

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ I.A. No. 2880/2011 in CS(OS) 2014/2010

SAFMARINE CONTAINER LINES N.V. Plaintiff

**Through: Mr. Munindra Dwivedi with
Mr. Kuber Dewan and
Mr. Varun Mishra, Advocates.**

versus

M/S AMITA ENTERPRISES & ANR Defendants

**Through: Mr. Abhinav Jain with
Ms. Reenna Rawat, Advocate
along with defendant No.1 in
person.
Mr. Gagan Gupta, Advocate
for the defendant No.2.**

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Date of Decision : December 20, 2012

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

1. The Plaintiff has filed the aforementioned interim application, being IA No.2880/2011, praying for passing of an order granting stay of the proceedings in Consumer Complaint No.11 of 2009, pending

before the Consumer Disputes Redressal District Forum, Gautam Budh Nagar till adjudication of the suit filed by the Plaintiff.

2. The facts material for the determination of the present application are as follows.

3. The Plaintiff instituted the abovementioned Inter-pleader suit under Order XXXV read with Section 151 of the Code of Civil Procedure, 1908 before this Court against the Defendant Nos.1 and 2 seeking, *inter alia*, interpleading of the Defendants in respect of a dispute relating to the title/ownership of a consignment of 85,200 Kilograms of cast iron scrap shipped by M/s. Accord Metals (Kenya) Ltd. (hereinafter referred to as “ACCORD”) through the Plaintiff sometime in October, 2008. The Plaintiff agreed to carry the aforesaid consignment from the port of Mombasa, Kenya to the port of Dadri, India on freight prepaid basis in three containers, which were released by its local agent to Accord for stuffing their cargo. Upon receipt of the said three containers for shipment, the Plaintiff loaded these containers onboard M.V. Nordstar at Mombasa, Kenya and issued an original Bill of Lading bearing No.751156016 to Accord, in terms of whose instructions **Defendant No.2 was named as consignee thereon.**

4. The Plaintiff states that a short while after the shipment was loaded onboard the M.V. Nordstar, Accord made a request to the Plaintiff to make alterations to the name of the Shipper and consignee. Accordingly, in lieu of surrender of the original Bill of Lading issued to Accord and in conformity with instructions received from Accord, the local agents of the Plaintiff issued a fresh Bill of Lading, in terms

of internationally accepted customary shipping trade practice, reflecting the name of the Shipper as Goyal General Trading LLC and **the name of the consignee was altered from that of Defendant No.2 to that of Defendant No.1.**

5. The Plaintiff asserts that to its utter shock and surprise, on or about 24th November, 2008, a legal notice was issued on behalf of the Defendant No.2 to the Plaintiff calling upon them not to release the consignment of cargo encompassed by the subject Bill of Lading to any person until investigations in a criminal complaint filed by them with the Economic Offences Wing (Crime Branch), New Delhi, were completed.

6. On or about 25th November, 2008, in a suit filed by the Defendant No.2 in the High Court of Kenya at Nairobi, an *ex parte* order restraining the local agents of the Plaintiff from releasing the subject consignment came to be passed. On or about 26th November, 2008, the aforesaid consignment arrived at the nominated place of delivery whereupon Defendant No.1 presented the original Bill of Lading No.751156016 dated 30th October, 2008 seeking delivery, but was informed that the consignment could not be delivered to it in view of the title dispute between it (the Defendant No.1) and the Defendant No.2. The Defendant No.1 thereupon addressed a legal notice dated 16th December, 2008 to the Plaintiff demanding a Delivery Order in relation to the subject Bill of Lading. The Plaintiff replied by its letter dated 7th January, 2009. Meanwhile, on 6th January, 2009, Defendant No.1 filed a consumer complaint before the Consumer Forum aforementioned against the Plaintiff praying for a Delivery Order to be

issued in respect of the consignment shipped by it and seeking monetary compensation. The Plaintiff filed an application for impleadment of the Defendant No.2 M/s. KKK Impex Pvt. Ltd. before the Consumer Forum on 25th February, 2009, which was disallowed on 25th April, 2009.

7. Meanwhile, on 12th March, 2010, the High Court of Kenya passed an order restraining the Plaintiff or its agents from releasing the subject consignment to any person other than the Defendant No.2 and also directing the Plaintiff to pay US\$ 100,000 to the Defendant No.2. The said order was appealed against by the Plaintiff, which appeal is stated to be pending.

8. By way of the present application, the Plaintiff submits that there exists a dispute between the Defendant Nos.1 and 2 with regard to the title of the subject consignment and as the same is pending adjudication before this Court, serious prejudice will be caused to the Plaintiff if the Consumer Forum is not restrained from proceeding further with the complaint filed by the Defendant No.1, until the disposal of the present suit.

9. Upon issuance of notice of the application to the Defendants, the Defendant No.1 filed a reply contesting the application and praying for its dismissal.

10. Referring to the provisions of Order XXXV Rule 3 of the Code of Civil Procedure, 1908, Mr. Munindra Dwivedi, learned counsel for the Plaintiff contended that the statutory provision is clear, *viz.*, that any legal action brought by a Defendant against a Plaintiff in an Inter-pleader suit is liable to be stayed upon the Plaintiff in an Inter-pleader

suit bringing such fact to the attention of the concerned judicial forum. The legislative intent behind the aforesaid provision is also clear as it seeks to avoid multiplicity of proceedings, which may potentially lead to conflicting judgments.

11. For the facility of reference, Order XXXV Rule 3 of the Code of Civil Procedure is reproduced hereunder:-

“Procedure where defendant is suing plaintiff

– Where any of the defendants, in an interpleader-suit is actually suing the plaintiff in respect the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.”

12. Learned counsel for the Plaintiff in the course of hearing relied upon the decision of the Madhya Pradesh High Court, in the case of ***Mrs. Tarabai Agrawal & Ors. vs. Mukhiya Govind, 2004 (4) CCC 23 (M.P.)***, and in particular on the following observations made in paragraph 12:-

“12.The order (Order XXXV Rule 3) in question in clear terms cast an obligation upon the Court which has (sic. is) seized of an interpleader suit to inform the Court in which the suit against the plaintiff is pending that an interpleader suit inter se parties and in relation to the suit property is pending.”

13. It is submitted that in view of the above, it is clear that this Court has the power to issue a notice to the Consumer Forum,

intimating the latter that this Court is seized of the present Inter-pleader suit and that the proceedings pending before the Consumer Forum ought to be stayed, pending adjudication of the present suit.

14. Learned counsel also heavily relied upon the decision of ***Patel Roadways Ltd. vs. Birla Yamaha Ltd., (2000) 4 SCC 91*** to contend that a proceeding before the National Commission comes within the term “suit” referred to in Order XXXV Rule 3 of the Code of Civil Procedure. The relevant portion of the said decision is as under:- (SCC, page 107)

“48.The term “suit” has not been defined in the Carriers Act nor is it provided in the said Act that the term “suit” will have the same meaning as in the Civil Procedure Code. Therefore, the ordinary dictionary meaning of the term will have to be taken for ascertaining its meaning. In P. Ramanatha Aiyar's Law Lexicon, 1997 Edn., some of the references of the term are:

“Suit.—Prosecution or pursuit of some claim, demand or request; the act of suing, the process by which one endeavours to gain an end or object; attempt to attain a certain result; the act of suing; the process by which one gains an end or object, an action or process for the recovery of a right or claim; the prosecution of some demand in a court of justice; any proceeding in a court of justice in which plaintiff pursues his remedy to recover a right or claim; the mode and manner adopted by law to redress civil injuries; a proceeding in a court of justice for the enforcement of a right.

** * **

The word ‘suit’ in Sections 51 to 55 Act IX of 1879, Court of Wards Act, does not mean only

what is usually called a 'regular suit'. It embraces all contentious proceedings of an ordinary civil kind, whether they arise in a suit or miscellaneous proceedings."

Suit, Action.—'Suit' is a term of wider signification than action; it may include proceedings on a petition." (emphasis supplied)"

*49. From the above it is clear that the term "suit" is a generic term taking within its sweep all proceedings initiated by a party for realisation of a right vested in him under law. The meaning of the term "suit" also depends on the context of its user which in turn, amongst other things, depends on the Act or the rule in which it is used. No doubt the proceeding before a National Commission is ordinarily a summary proceeding and in an appropriate case where the Commission feels that the issues raised by the parties are too contentious to be decided in a summary proceeding it may refer the parties to a civil court. That does not mean that the proceeding before the Commission is to be decided ignoring the express statutory provisions of the Carriers Act (Section 9) in a proceeding in which a claim is made against a common carrier as defined in the said Act. Accepting such a contention would defeat the object and purpose for which the Consumer Protection Act was enacted. **A proceeding before the National Commission, in our considered view, comes within the term "suit".** Accordingly we reject the contention raised by Shri Ashok Desai in this regard."*

15. Learned counsel argued that the contention of the Defendant No.1 that this Court does not have the power to grant the relief sought by the Plaintiff on the ground that the provisions of the Code of Civil Procedure do not apply to proceedings before the Consumer Forum deserves outright rejection. He submitted that the only aspect that is

to be considered by this Court in an Inter-pleader suit for the purpose of issuance of intimation to the Court in which the complaint is being pursued (in this case the Consumer Forum) is whether *prima facie*, there exists a dispute *inter se* the Defendants with respect to the title of property, which each of them are claiming against the Plaintiff individually. In the instant case, it is evident from the written statement filed by the Defendant No.2 that the Defendant No.2 is also claiming title over the very same goods which are being claimed by the Defendant No.1, and, therefore, it can safely be inferred that *prima facie*, there exists a dispute as to the title of goods between the Defendant No.1 and the Defendant No.2. It is submitted that since both the Defendant No.1 and the Defendant No.2 claim title to the goods and each of the Defendants has initiated separate legal proceedings against the Plaintiff claiming title over the goods, this Court by virtue of the provisions of Order XXXV Rule 3 CPC has the power and authority to issue the notice as contemplated by the aforesaid statutory provision to the Consumer Forum, as prayed for by the Plaintiff.

16. Per contra, Mr. Abhinav Jain, Advocate on behalf of the Defendant No.1 at the very threshold contended that the suit itself is not maintainable as there exists no dispute between the parties in India. There is a dispute between the Plaintiff and the Defendant No.2 in Kenya, to which the Defendant No.1 is not a party, and between the Plaintiff and the Defendant No.1 in India, and in India the Defendant No.1 is the only one who has documents of title pertaining to the

goods, viz., the original Bill of Lading. As such, the suit itself is liable to be dismissed.

17. Adverting to the provisions of Order XXXV Rule 3 of the Code of Civil Procedure, 1908, it was submitted that in the conspectus of the wording, language and legislative intent of the aforesaid provision of law, the stay as sought for by the Plaintiff cannot be granted for the following reasons:-

- (A) The subject matter of both the suits should be the same. It is not so in the instant case as the “subject matter” in the consumer proceedings initiated by the Defendant No.1 is “deficiency in service” and “negligence” of the Plaintiff arising out of the latter’s failure to deliver the goods to the former, whereas the subject matter of the suit before this Court is the “alleged ownership dispute” *qua* the goods between the Defendant Nos.1 and 2. It is submitted that the Consumer Forum proceedings were initiated by the Defendant No.1 nearly two years prior to the instant suit. Even otherwise, there is not even a semblance of dispute as the Plaintiff has categorically admitted that the Defendant No.1 is in possession of the original documents pertaining to the goods, but has conspicuously failed to mention in the suit or in the present application as to what original documents are with the Defendant No.2. The Plaintiff, therefore, does not have any cause of action against the Defendant No.1.
- (B) Order XXXV Rule 3 provides that “the Court in which the suit against the Plaintiff is pending shall, on being informed by the

Court in which the Inter-pleader suit has been instituted, stay the proceedings as against him.” Thus, only a **suit** pending before a **Court** can be stayed and that too by the Court before which the prior suit is pending, on the intimation from the Court where the Inter-pleader suit is filed. In the instant case, the complaint filed before the Consumer Forum by the Defendant No.1 is not a suit, and as such, no stay as sought for by the Plaintiff can be granted.

18. Learned counsel further submitted that the issue whether Order XXXV Rule 3 of the Code of Civil Procedure is applicable to proceedings initiated under the Consumer Protection Act, 1986 has been conclusively settled by a three-Judge Bench of the Hon’ble Supreme Court in the case of *Ethiopian Airlines vs. Ganesh Narain Saboo* reported in **(2011) 8 SCC 539**. The relevant part of the said decision reads as follows:

“65. However, notwithstanding the fact that the proceedings of the National Commission are “suits” under the Carriers Act, vide the expressio unius principle, the Consumer Protection Act, 1986 clearly enumerates those provisions of CPC that are applicable to proceedings before the Consumer Fora. Such provisions include Section 13(4), in which the Consumer Protection Act, 1986 vests those powers which are vested in a civil court under CPC to the District Forum. However, according to the principle of expressio unius, because the legislature expressly made the aforementioned provisions of CPC applicable to the consumer proceedings, the legislature is, therefore, deemed to have intentionally excluded all other provisions of CPC from applying to the said proceedings.

*This is particularly true since, as explained above, the Consumer Protection Act, 1986 sets forth an exhaustive list of procedures, distinguishable from those required under CPC, that the consumer redressal fora must follow. Therefore, **since the Consumer Protection Act does not state that Section 86 applies to the Consumer Fora's proceedings, that section of CPC should be held to be not applicable.***

*66. Likewise, CPC itself does not claim to make Section 86 applicable to proceedings before the Consumer Fora. Instead, CPC includes a saving clause, providing that “in the absence of any specific provision to the contrary, **nothing in [CPC] shall be deemed to limit or otherwise affect any special ... law ... or any special form of procedure prescribed, by or under any other law...**” In addition, Section 86 only applies to a “**suit in any court**”. This term should be understood differently than the term “court” discussed above because CPC refers exclusively to the civil courts. **In particular, CPC specifically refers to the District Courts, the High Courts, and the Supreme Court and makes little if any reference to other, quasi-judicial fora like the consumer redressal bodies at issue here.** This interpretation has been approved by the Supreme Court, in *Bhagwat Singh v/s. State of Rajasthan*, AIR 1964 SC 444.....*

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*70. That is, the Consumer and Carriage Acts, which came long after CPC, are more focused and specific statutes, and, therefore, should be held to exclude Section 86. The Supreme Court (in *Savita Garg v/s. National Heart Institute* (2004) 8 SCC 56, SCC p. 63, para 7) has previously found as such, holding that in the fora created by the Consumer Act,*

“the provisions of the Code of Civil Procedure are applicable to a limited extent and not all the provisions of the Code of Civil Procedure are made applicable to the proceedings of the National Forum”.

*Rather, the rules created pursuant to the Consumer Act itself govern the procedure to be followed in the Consumer Fora. Similarly, a Constitution Bench of this Court in **Economic Transport Organization v/s. Charan Spg Mills (P) Ltd (2010) 4 SCC 114** found that even though the consumer redressal fora utilised summary proceedings, that “does not mean that proceedings before the Consumer Forum are to be decided by ignoring the express statutory provisions of the Carriers Act in a proceeding in which a claim is made against a common carrier.*

*71. In view of the Constitution Bench judgment in Economic Transport Organization (Supra) the view which has been taken by the two-Judge Bench of this Court in **EICM Exports Ltd.v/s. South Indian Corporation (Agencies) Limited (2009) 14 SCC 412** is wholly untenable and unsustainable in law.*

72. Section 86 of the Code of Civil Procedure is inapplicable to the present case because the older and more general statute has been excluded by more recent special statute, namely, the Consumer Protection Act, 1986 and the Carriage by Air Act, 1972. Ethiopian Airlines is not entitled to sovereign immunity in the suit at issue in the present case. Therefore, any other consent of the Central Government is not required to subject the appellant Ethiopian Airlines, to a suit in an Indian court.

73. It is a settled principle of statutory interpretation that specific statutes that come later in time trump prior general statutes. Both the Consumer Protection Act, 1986 and the Carriage by Air Act, 1972, which came

long after the Code of Civil Procedure, 1908, are more focused and specific statutes and, therefore, should be held to supersede Section 86 of the Code. This Court in Savita Garg (supra) has clearly laid down that the principle that in fora created by the Consumer Act, the provisions of the Code of Civil Procedure are applicable only to a limited extent, therefore, the provisions of the Code of Civil Procedure have not been made applicable to the proceedings of the National Consumer Forum.”

19. The specific attention of this Court was drawn by learned counsel for the Defendant No. 1 to the provisions of Section 13(4) of the Consumer Protection Act, 1986, to contend that the Code had a very limited application to the said Act, which being topical, are reproduced hereunder:-

“13 (4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

- (i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;*
- (ii) the discovery and production of any document or other material object producible as evidence;*
- (iii) the reception of evidence on affidavits;*
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;*
- (v) the issuing of any commission for the examination of any witness; and*
- (vi) any other matter which may be prescribed.”*

20. It is submitted by learned counsel for the defendant that the Hon’ble Supreme Court having categorically laid down that the Code

of Civil Procedure, 1908 refers specifically to Civil Courts, viz., the District Courts, the High Courts and the Supreme Court and not to quasi-judicial fora set up under specific statutes that came in later like the consumer redressal bodies, to which it may apply only to a limited extent, it is beyond cavil that the Consumer Protection Act, 1986 being a specific statute which came after the Code of Civil Procedure, 1908, which is a general statute, the latter will not apply to the Consumer Protection Act except to the extent spelt out in Section 13(4) of the said Act.

21. It was contended that since the complaint before the Consumer Forum is not a “suit”, the necessary corollary is that the provisions of the Code are inapplicable to the proceedings before the Consumer Forum except to a limited extent only, as clearly enunciated in the case of *Laxmi Engineering Works vs. P.S.G. Industrial Institute* reported in (1995) 3 SCC 583, wherein it has been held that:-

“10. A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these forums/commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. The forum so created is uninhibited by the requirement of court fee or the formal procedures of a court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the

complainant himself; any recognized consumers' association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Governments can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for "business-to-consumer" disputes and not for "business-to-business" disputes. This scheme of the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal."

22. A three-Judge Bench decision of the Hon'ble Supreme Court rendered in the case of ***Kishori Lal vs. Chairman, E.S.I. Corporation*** reported in ***AIR 2007 SC 1819*** is also relied upon by the learned counsel for the Defendant No. 1 to contend that the jurisdiction of the Consumer Forum should not be curtailed unless there is an express provision prohibiting the Consumer Forum to take up the matter. Reference in particular was made to paragraph 17 of the said judgment where the law has been enunciated in the following terms:-

"17. It has been held in numerous cases of this Court that the jurisdiction of a Consumer Forum has to be construed liberally so as to bring many cases under it for their speedy disposal. In Spring Meadows Hospital v. Harjol Ahluwalia and Another, AIR 1998 SC 1801, it was held that the CP Act creates a framework for speedy disposal of consumer disputes and an attempt has been made to remove the existing evils of the ordinary court system. The Act being a beneficial legislation should

receive a liberal construction. In State of Karnataka v. Vishwabharathi House Building Coop. Society AIR 2003 SC 1043, the Court speaking on the jurisdiction of the Consumer Fora held that the provisions of the said Act are required to be interpreted as broadly as possible and the fora under the CP Act have jurisdiction to entertain a complaint despite the fact that other fora/courts would also have jurisdiction to adjudicate upon the lis. These judgments have been cited with approval in paras 16 and 17 of the judgment in Secy., Thirumurugan Coop. Agricultural Credit Society v. M. Lalitha and Others, (2004) 1 SCC 305. The trend of the decisions of this Court is that the jurisdiction of the Consumer Forum should not and would not be curtailed unless there is an express provision prohibiting the Consumer Forum to take up the matter which falls within the jurisdiction of civil court or any other forum as established under some enactment. The Court had gone to the extent of saying that if two different fora have jurisdiction to entertain the dispute in regard to the same subject, the jurisdiction of the Consumer Forum would not be barred and the power of the Consumer Forum to adjudicate upon the dispute could not be negated.”

23. On the same aspect, the decision of a Division Bench of this Court in *Hindustan Motors Ltd. vs. Amardeep Singh Wirk & Ors.*, 161 (2009) DLT 88 (DB) is also relied upon. Paragraphs 16 and 17 of the said judgment are apposite, which read as under:-

“16. In the light of the judgments discussed hereinabove, there is no room for any doubt that proceedings under the Consumer Protection Act and in a Civil Court can simultaneously go on, even if the issues involved in the two proceedings are substantially similar. The remedies are independent of each other. The existence of parallel or other adjudicatory Forums

cannot take away or exclude the jurisdiction created under the Consumer Protection Act. It is also pertinent to mention that in the present case, the proceedings in the Civil Court and those in the Consumer Forum have been initiated by two different parties though, admittedly, their grievances relate to the same incident as also the fact that the two parties are related. However, the fact remains that they are two independent parties who have initiated independent and separate proceedings before this High Court and the Consumer Forum.

17. The learned Single Judge has rightly declined to grant the relief to the appellants in the writ petition filed by them. We see no infirmity in the order of the learned Single Judge to warrant any interference by us. The appeal must fail. Accordingly, the appeal is dismissed. The pending application stands disposed of.”

24. Learned counsel for the defendant No.1 thus contended that the Hon’ble Supreme Court has consistently taken the view that the jurisdiction of the Consumer Forum should not be curtailed unless there is an express provision prohibiting the Consumer Forum from taking up the matter which falls within the jurisdiction of the Civil Court; and in the instant case the Plaintiff has not been able to show any such statutory bar. It is submitted that the suit in the instant case was filed two years after the filing of complaint before the Consumer Forum and there is, therefore, even otherwise no justification for this Court to stay the said proceedings, more so as the Plaintiff has not been able to show any dispute *qua* the ownership of the goods in question; and the nature of the proceedings before the Consumer Forum are entirely different as also the parties. The proceedings before the Consumer Forum are pending *vis-à-vis* the deficiency in

service on the part of the Plaintiff in not handing over the goods in question to the Defendant No.1, and the application of the Defendant No.2 for impleadment in the said proceedings has been dismissed by the Consumer Forum, whereas in the instant suit what the Plaintiff in effect seeks to accomplish is the recovery of his container detention charges either from the Defendant No.1 or the Defendant No.2 by creating a fiction about a non-existent dispute about the “ownership” of subject goods.

25. Distinguishing the judgment rendered by the Hon’ble Madhya Pradesh High Court in the case of *Mrs. Tarabai Agrawal (supra)*, it was contended that it is for the Inter-pleader Court to decide whether or not to inform the other Court about the pendency of the Inter-pleader suit and this decision calls for application of mind by the Inter-pleader Court to the facts of the case to satisfy itself as to whether it is a fit case in which information ought to be sent under Order XXXV Rule 3 of the Code, and to satisfy itself that the requirement of Section 88 is fulfilled and it is a fit case for sending information to the other Court at the instance of the party asking for such relief. It was pointed out that in *Mrs. Tarabai Agrawal (supra)*, there was an eviction suit and an Inter-pleader suit and it was held that it was for the Inter-pleader Court to inform the Court dealing with the eviction suit. The Court in the said case was not dealing with proceedings before the Consumer Forum and the question of the applicability of the provisions of the Code of Civil Procedure to proceedings before the Commission was not in issue.

26. In rejoinder, learned counsel for the Plaintiff submitted that the reliance placed by the learned counsel for the Defendant No.1 on the aforesaid precedents was entirely misplaced. He submitted that the Consumer Forum does not possess jurisdiction to adjudicate upon the title of goods and such relief has neither been sought by the Defendant No.1 nor can be granted by the Consumer Forum. As such, the decision of the Hon'ble Supreme Court in *Ethiopian Airlines (supra)* has no applicability to the facts of the present case. He submitted that from a conjoint reading of the decisions in *Trans Mediterranean Airways vs. Universal Exports and Anr., (2011) 10 SCC 316* and *Ethiopian Airlines (supra)* (relied upon by the Defendant No.1) it is clear that the abovementioned decisions cannot be applied to the facts of the present case as an Inter-pleader suit is in the nature of an extraordinary suit, where there exists a dispute as to the title of the suit property between parties claiming title adverse to each other against the Plaintiff, in relation to which this Court has the power and authority to issue the notice as prayed for by the Plaintiff. The Consumer Protection Act, 1986 is a welfare legislation and the procedure adopted by the Consumer Forum in conducting proceedings is summary in nature. In a consumer dispute, therefore, there exists a presumption of title which cannot be deduced in the present case and in fact the central issue in the present case is regarding the title to the consignment. The existence of a dispute with regard to the title would exclude the matter from the realm of adjudication of the Consumer Forum and thus the argument advanced by the Defendant No.1 with regard to the non-applicability of the CPC to the Consumer Forum is

entirely misplaced. It was submitted that in the case of ***Trans Mediterranean Airways (supra)*** the Supreme Court has clearly opined that while construing the Consumer Protection Act, the term “Court” cannot be given a restricted meaning in the following terms:-

“58. we are of the view that when it comes to legislations like the CP Act, there can be no restricted meaning given to the word “court”. Hence, we reject the argument of Shri Bhagat that the National Commission is not a “court” within the meaning of Rule 29 of the Second Schedule of the CA Act.”

27. Referring to the decision in ***Kuldip Singh Kalra & Anr. vs. Roshan Lal Pal & Anr.*** rendered by the National Consumer Disputes Redressal Commission, New Delhi, which is reported in ***II (1993) CPJ 170 (NC)***, it was submitted that the factual matrix of the present case clearly reveals that the Defendant Nos.1 and 2 are adversely claiming title to the goods and each claiming entitlement to delivery of the same. This showed that there is a defect in the title which can be adjudicated only by this Court and which is beyond the competency of the Consumer Forum. In the aforementioned case, the National Commission opined as follows:-

“8. However, the term “defect” as defined in Section 2(1)(f) of the Consumer Protection Act has specific connotation: it means imperfection or shortcoming in the quality, potency, purity or standard required to be maintained. A defect in title to property will not fall under any of the defects enumerated in Section 2(1)(f). A taint in property due to defective title does not affect the quality or purity of the goods. It is far fetched to

maintain that a defect in title in any goods would affect their purity and render them impure.”

28. After carefully considering the rival contentions of the parties and the precedents relied upon by them, this Court is of the opinion that the trend of decisions of the Hon’ble Supreme Court and of this Court placing reliance upon the aforesaid decisions of the Supreme Court is that the proceedings before the Consumer Protection Act and the Civil Court can simultaneously go on, even if the issues involved in the two proceedings are substantially similar.

29. The contention of the counsel for the Plaintiff that a defect in the title of the goods will not fall under the Consumer Protection Act also appears to be wholly untenable as also the reliance placed on the judgment of the National Consumer Disputes Redressal Commission rendered in ***Kuldip Singh Kalra (supra)*** to the effect that a defect in title to property will not fall under any of the defects enumerated in Section 2(1)(f) of the Consumer Protection Act, 1986. The proceedings in the present case instituted by the Defendant No.1 against the Plaintiff before the National Consumer Forum will fall not under Section 2(1)(f) but under Section 2(1)(g) for “deficiency of service”. In Section 2(1)(g), “deficiency” is defined to mean:

“any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

Section 2(1)(o) defines “service” to mean:

*“Service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, **transport**, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purviewing of news or other action, but does not include the rendering of any service free of charge or under a contract of personnel service.”*

30. In *Patel Roadways Ltd. (supra)* relied upon by the learned counsel for the Plaintiff, the Supreme Court was seized of a matter in which a complaint had been filed before the National Consumer Disputes Redressal Commission alleging, *inter alia*, that the carrier had accepted the responsibility of the transportation of certain consignments and safe delivery of the goods but it failed to deliver the same. Thus, there was deficiency in the service to be rendered by the appellant as a carrier. The Commission in its order placed reliance on the provisions of Section 9 of the Carriers Act to hold that the appellants were deficient in performance of their service as a common carrier. Feeling aggrieved by the said order, the appellant filed an appeal under Section 23 of the Consumer Protection Act contending that Section 9 of the Carriers Act in terms does not apply to a proceeding under the Consumer Protection Act, and that the provision applies only to suits filed in a Civil Court and not to Redressal Forums under the Consumer Protection Act, which adjudicate disputes in a summary manner. It was in this context that the Hon’ble Supreme Court held that the term “suit” is a generic term taking within its sweep all proceedings initiated by a party for realisation of a right

vested in him under law. The Court held that though, no doubt, the proceedings before a National Commission is ordinarily a summary proceeding and in an appropriate case where the Commission feels that the issues raised by the parties are too contentious to be decided in a summary suit, it may refer the parties to a Civil Court, that does not mean that the proceedings before the Commission is to be decided ignoring the express statutory provisions of the Carriers Act within Section 9. Accepting such a contention would defeat the object and purpose for which the Consumer Protection Act was enacted. In the aforesaid facts, it held that a proceeding before a National Commission comes within the term “suit”.

31. In the decision of *Trans Mediterranean Airways (supra)* also relied upon by the Plaintiff, a question had cropped up before the Supreme Court as to whether National Commission under the Consumer Protection Act was a “Court”. This question was to be decided by the Supreme Court in the context of the Carriage by Air Act, 1972 and Warsaw Convention of 1929. After a careful consideration of the dictionary meaning of the term “Court” and its earlier decisions rendered in *Union of India v. R. Gandhi, President, Madras Bar Association, (2010) 11 SCC 1; Bharat Bank Ltd. v. Employees of Bharat Bank, AIR 1950 SC 188; Brajnandan Sinha v. Jyoti Narain, AIR 1956 SC 66* and *Canara Bank v. Nuclear Power Corporation of India Ltd. and Others, (1995) Supp 3 SCC 81*, the Supreme Court observed as under:-

“The above dictionary meaning and decision of this Court in the case of Canara Bank and also the

*observations of the Constitution Bench decision of this Court in **Madras Bar Association** reveal that word "Court" must be understood in the context of a body that is constituted in order to settle disputes and decide rights and liabilities of the parties before it. "Courts" are those bodies that bring about resolutions to disputes between persons. As already mentioned, this Court has held that Tribunals and Commissions do not fall under the definition of "Court". However, in some situations, the word "Court" may be used in a wide, generic sense and not in a narrow and pedantic sense, and must, in those cases, be interpreted thus."*

32. The Supreme Court in the aforesaid case accordingly held that for the purpose of the Carriage by Air Act, 1972 (CA Act) and the Warsaw Convention, the Consumer Forums can fall within the meaning of the expression "Court". **It accordingly rejected the argument that the National Commission is not a Court within the meaning of Rule 29 of the Second Schedule of the CA Act.**

33. In the present case, this Court is not concerned with the question as to whether the Consumer Forum in its precise nature is a court or quasi-judicial body or tribunal or authority, but only with the question of whether the Civil Procedure Code in general and Order XXXV Rule 3 in particular is applicable to the National Commission. The Hon'ble Supreme Court has consistently taken the view that the jurisdiction of the Consumer Forum should not be curtailed unless there is an express provision prohibiting the Consumer Forum from taking up the matter which falls within the jurisdiction of Civil Courts. In the instant case, the Plaintiff has not been able to show any statutory bar on the Consumer Forum proceedings initiated by the

Defendant No.1 and thus the ratio of the decision rendered by this Court in the case of *Hindustan Motors Ltd. (supra)* squarely applies to the facts of the present case.

34. In view of the aforesaid discussion, there is no merit in the present application, which is accordingly dismissed.

**REVA KHETRAPAL
JUDGE**

December 20, 2012
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