the decision rendered under the Income Tax Act and is not on the point involved in the present case whether the appellant was a "consumer" within the meaning of the consumer protection Act, 1986.

9. In the instant case, what is to be considered is whether the appellant was "consumer" within the meaning of the consumer Protection Act, 1986, and whether the goods in question were obtained by him for "resale" or for any "commercial purpose". It is the case of the appellant that every patient who is referred to the Diagnostic Centre of the appellant and who takes advantage of the CT scan etc. has to pay for it and the service rendered by the appellant is not free. It is also the case of the appellant that only ten per cent of the parents are provided free service. That being so, the "goods" (machinery) which were obtained by the appellant were begin used for "commercial purpose".

10. No other point was pressed before us. We, therefore, maintain our judgment dated 12-8-1999 even after having heard Mr. Keswani who insisted for a hearing thought this application. The application shall be treated as disposed of.