

SUPREME COURT OF INDIA

Unit Trust of India

Vs.

Sri Shankar Das

C.A.No.7604 of 2002

(D.K. Jain and R.M. Lodha JJ.)

28.04.2009

ORDER

1. This appeal, by special leave, has been preferred by the Unit Trust of India questioning the correctness of order dated 13rd February, 2002 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the "National Commission") in First Appeal No.465 of 1995. By the impugned order, while affirming the amount of compensation awarded by the State Consumer Commission to the respondent, being the value of 750 Master Shares, the National Commission has reduced the rate of interest payable on the said amount from 18% per annum to 12% per annum for the period from 1st May, 1992 till payment. Despite service the respondent is not present. Accordingly, we have heard learned counsel for the appellant. The sole ground on which the decision of the State Commission as well as of the National Commission is sought to be challenged is that being a trader in shares, the respondent can not be treated as a 'consumer' within the meaning of Section 2(1)(d) of *Consumer Protection Act, 1986*. To bettress his stand learned counsel for the appellant referred to an averment made by the complainant in his complaint, wherein it was stated that had the complainant been allotted 750 units of Master Shares, apart from getting dividend at the rate of Rs.18 per Share, he would have made some profit by selling the same at the rate of 125/- per unit, which was the market rate as on 3rd April, 1992. Thus, the submission of the learned counsel is that the respondent wanted to acquire the shares only with a view to sell them for profit and therefore, being a commercial transaction, he is out of the purview of the Act. The submission is stated to be rejected. The word "trade" means an activity or occupation carried on continuously and regularly for the purpose of profit. A mere investment in shares for the purpose of earning dividends and for that matter earning profit on their sale as a solitary transaction cannot by any standard amount to "trading" in the commercial sense, as contemplated in Section 2(1)(d) of the Act. In the instant case the National Commission has noted that no material had been brought on record to show that the complainant-respondent was engaged in a regular business of sale and purchase of shares. Even before us, learned counsel has not been able to show any material which has not been taken into consideration by the Commission. In that view of the matter, we do not find any infirmity in the impugned order, holding the complainant to be a "consumer". Deficiency in

service by the appellant also stood proved on account of their failure to allot and issue shares to the respondent. The appeal being devoid of any merit is dismissed accordingly.