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O.S.A.(CAD) No.97 of 2023 & etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

O.S.A. (CAD) Nos.97 to 100 & 102 to 110 of 2023
and Cross Obj. Nos.65, 61, 60, 63, 66, 68,
64, 58, 59, 62, 56, 57 & 67 of 2023

[O.S.A.(CAD)No.97 of 2023]

Info Edge (India) Ltd.

Through their Authorized Signatory

Mr.Amitendra Singh Antal

Corporate Identification No.L74899DL1995PLC068021

Having Registered Address at:

Ground Floor, GF-12A 94

Meghdoot, Nehru Place

New Delhi, DL 110020 IN

and Branch Office at:

1st Floor Savidhaanu Building

21 Casa Major Road, Egmore

Chennai, Tamil Nadu – 600 008.

.. Appellant

Vs

1. Google India Pvt. Ltd.

Rep. by its Managing Director

Corporate Identification No.U72900KA2003PTC033028

With their registered address at:

No.3, RMZ Infinity – Tower E, Old Madras Road

4th and 5th Floors, Bangalore

Karnataka – 560 016.



O.S.A.(CAD) No.97 of 2023 & etc. batch

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2. Google India Digital Services Private Limited
Rep. by its Managing Directorate
(CIN) U74999DL2017PTC376205
5th Floor, DLF Centre, Block – 124
Narindra Place, Sansad Marg
New Delhi – 110 001.
 3. Alphabet Inc.
Rep. by its Authorized Officer
1600 Amphitheatre Parkway Mountain View
CA 94043, United States of America.
 4. Google LLC
Rep. by its Authorized Officer
A Limited Liability Corporation
With their registered address at:
251, Little Falls Drive
Wilmington, Delaware 19808
United States of America.
 5. Google Asia Pacific Pte. Ltd.
Rep. by its Authorized Officer
Unique Entity Number 200817984R
With their registered address at:
8 Marina Boulevard
#05-02, Marina Bay Financial Centre
Singapore 018981.
 6. Google Payment Corp.
Rep. by is Authorized Officer
1600 Amphitheatre Parkway Mountain View
CA 94043, United States of America.
 7. Google Payments India Private Ltd.
Rep. by its Managing Director
(CIN) U72200DL2007PTC360455
5th Floor, DLF Centre, Block -124
Narindra Place, Sansad Marg
New Delhi – 110 001.
- .. Respondents



O.S.A.(CAD) No.97 of 2023 & etc. batch

Prayer: Appeal under Section 13 of the Commercial Courts Act, 2015 r/w Order 43 Rule 1 of the Code of Civil Procedure r/w Order XXXVI Rule 9 of the Original Side Rules to set aside the decree and judgment dated 03.08.2023 in A.No.3101 of 2023 in C.S.(Comm. Div.) No.120 of 2023 and consequentially direct the Single Judge of the High Court of Madras to restore the Suit in C.S.(Comm. Div.) No.120 of 2023.

For the Appellants in : Mr.P.Chidambaram
O.S.A.(CAD) Nos.100, 109, Senior Counsel
98, 97, 107, 104, 105, 103,
108, 106, 99 and 110 of Mr.Sriram Panchu
2023 Senior Counsel

Mr.Satish Parasaran
Senior Counsel

Mr.Srinath Sridevan
Senior Counsel

Assisted by:
Mr.R.Venkat Raman,
Mr.Santhosh Ukkur,
Mr.Abir Roy,
Mr.D.Senthil Kumar,
Mr.Anirudh B.Menon,
Mr.Harinarayanan.S.K.,
Mr.Sachin Menon,
Mr.Deva Kumar,
Mr.Vivek Pandey,
Mr.Aman Shankar,
Mrs.Sukanya Vishwanath and
Mr.Arvind Srinivas

For the Appellant in : Mr.Arun C.Mohan
O.S.A.(CAD) No.102 of 2023 Assisted by Mr.Abir Roy,
Ms.Shruthi Srinivasan,
Mr.Karthik Selvaraj and
Mr.Aman Shankar



O.S.A.(CAD) No.97 of 2023 & etc. batch

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For the Respondents 1 to : Mr.P.S.Raman
7/Cross Objectors in Senior Counsel
O.S.A.(CAD) Nos.97, 99, for Mr.G.Balasubramanian
100, 108, 109 and 110 of for M/s.Leela & Co.
2023

For the Respondents 1 to : Mr.Sajan Poovayya
7/Cross Objectors in Senior Counsel
O.S.A.(CAD) Nos.98, 102, for Mr.G.Balasubramanian
103, 104, 105 & 106 of for M/s.Leela & Co.
2023 and Cross Objection
Nos.58, 59, 61, 64 & 68 of
2023

Assisted by:
Mr.S.Anand,
Mr.Jesin Prabhu George,
Mr.S.Girish,
Mr.P.Arun Kumar,
Mr.Vijayendra Pratap Singh,
Ms.Sayobani Basu,
Mr.Raghav Seth,
Ms.Shubhangni Jain,
Mr.Ankitesh Ojha,
Ms.Maithreyi Canthaswamy
Sharma,
Mr.Krishna Sumanth,
Ms.Lakshana Viravalli,
Mr.Raghav Seth and
Mr.Chetan Chawla

COMMON JUDGMENT
(Delivered by the Hon'ble Chief Justice)

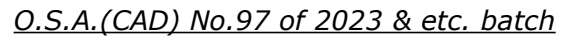
The present appellants are the original plaintiffs. For the sake of convenience, the parties would be referred to with their original status in the complaints.



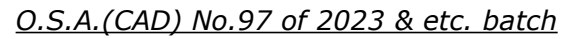
O.S.A.(CAD) No.97 of 2023 & etc. batch

2. The plaintiffs instituted suits seeking a declaration that the Google Payments Terms of Service-Seller (IN) posted on 02.06.2022, Payment Policies, Policies relating to Service Fees, Terms and Conditions, posted by the defendants' on its websites/portals/webpages on various dates, including the Blog-post dated 17.05.2023, all relating to the implementation of Google Play Billing System (GPBS)/User Choice Billing (UCB)/Consumption-Based Model vis-a-vis the Mobile Application as illegal and unenforceable. The plaintiffs further sought a declaration that the definition of "Authorized Provider" and Clauses 15.3 of the Developer Distribution Agreement (DDA), effective as of 03.10.2022, as unconscionable, illegal and unenforceable and for a consequential relief for permanent injunction.

3. The defendants appeared in the suits and filed applications seeking rejection of the complaints purportedly under Order VII Rule 11(d) of the Civil Procedure Code, 1908 on the ground that the suit is barred in view of the provisions of the Competition Act, 2002 [for brevity, "the Act of 2002"] and the Payment and Settlement Systems Act, 2007 [for brevity, "the PSS Act, 2007"]. The learned Single



(i) The defendant is a system provider. Suit would lie against



- (a) Violation of Section 10-A of the PSS Act, 2007;
- (b) Failure to comply with the settlement period prescribed under the Reserve Bank of India (RBI) Guidelines;
- (c) Commission for payment processing not being charged at a pre-determined rate;
- (d) Illegal debits by the defendants from the Escrow Account; and
- (e) Co-mingling of business while settling funds with the appellants.

(ii) The PSS Act, 2007 is not a “complete code” or that the RBI is a self-contained machinery which can grant all the remedies that a civil court can grant. No pleadings are raised by the defendants that the civil courts' jurisdiction is ousted by Section 28 of the PSS Act, 2007, nor appropriate pleadings have been made alleging ouster of



jurisdiction of civil courts by referring to Sections 17, 18 and 24 of the PSS Act, 2007.

(iii) Section 17 of the PSS Act, 2007 does not contemplate an adjudicatory mechanism for resolution of disputes. Under Section 17 of the PSS Act, 2007, the RBI may *suo motu* issue directions when the prerequisites stipulated under Sub-Sections (a) and (b) of Section 17 of the PSS Act, 2007 are fulfilled. However, under the PSS Act, 2007, an order of injunction cannot be passed by the RBI. Section 18 of the PSS Act, 2007 also does not contemplate an adjudicatory mechanism for resolution of disputes. Section 18 of the PSS Act, 2007 only regulates the payment systems and no policies/regulations for redressal of grievances under the PSS Act, 2007 have been framed. Sections 17 and 18 of the PSS Act, 2007 only contemplate the general powers of the RBI vis-a-vis the PSS Act, 2007. The same cannot be construed as an ouster of jurisdiction of the civil court.

(iv) Section 24 of the PSS Act, 2007, though provides for settlement of disputes, cannot be a substitute to the civil court. The mechanism for resolution of disputes envisaged under the said



O.S.A.(CAD) No.97 of 2023 & etc. batch

Section is not an appropriate substitute for the adjudicatory mechanism of the civil court. The plaintiffs are the "system participants", whereas the defendant is the "system provider". The in-house panel under Sections 24(1) and 24(2) of the PSS Act, 2007 is a creation of the "system provider", which in the present case is the alleged violator. The said in-house panel for settlement of disputes cannot be said to be an impartial adjudicatory forum, much less, a substitute to the civil court. The present dispute is between the "system participants" and the "system provider". Sub-Sections (1) and (2) of Section 24 of the PSS Act, 2007 are not relevant, since the said Sub-Sections only contemplate resolution of dispute as between the "system participants".

(v) Though Section 24(3) of the PSS Act, 2007 provides for referral of disputes between a "system participant" and a "system provider" to the RBI for resolution and Section 24(4) of the PSS Act, 2007 provides for disposal of disputes referred to the RBI by an authorized officer, however, the said provisions nowhere prescribe a detailed mechanism for adjudication of such disputes in a manner and procedure contemplated under the Code of Civil Procedure, 1908.



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O.S.A.(CAD) No.97 of 2023 & etc. batch

(vi) Whenever the Legislature, in its wisdom, had by way of a special statute, ousted the jurisdiction of the civil court, it had laid down appropriate provisions vesting the authority under the special statute with the powers of the civil court in order to ensure transparent and extensive adjudicatory mechanism. The plaintiffs, to buttress their submissions, relied upon other special statutes such as the Tamil Nadu Regulation of Rights and Responsibilities of Landlords and Tenants Act, 2017 to contend that under the said Act, a rent tribunal is constituted and is vested with the powers of a civil court under the Civil Procedure Code, 1908 for recording evidences, issuing commission for local investigation, powers to execute its orders, to review its decision and specifically providing that the proceedings before the rent court or rent tribunal shall be deemed to be a judicial proceedings. Similarly, reliance was placed upon other special statutes such as the Consumer Protection Act, 2019, The Recovery of Debts and Bankruptcy Act, 1993 and the Telecom Regulatory Authority Act, 1997.



(vii) It is submitted that the threshold to oust the jurisdiction of the civil court is high. In the absence of the powers to receive pleadings and evidence, discover and inspect documents, prefer an appeal, summon witnesses and conduct cross-examination, the PSS Act, 2007 cannot be considered to be a complete code and thereby oust the jurisdiction of the civil court. Further, Section 24(4) of the PSS Act, 2007 provides for "summary disposal". The same cannot supplant the jurisdiction of the civil court to entertain the civil suit, alleging multiple violations of the PSS Act, 2007. The PSS Act, 2007 does not create any new rights, but only deals with the pre-existing common law rights. It is further submitted that in the absence of the PSS Act, 2007, the plaintiffs, defendants and the "end-user/consumers" of the plaintiffs' Apps are free to enter into a tripartite agreement to bind themselves to certain contractual obligations and remedies. The PSS Act, 2007 does not confer any special rights upon the parties to regulate the *modus* upon which their business operates. The Act merely provides for the resolution of disputes, arising out of the pre-existing common law and does not in any manner, whatsoever, act as a bar to the jurisdiction of the civil court and therefore, at the most, can be said to be a concurrent



O.S.A.(CAD) No.97 of 2023 & etc. batch

remedy. Reliance is placed on the judgment of the Supreme Court in the case of *Raja Ram Kumar Bhargava vs Union of India*¹.

(viii) It is submitted by the plaintiffs that by conflating the averments regarding contractual/common law rights and averments regarding violation of the Act of 2002, the part of the suit containing averments regarding contraventions of the PSS Act, 2007 cannot be rejected under Order VII Rule 11 (d). In that view of the matter, Sections 2, 4, 18, 19, 21, 21A, 27, 60 and 61 of the Act of 2002 have no relevance to the issue whether a suit regarding contraventions of the PSS Act, 2007 will lie in a civil court.

(ix) It is submitted that a plaint cannot be rejected in part. Reliance is placed on the judgments of the Apex Court in the cases of *Church of Christ Charitable Trust and Educational Charitable Society vs Ponnamman Educational Trust*², *Madhav Prasad Aggarwal vs Axis Bank Ltd.*³ and *Sejal Glass Ltd. Vs Navilan Merchants (P) Ltd.*⁴.

¹ 1988 1 SCC 681

² (2012) 8 SCC 706

³ (2019) 7 SCC 158

⁴ (2018) 11 SCC 780



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(x) To rely on the concept of ouster of jurisdiction, two aspects are to be examined, namely:

(a) Whether the right or liability in respect whereof grievance has been made, had been created under an enactment and it did not relate to a pre-existing common law right?; and

(b) Whether the machinery provided for redressal of the grievance in respect of infringement of such right or imposition of a liability under such enactment, was adequate and complete?

By applying the test laid down in the judgment of the Apex Court in the case of *Shiv Kumar Chadha vs Municipal Corporation of Delhi and Ors.*⁵, the PSS Act, 2007 neither creates a special right/liability for any of the parties herein nor can it provide an adequate remedy vis-a-vis the skeletal and opaque adjudicatory mechanism prescribed under Section 24(3) of the PSS Act, 2007.

(xi) It is contended by the plaintiffs that Sections 61 and 62 of the Act of 2002 would not bar the jurisdiction of the civil court.

⁵ 1993 (3) SCC 161



O.S.A.(CAD) No.97 of 2023 & etc. batch

Section 62 of the Act of 2002 would enable the the plaintiffs to approach the civil court seeking appropriate remedy as it states that “the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force”. Reliance is placed on the judgments of the Apex Court in the cases of *Indian Medical Assn. vs. V.P.Shantha*⁶, *KSL & Industries Ltd. Vs Arihant Threads Ltd.*⁷, *Mathew Varghese vs M.Amritha Kumar*⁸ and *Basti Sugar Mills Co. Ltd. vs. State of U.P.*⁹.

(xii) Reliance is also placed on the judgment of the Apex Court in the case of *State of Karnataka vs. Vishwabharathi House Building Coop. Society and Ors.*¹⁰ to contend that in the event a complainant feels that he will have a better and effective remedy in a civil court, as he may have to seek for an order of injunction, he may file a civil suit before the appropriate civil court or take some other remedy as provided under the statutes.

⁶ (1995) 6 SCC 651

⁷ (2015) 1 SCC 166

⁸ (2014) 5 SCC 610

⁹ (1979) 2 SCC 88

¹⁰ 2003(1) SCR 397



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(xiii) In the case of *Bank of Rajasthan Ltd. Vs VCK Shares and Stock Broking*¹¹, the Apex Court held that by virtue of the scheme of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, in relation to the proceedings for recovery of debt by a Bank or financial institution, a civil suit filed by the borrower in a civil court is not barred. The purposeful insertion of Section 62 of the Act of 2002 into the statute is only to create an additional remedy for an aggrieved party.

(xiv) Learned Senior Counsel for the plaintiffs emphatically contended that the Competition Commission of India cannot adjudicate upon the violations of the PSS Act, 2007. Section 27 of the Act of 2002 only empowers the Competition Commission of India to direct a party to discontinue an agreement, to direct a party to not re-enter an agreement, to direct the modification of an agreement and to impose penalty. The aforementioned powers are exercised after the Competition Commission of India conducts its inquiry and

¹¹ 2023 (1) SCC 1



O.S.A.(CAD) No.97 of 2023 & etc. batch

finds that the agreement between two or more parties is in violation of Section 3 or Section 4 of the Act of 2002. The Competition Commission of India is not empowered to grant compensation which can only be granted by a civil court nor it can arrive at a finding that an action is in violation of the PSS Act, 2007.

(xv) The remedies under the Ombudsman scheme do not oust the jurisdiction of the civil court. "Reserve Bank – Integrated Ombudsman Scheme, 2021", framed by the Reserve Bank of India by the powers conferred on it under Section 18 of the PSS Act, 2007, is aimed at resolving customer grievances in relation to the services provided by entities regulated by the Reserve Bank of India. Reference is made to the judgment of the Apex Court in the case of *Durga Hotel Complex vs RBI & Ors.*¹².

(xvi) Specific issues of novation and restraint of trade are raised by the plaintiffs. The same are required to be adjudicated by the civil court and the same cannot be decided by the Competition Commission of India nor the Reserve Bank of India. It is submitted

¹² 2007 SCC Online SC 367



O.S.A.(CAD) No.97 of 2023 & etc. batch

that the definition of service under the GPTS refers to “payment processing” only. Now, Google has novated unilaterally and said that the price or service fee charged by Google on the Play Store is for whole host of services. This fundamentally alters the very substratum of the contract. The same is illegal.

(xvii) It is further contended that presently, all the App developers have contracts with third-party payment processors approved by the Reserve Bank of India, however, with the change brought in by the “authorized payment provider” unilaterally by Google, that freedom is being taken away. Such a conduct is clearly hit by Section 27 of the Indian Contract Act, 1872 [for brevity, “ICA, 1872”].

(xviii) Violation of provisions of the PSS Act, 2007 on the part of the defendants also constitutes a breach of statutory duty. The claim for breach of statutory duty can be maintained even against private bodies/individuals. These issues and mixed questions of law and facts can only be determined by a civil court and not by the Reserve Bank of India and the Competition Commission of India. To



O.S.A.(CAD) No.97 of 2023 & etc. batch

that effect, reliance is placed on the judgment of the Apex Court in the case of *Municipal Corporation of Delhi vs. Uphaar Tragedy Victims Association and Ors.*¹³.

(xix) It is further contended that much emphasis was laid that the plaintiff in C.S.(Comm.Div.) No.109 of 2023 ("Shaadi") has not disclosed its participation in the Competition Commission of India proceedings by filing a new information on 18th October, 2023. However, the plaint proceeds entirely in substance highlighting the ICA, 1872, the PSS Act, 2007 and tort law related violations.

(xx) The proceedings before the Competition Commission of India and the Madras High Court are different causes of action. Forum shopping allegations are not correct. The complaints filed by "Shaadi" and "Matrimony" proceed on violation of PSS Act, 2007 and the ICA, 1872 violations. It is submitted that this Court, while deciding applications under Order VII Rule 11 of the Code of Civil Procedure, 1908 cannot look into the allegation of forum shopping because, determination of the issue would require perusal of entire set of pleadings made by

¹³ (2011) 14 SCC 481



O.S.A.(CAD) No.97 of 2023 & etc. batch

“Shaadi” before the Competition Commission of India and the submissions of Google therein. Such an exercise is not permissible at this stage. Reliance to this effect is placed on the judgment of the Apex Court in the case of *Keshav Sood vs. Kirti Pradeep Sood and Ors.*¹⁴.

(xxi) Misleading arguments are made by the defendants that the plaintiff in C.S.(Comm.Div.) No.109 of 2023 has tried to execute the orders passed by the Competition Commission of India and therefore, the plaint should be rejected. However, before the Competition Commission of India, on 28th April, 2023, the defendants stated that no third-party can approach the Competition Commission of India to execute its order through a non-compliance proceedings under Section 42 of the Act of 2002. Further, the defendants, before the Delhi High Court in the case of *Alliance of Digital India Foundation vs Competition Commission of India and Ors.*¹⁵, argued that Section 42 of the Act of 2002 does not authorize the Competition Commission of India to pass any interim order. In another set of written submissions filed on 8th June, 2022 made by the defendants on

¹⁴ Civil Appeal No.5841 of 2023, 12.09.2023

¹⁵ W.P.(C) No.4599 of 2023



O.S.A.(CAD) No.97 of 2023 & etc. batch

account of Shaadi's information before the Competition Commission of India, the defendants made contrary submissions to suit their convenience by requesting the Competition Commission of India to defer the proceedings initiated on account of a new information filed under Section 19 and final inquiry under Section 42 of the Act of 2002. In every forum, the defendants are taking contrary pleadings, in what they believe is the same cause of action and citing examples of other ongoing proceedings to stall any judicial determination on the issues.

(xxii) The contention of the defendants that the Competition Commission of India can look into the PSS Act, 2007 issues to ascertain abuse of dominance is not correct. The plaintiffs would disclose that it does not contain any averment to seek any of the reliefs or remedies provided for within the scope of the Act of 2002. The reliefs claimed are those under the ICA, 1872 and the PSS Act, 2007. In *Combination Registration No.C-2018/05/571* involving *Walmart International Holdings, Inc.*, the Competition Commission of India held that it cannot look into provisions of other laws. In the said case, the matter was relating to FDI Policy violation. In the present



O.S.A.(CAD) No.97 of 2023 & etc. batch

case, the provisions of the PSS Act, 2007 and the ICA, 1872 are pressed into service. The same cannot be dealt with by the Competition Commission of India.

(xxiii) Reliance on Section 21A of the Act of 2002 would also be of no avail. By relying upon the judgment of the Apex Court in the case of *Competition Commission of India vs. Bharti Airtel Ltd.*¹⁶, it is contended that when there is another expert regulator, the Competition Commission of India will have no power to look into those issues.

(xxiv) It is submitted that in a composite suit, where there are multiple remedies available under different statutes, the plaint cannot be rejected even if the jurisdiction of the civil court is barred under one statute. Reference is made to the judgment of the Delhi High Court in the case of *JCB India Ltd. vs. I.P. Adress: 1021/2008 and Ors.*¹⁷, reaffirmed by the Division Bench in *Abhinav Gupta vs. JCB India*¹⁸. The Delhi High Court was considering an application for

¹⁶ (2019) 2 SCC 521

¹⁷ I.A.No.9011/2008 in C.S.(OS)No.1021/2008

¹⁸ (2010) 119 DRJ 397



O.S.A.(CAD) No.97 of 2023 & etc. batch

rejection of plaint claiming violations under the Information Technology Act, 2000 and the Copyright Act, 1957. The Information Technology Act, 2000 also has a provision similar to the Act of 2002, wherein the jurisdiction of the civil court is completely barred under Section 61 of the Information Technology Act, 2000 for matters which the adjudicating officer is empowered to determine. However, the Delhi High Court, considering the composite nature of the suit, upheld the jurisdiction of the civil court.

(xxv) The scheme of the Act of 2002 is also referred to. Under Section 19(1)(a) of the Act of 2002, an information is filed or the Competition Commission of India takes *suo motu* cognizance. On a *prima facie* determination of the violation of Section 3 and/or Section 4 along with the determination of the relevant market made under Sections 19(6), 19(7) and appreciable adverse effect on competition in the market under Section 19(3) of the Act of 2002, the Competition Commission of India passes an order for investigation by the Director General under Section 26(1) of the Act, in case a case for investigation is made out, otherwise, the Competition Commission of India rejects the information as there exist no *prima facie* case under



O.S.A.(CAD) No.97 of 2023 & etc. batch

Section 26(2) of the Act of 2002.

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(xxvi) After passing of the *prima facie* order, under Section 26(1) of the Act of 2002, inquiry is said to start. During the inquiry, an application under Section 33 of the Act of 2002, for interim relief, can be filed. The Director General parallelly conducts the investigation in the concerned relevant market and then submits the investigation report to the Competition Commission of India. The Competition Commission of India can either accept the said report and call for written and oral pleadings from the parties concerned or ask the Director General for further investigation. The Competition Commission of India can, after consideration of the investigation report and the pleadings made by the parties, pass a final order under Section 27 of the Act of 2002, in case violation of the provisions of the Act of 2002 is found to be made.

(xxvii) Enforcement mechanism for directions passed by the Competition Commission of India in an order passed under Section 27 of the Act of 2002 is covered under Sections 42 and 42A of the Act of 2002. The power to issue interim orders under Section 33 of the Act



O.S.A.(CAD) No.97 of 2023 & etc. batch

is during an inquiry and not prior. The inquiry is said to start after an order under Section 26(1) [*prima facie* order] is passed and is said to terminate after the Competition Commission of India passes a final order under Section 27 of the Act of 2002. After passing the final order under Section 27, the Competition Commission of India cannot pass any interim order. Reliance is placed on the judgment of the Apex Court in the case of *Competition Commission of India vs. SAIL*¹⁹.

(xxviii) The Act of 2002 is not a complete code as per the yardstick mentioned by the Apex Court in the case of *Girnar Traders vs. State of Maharashtra*²⁰. The third-party has no right to initiate non-compliance proceedings. In contravention proceedings, the Competition Commission of India is not empowered to pass interim orders. Section 42 of the Act of 2002 only provides for penal consequences for non-compliance of the orders passed by the Competition Commission of India. Section 42A of the Act of 2002 mentions compensation in case of loss, but does not cover the powers of specific performance or granting injunction. Further, the orders passed by the Competition Commission of India under Section 42 of

¹⁹ (2010) 10 SCC 744

²⁰ (2011) 3 SCC 1



O.S.A.(CAD) No.97 of 2023 & etc. batch

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the Act of 2002 are not appellable.

(xxix) Multiple remedies can arise from the same set of facts. The proceedings before the Competition Commission of India is materially different and the Act of 2002 is in addition to the provisions of other statutes, thus, does not prevent a party from recourse to more than one proceeding.

(xxx) It is submitted that Section 61 of the Act of 2002 has been discussed by the Bombay High Court in the case of *Nuzeiveedu Seeds Limited vs Mahyco Monsanto*²¹, where the Court observed that issues pertaining to contract and competition law proceedings can go simultaneously due to its different remit before appropriate/different forums. Reliance is also placed on the judgment in the case of *Naveen Kataria vs Jaiprakash Associates Limited*²².

(xxxi) It is further contended that Section 4 of the Act of 2002 would not make the application of Sections 16 and 27 of the ICA, 1872 nugatory. It cannot be held that for all contracts, wherein one

²¹ 2020 SCC Online Bom 816

²² Case No.99 of 2014



O.S.A.(CAD) No.97 of 2023 & etc. batch

party is dominant, the sole recourse is only under the Act of 2002. Reliance is placed on the judgments in the cases of *GAIL vs Indian Petrochemical Corporation Ltd.*²³, *Indian Explosives Ltd. Vs Coal India Ltd.*²⁴, *Coal India Limited vs. Competition Commission of India and Ors.*²⁵ and *Texco Marketing (P) Ltd. vs. TATA AIG General Insurance Co. Ltd.*²⁶.

(xxxii) Forcing the plaintiffs to enter into an unlawful agreement, wherein an unauthorized payment service provider is being forced to be integrated by Google, is clearly a violation of Section 23 of the ICA, 1872. The Competition Commission of India cannot determine the violation of Sections 23 or Section 27 of the ICA, 1872.

(xxxiii) The prayer in the complaints seeking a declaration that the pricing under GPBS or UCB is exorbitant can only be granted by a civil court, since the Competition Commission of India cannot be a

²³ (2023) 3 SCC 629

²⁴ (2019) 16 SCC 258

²⁵ (2023) SCC Online SC 740

²⁶ (2023) 1 SCC 428



O.S.A.(CAD) No.97 of 2023 & etc. batch

price regulator. Determination of price is outside the remit of the Competition Commission of India as has been held by the Apex Court in the case of *Rajasthan Cylinders and Containers vs Union of India*²⁷. It is the defendants' own stand that the Competition Commission of India cannot determine price. The same was the submission and is culled out in the Competition Commission of India's order.

(xxxiv) It is contended that Section 9 of the Code of Civil Procedure, 1908 provides that the courts can try all civil suits unless it is barred. The civil courts have expansive jurisdiction across all subject matters of a civil nature. As opposed to the Competition Commission of India, which can only ask the dominant party to fix a reasonable rate, the civil court has power to intervene and fix a reasonable rate based on equity. Reliance is placed on the judgment of the Apex Court in the case of *Damodhar Tukaram Mangalmurti vs State of Bombay*²⁸ to buttress the said argument.

(xxxv) The arguments of the defendants in cross appeal on

²⁷ (2020) 16 SCC 615

²⁸ 1959 Supp (2) SCR 180



O.S.A.(CAD) No.97 of 2023 & etc. batch

Clause 16.8 of the DDA, pertaining to territorial jurisdiction, is misplaced. The said Clause has been held to be against the public policy by the learned Single Judge. Reliance is placed on the judgment of the Delhi High Court in the case of *Rajendra Sethia vs Punjab National Bank*²⁹ to contend that an agreement which says that parties will not have recourse to Indian courts would be void. The scope of Indian enactments, such as the PSS Act, 2007, is restricted to Indian courts and because of the exclusion of conflict of law and provision under Clause 16.8 of DDA, the Courts in California, United States, would not recognise the PSS Act, 2007 and the ICA, 1872.

7. Mr.P.S.Raman, learned Senior Counsel and Mr.Sajan Poovayya, learned Senior Counsel appearing for the respective respondents/defendants canvassed their submissions as hereunder:

(i) The complaints filed by the plaintiffs are premised on the alleged rights and entitlement arising out of the Competition

²⁹ 1991 SCC OnLine Del 55



O.S.A.(CAD) No.97 of 2023 & etc. batch

Commission of India's order and/or the alleged abuse of dominance by the defendants. The plaintiffs allege that the defendants abuse their dominant position to impose unfair service fee and billing policy on application developers. The Competition Commission of India had passed an order on 25.10.2022 in Case Nos.7 of 2020, 14 of 2021 and 35 of 2021. The case of the plaintiffs is that alternate billing system/user choice billing policy was introduced to circumvent or side step the Competition Commission of India's order. At many places in the complaints, such averments are made.

(ii) The Act of 2002 empowers the Competition Commission of India to assess compliance with its orders. The Act of 2002 is a complete code in itself. Section 61 of the Act of 2002 ousts the jurisdiction of the civil court. The Competition Commission of India and the National Company Law Appellate Tribunal have jurisdiction to inquire into Google's alleged abuse of dominance and alleged non-compliance with the Competition Commission of India's orders. The cause of action identified in the complaints is premised on the issues determined by the Competition Commission of India order.



O.S.A.(CAD) No.97 of 2023 & etc. batch

Reference is made to Sections 4, 42 and 42A of the Act of 2002.

Their sole case is that DDA/DPP is imposed through Google's alleged dominance. This applies as much to the alleged breach of the Act of 2002 as it does to the claimed violations of the ICA, 1872. The averments in the plaints are solely on the ground that the defendants occupy the dominant position to gain unfair advantage.

(iii) In the plaints, the plaintiffs even asked for the Competition Commission of India's order to be made part and parcel of the plaints, with a leave to make extensive reference to all relevant portions of the Competition Commission of India order. "Matrimony" and "Alliance of Digital Foundation (ADIF)" have filed applications seeking initiation of inquiry under Section 42 of the Act of 2002 and further sought directions under Section 33 not to impose UCB policy. As such, the plaintiffs recognize that the allegations and reliefs made in the plaints could be granted by the Competition Commission of India.

(iv) Some of the plaintiffs are guilty of sophisticated forum



O.S.A.(CAD) No.97 of 2023 & etc. batch

shopping. The complaint is pending before the Competition Commission of India, impugning excessive service fee and the alleged abuse of dominant position. The proceedings under Section 42 of the Act of 2022 are also pending. The said fact has been rightly considered by the learned Single Judge.

(v) It is submitted that when a right or liability is established by a statute, that very statute also provides the mechanism for enforcing them. The Competition Commission of India was established to address competition related issues. Reference is made to the judgment of the Apex Court in the case of *South Delhi Municipal Corporation vs. Total Homes & Infrastructure (P) Ltd.*³⁰ to submit that forums were created under the Acts themselves, where grievances could be entertained on behalf of the persons aggrieved. Reference is also placed on the judgment of the Bombay High Court in the case of *Khetan Industries Pvt. Ltd. vs Manju Raviprasad Khetan*³¹.

³⁰ (2020) 12 SCC 680

³¹ 1994 SCC OnLine Bom 163



O.S.A.(CAD) No.97 of 2023 & etc. batch

(vi) Reliance is also placed on the case of *Raja Ram Kumar Bhargava (supra)*. It is submitted that in the said case, it was held that wherever a right or liability, not pre-existing in common law, is created by a statute and that statute itself provides a machinery for enforcement of such right or liability, then, even in the absence of an exclusionary provision, the jurisdiction of the civil court is impliedly barred.

(vii) The arguments raised before the Competition Commission of India mirror the allegations and prayers in the complaints. Reference is made to various paragraphs and operative portion of the Competition Commission of India's order.

(viii) The Competition Commission of India is empowered to decide and has decided the issues of user fee and service fee raised in the complaints. The plaintiffs can not convert the civil court into an executing court of the Competition Commission of India's order. After considering the detailed evidences and conducting a full fledged inquiry regarding whether the defendants were charging an



O.S.A.(CAD) No.97 of 2023 & etc. batch

unfair/excessive service fee, the Competition Commission of India found that the service fee not to be in violation of the Act of 2002.

(ix) Even the implementation of the UCB pilot has been specifically addressed in the Competition Commission of India's order. The launch of the UCB pilot was considered a mitigating factor of the defendants on the issue of quantum of penalty. The plaintiffs have not filed any appeal contesting these findings of the Competition Commission of India and any further action to re-agitate the same is barred by the principles akin to issue estoppel.

(x) The orders of the Competition Commission of India are in *rem*, therefore are binding on all the plaintiffs. Reliance is placed on the judgment of this Court in the case of *R.Subramanian vs. Hongkong & Shanghai Banking Corpn. Ltd.*³² to contend that a suit can very well be rejected by a civil court if the party has already

³² 2018 SCC OnLine Mad 13690



O.S.A.(CAD) No.97 of 2023 & etc. batch

approached a particular forum and is re-agitating the same reliefs/issues before the civil court.

(xi) Section 61 of the Act of 2002 is a complete bar for exercise of jurisdiction of the civil court. Section 62 of the Act of 2002, relied by the plaintiffs, cannot be used to render the express ouster in Section 61 of the Act of 2002 nugatory and redundant. Section 62 of the Act of 2002 is not applicable in the present cases. The issues agitated by the plaintiffs before this Court are essentially allegations pertaining to abuse of dominant position and non-compliance with the Competition Commission of India's order, which pursuant to Section 61 of the Act of 2002 can only be looked into by the Competition Commission of India.

(xii) The contention of the plaintiffs that the introduction of UCB policy amounted to novation of the DDA under Section 62 of the ICA, 1872 is without pleadings. The allegation of unconscionability under Section 16 of the ICA, 1872 is also based



O.S.A.(CAD) No.97 of 2023 & etc. batch

on existence of an alleged economic dominance by the defendants.

This dominance can only be ascertained by the Competition Commission of India under the Act of 2002. In the present cases, the allegation of abuse of dominance before the Competition Commission of India even included a claim that the defendants had imposed unfair contractual terms under Section 4(2)(a)(i) of the Act of 2002 for higher bargaining power, which is a mirror image of the claim that the plaintiffs now try to assert under Section 16 of the ICA, 1872. The ingredients of Section 16 of the ICA, 1872 are also not pleaded. The only undue influence asserted is the determination based on economic analysis by Competition Commission of India and not one based on those indicated under Section 16 of the ICA, 1872.

(xiii) Reference is made to the case of *Mardia Chemicals Ltd. vs. Union of India*³³, stating that the civil court's jurisdiction can be invoked on a limited basis like in cases of fraud and it cannot be a 'mere recital of fraud'. The pleadings have to be specific and meet

³³ (2004) 4 SCC 311



O.S.A.(CAD) No.97 of 2023 & etc. batch

the requirements of Order VI Rule 4 of the Civil Procedure Code, 1908. Reliance is also placed on the judgment of the Apex Court in the case of *ITC Ltd. vs. Debt Recovery Appellate Tribunal*³⁴.

(xiv) The PSS Act, 2007 is a complete code. The complaints, as predicated, allege violation of the PSS Act, 2007, particularly Section 10A and the RBI Guidelines dated 17th March, 2020 under Section 10(2) r/w Section 18 of the PSS Act, 2007 for regulation of Payment Aggregators and Payment Gateways. These allegations can only be adjudicated by the RBI, who is the designated regulator under the PSS Act, 2007. The PSS Act, 2007 impliedly bars the jurisdiction of the civil courts to adjudicate on allegations of violation of the Act.

(xv) The PSS Act, 2007 defines the right of parties, their corresponding obligations and the consequences of breach in case of violation of the same. The PSS Act, 2007 provides for a mechanism of adjudication of disputes between parties. The PSS Act, 2007

³⁴ (1998) 2 SCC 70



O.S.A.(CAD) No.97 of 2023 & etc. batch

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identifies RBI as the designated expert authority for overseeing the implementation and enforcement of the PSS Act, 2007. The RBI is the sole authority empowered to deal with violations of the PSS Act, 2007. The RBI is empowered to pass and enforce directions in respect of any entity, purportedly non-compliant with and/or in violation of the PSS Act, 2007 and directions, guidelines and regulations prescribed thereunder. If the plea of the plaintiffs is accepted that the civil jurisdiction is not impliedly barred, then there is a potential for conflicting opinions by the sectoral regulator and the civil court and to avoid scrutiny of an expert regulator, all parties can embark on “set up litigations” to keep the matters pending in civil courts to avoid scrutiny by the regulatory authority.

(xvi) It is submitted by the defendants that the Apex Court, in the case of *Internet & Mobile Assn. of India vs. RBI*³⁵ also has held that the RBI has peremptory power to take pre-emptive action. The power of RBI is not merely curative but also preventive. The power to regulate also includes the power to prevent. Reliance is placed on

35 (2020) 10 SCC 274



O.S.A.(CAD) No.97 of 2023 & etc. batch

the judgments in the cases of *Transmission Corpn. Of A.P. Ltd vs. Rain Calcining Ltd.*³⁶, *Subramanian Swamy vs State of Tamil Nadu*³⁷ and *U.P. Coop. Cane Unions Federations vs. West U.P. Sugar Mills Assn.*³⁸.

(xvii) A dispute resolution mechanism is also provided under the PSS Act, 2007 under Section 24 and also under the Integrated Ombudsman Scheme, 2021, issued under Section 18 of the PSS Act, 2007. Section 24(3) of the PSS Act, 2007 provides that where a dispute is between any system participant and system provider, the dispute shall be referred to the RBI. The RBI's decision under Section 24(3) has been given finality under Section 24(4) of the PSS Act, 2007. The RBI can enforce orders under PSS Act, 2007 including civil and criminal. Reference is made to various Sections such as, Sections 8, 14, 26, 27, 28 and 30 of the PSS Act, 2007.

(xviii) Reference to Section 7(1)(iii) of the PSS Act, 2007 is

³⁶ (2021) 13 SCC 674

³⁷ (2014) 5 SCC 75

³⁸ (2004) 5 SCC 430



O.S.A.(CAD) No.97 of 2023 & etc. batch

made to submit that the RBI may examine the terms and conditions governing the relationship between consumers and the payment system providers prior to giving authorization.

(xix) The RBI has the overwhelming power as the designated authority to permit regulated entities to start, continue and prevent as well as terminate any rights and obligations under the PSS Act, 2007. It provides finality to the decisions of the RBI and the Central Government on various issues. The PSS Act, 2007 confers RBI to impose civil and criminal levies in the form of fine and penalty for contravention of the PSS Act, 2007. The PSS Act, 2007 ensures ring-fencing of actions before courts with respect to the subject matter and permits such actions only if they have been initiated through RBI. The intention of the legislature to oust jurisdiction of civil court is clearly with the intent to prevent misuse of the process of court. Reliance is placed on the judgment of the Apex Court in the case of *Church of North India vs. Lavajibhai Ratanjibhai*³⁹.

³⁹ (2005) 10 SCC 760



O.S.A.(CAD) No.97 of 2023 & etc. batch

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(xx) It is further submitted that if the law provides for remedy, a machinery and enforcement of the remedy by the same, it provides for a complete code. The parties cannot be allowed to agitate about violation of the PSS Act, 2007 before the civil court, much less, a commercial court. The plaintiffs in their respective complaints, acknowledged that the PSS Act, 2007 allows the RBI to pass appropriate orders under Sections 17 and 18 of the PSS Act, 2007. The plaintiffs further alleged in the complaints that the RBI should have taken *suo motu* cognizance of these issues under Sections 10, 17 and 18 of the PSS Act, 2007. One of the plaintiffs ("Matrimony"), in its complaint to the RBI dated 17th April, 2023, has itself stated that it is asking the RBI to act on the very same allegations as set out in the complaints and that the RBI has the power to do so under Sections 17 and 18 of the PSS Act, 2007.

(xxi) The issues concerning purported breach of the PSS Act, 2007 were raised by the plaintiffs in conjunction with the allegations of abuse of dominance, which have been examined by the Competition Commission of India. Section 11 of the Commercial



O.S.A.(CAD) No.97 of 2023 & etc. batch

Courts Act, 2015 excludes claims where jurisdiction of the civil courts is excluded either expressly or impliedly. A civil suit is barred expressly under the Commercial Courts Act, 2015 and impliedly under the PSS Act, 2007. Reliance is placed on the judgment of the Apex Court in the case of *Patil Automation Pvt. Ltd. vs. Rakheja Engineers Pvt. Ltd.*⁴⁰.

(xxii) The averments made in the plaints demonstrate that the allegations relating to the PSS Act, 2007 are an afterthought and a red-herring. The plaintiffs have raised the purported violation of the PSS Act, 2007 after twelve years since the defendants introduced in-app purchases and started charging service fee on such purchases and three years after the payment policy was announced on 28th September, 2020 and 5th October, 2020.

(xxiii) It is further submitted that inaction by the RBI can only be corrected through a writ remedy and not by filing a civil suit. The dispute between the plaintiffs and the defendants deals with a

40 (2022) 10 SCC 1



O.S.A.(CAD) No.97 of 2023 & etc. batch

commercial contract between private entities. The relationship is governed by the terms and conditions set forth in their contractual agreement. Public law standards cannot be used to evaluate the validity of DDA. Reliance is placed on the judgments of this Court in the cases of *Marg Ltd. vs. Karaikal Port Private Limited*⁴¹ and *K.C.Cinema vs. State of J&K*⁴². The present dispute does not classify as a commercial dispute between the parties.

(xxiv) The complaints lack the bare pleadings on purported contractual breach of the subject contracts nor any pleadings are made about the alleged tortious interference, much less, any ingredients are set in. It is further submitted that the contention of the plaintiffs that the remedy under the PSS Act, 2007 is not adequate is incorrect. Under the PSS Act, 2007 a complete mechanism is provided. Reliance is placed on the judgments of the Apex Court in the case of *Srikant Kashinath Jituri vs. Corpn. of the City of Belgaum*⁴³ and in the case of *South Delhi Municipal*

41 2021 SCC OnLine Mad 2585

42 (2023) 5 SCC 786

43 (1994) 6 SCC 572



O.S.A.(CAD) No.97 of 2023 & etc. batch

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Corporation (*supra*).

(xxv) The argument of the plaintiffs that compensation can be sought by amendment cannot be entertained, as while deciding the applications filed under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, the averments made in the plaints have to be taken as they are. It is further submitted that Section 24(3) of the PSS Act, 2007 contains an appeal mechanism, in case the complainant is not satisfied with the decision of the panel contemplated under Section 24(1) of the PSS Act, 2007.

(xxvi) Reliance is placed on the judgment of the Apex Court in the case of *Titaghur Paper Mills Co. Ltd. vs. State of Orrisa*⁴⁴ to contend that where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that statute alone must be availed. The Apex Court, while considering similar statutes, has held that there was an implied bar on the jurisdiction of the civil courts. Reliance is placed on the judgments

⁴⁴ (1983) 2 SCC 433



O.S.A.(CAD) No.97 of 2023 & etc. batch

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in the cases of *Jithendra Nath Biswas vs. Empire of India and Ceylone Tea and Co. and Anr.*⁴⁵ and *Anwar vs. Ist ADJ*⁴⁶.

(xxvii) The RBI is an expert regulator/body, having power to issue directions, guidelines and orders to system participants for proper compliance of the provisions of the PSS Act, 2007 and also has powers to issue further directions and take cognizance of offence punishable under the Act for non-compliance under Section 28 of the PSS Act, 2007. The RBI has expertise in economic and fiscal matters. It is a modern piece of economic legislation governing a technical field of payment settlements.

(xxviii) It is further submitted that the contention of the plaintiffs that the PSS Act, 2007 does not create a new right, but recognizes the rights that pre-existed in common law and therefore the remedy in common law is also available is erroneous. Such arguments are misplaced and untenable, because common law is a body of law, derived from judicial decisions rather than from

⁴⁵ (1989) 3 SCC 582

⁴⁶ (1986) 4 SCC 21



O.S.A.(CAD) No.97 of 2023 & etc. batch

statutes or constitutions. Pre-existing contractual arrangements cannot be equated to common law rights, which can be created only by judicial precedents. There is no pre-existing right or liability relating to any payment system under common law. The rights and obligations that the plaintiffs seek to enforce have been for the first time created by the PSS Act, 2007. Hence, the only remedy available to the plaintiffs to enforce a right created by the PSS Act, 2007 is only under the Act itself.

(xxix) The PSS Act, 2007, is a self-contained code and it impliedly bars the jurisdiction of civil courts and the PSS Act, 2007 would be rendered nugatory if civil courts are empowered to interfere in the expert domain of the RBI. Section 21-A of the Act of 2002 was amended on 18th May, 2023. The Ombudsman Scheme would also oust the jurisdiction of the civil court.

(xxx) In support of their cross objections, learned Senior Counsel for the defendants submitted that Clause 16.8 of the DDA stipulates that the claims arising from or relating to DDA are



O.S.A.(CAD) No.97 of 2023 & etc. batch

governed by the laws of the State of California and records the parties' agreement to submit exclusively to the jurisdiction of the federal or state courts in the County of Santa Clara, California, to resolve any disputes concerning the DDA or their relationship.

(xxxi) Learned Single Judge erred in arriving at the finding that Clause 16.8 of the DDA is not enforceable. The exclusive jurisdiction clauses reflect party autonomy, allowing the parties to choose a specific jurisdiction for resolution of the disputes. It is a settled position that when certain jurisdiction is specified in a contract, an intention to exclude all other dispute resolution forums may be inferred. Reliance is placed on the judgments of the Apex Court in the cases of *Svenska Handelman vs. Charge Chrome*⁴⁷ and *Modi Entertainment vs. WSG*⁴⁸ and judgment of the Madras High Court in the case of *Prashant Hasmukh Manek vs. Ramu Annamalai Ramasamy*⁴⁹.

47 1994 (2) SCC 155

48 2003 (4) SCC 341

49 2019 SCC OnLine Mad 5869



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(xxxii) It is further submitted that the U.S. Federal District Court has upheld the validity and enforceability of Clause 16.8 of the DDA. It is also when experienced business men are involved in commercial contract and they are not of unequal bargaining power, the agreed terms must ordinarily be respected and enforced. Reliance is placed on the judgment of the Apex Court in the case of *Phulchand Exports Ltd. vs. O.O.O. Pariot*⁵⁰.

(xxxiii) It is further submitted that reliance on Australian Court's judgment in *Epic Games, Inc. vs. Google LLC* and Canadian Court's judgment in *Douez vs. Facebook, Inc.* is misplaced. *Douez (supra)* is a case between a consumer and a corporation and in *Epic Games (supra)*, claims in the case were entirely statutory, derived from the Australian Competition and Consumer Protection Act, 2010. In view thereof, the cross objections may be allowed.

8. We have considered the submissions canvassed by learned

⁵⁰ (2011) 10 SCC 300



O.S.A.(CAD) No.97 of 2023 & etc. batch

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Senior Counsel appearing for the respective parties.

9. The complaints have been rejected by the learned Single Judge under the impugned judgment purportedly under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 on the ground that the Act of 2002 and the PSS Act, 2007 bar the jurisdiction of the civil court.

10. The defendants raised their objections *qua* the jurisdiction of the civil court on two counts, namely,

- (i) The jurisdiction of the civil court is expressly barred under Section 61 of the Act of 2002 and is impliedly barred in view of the remedy of adjudication of disputes provided under the PSS Act, 2007; and
- (ii) by an agreement, the jurisdiction is conferred and restricted to the courts in California.

11.1. The learned Single Judge negated the contentions of the defendants that Clause 16.8 of the DDA restricts the jurisdiction to



O.S.A.(CAD) No.97 of 2023 & etc. batch

the courts in the State of California. It is trite that if two or more courts have jurisdiction, the parties, by an agreement, can restrict the jurisdiction to one court. The same would be true in respect of the courts situated in India. In the present case, the defendants, by virtue of Clause 16.8 of the DDA, are restricting the jurisdiction to the courts of the county of Santa Clara, California, governed by the laws of the State of California, i.e., a foreign court.

11.2. When a party is doing business in India, it would be too far-fetched to suggest that the laws in India would not apply. If the law in India is applied, then there is nothing on record to suggest that the said law would be applicable in the court at California. The said agreement would be an agreement in the restraint of legal proceedings as contemplated under Section 28 of the ICA, 1872.

11.3. The learned Single Judge has rightly relied upon the judgment of the Delhi High Court in the case of *Rajendra Sethia (supra)*. The learned Single Judge has appreciated the said aspect and held that the Clause 16.8 of the DDA would not have the effect



O.S.A.(CAD) No.97 of 2023 & etc. batch

of excluding the jurisdiction of the Indian courts. Restricting the jurisdiction of the Indian courts, in its entirety, would be against the principles laid down under Section 28 of the ICA, 1872, *inter alia*, the same is unenforceable.

12.1. This takes us to the next issue, the jurisdiction of the civil court, being expressly and/or impliedly barred under the provisions of the Act of 2002 and the PSS Act, 2007 respectively.

12.2. It is a salutary rule that the civil court has the jurisdiction, unless it is expressly or impliedly barred by any law. The general rule is that the civil courts have jurisdiction to try the suits of civil nature, unless the jurisdiction of the civil court is expressly or by implication barred. The Constitution Bench of the Apex Court, in the case of *Dhulabhai etc. vs. State of Madhya Pradesh and Anr.*⁵¹, has laid down the following seven principles to determine whether the jurisdiction of the civil court would be barred to try and entertain a suit of civil nature:

⁵¹ 1968 SCC Online SC 40



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O.S.A.(CAD) No.97 of 2023 & etc. batch

(1) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals



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O.S.A.(CAD) No.97 of 2023 & etc. batch

so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegality collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision



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O.S.A.(CAD) No.97 of 2023 & etc. batch

of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

It is upon the touchstone of the aforesaid principles, the matter with regard to the ouster of civil court jurisdiction shall have to be examined and decided.

13. In the case of *Durga Hotel Complex (supra)*, the Apex Court observed that "*Conceptually, an Ombudsman is only a non-adversarial adjudicator of disputes. He serves as an alternative to the adversary system for resolving disputes, especially between citizens and government agencies. An adversarial adjudication necessarily stands on a higher plane than a settlement of a complaint at the instance of an Ombudsman.*" The proceedings before the Ombudsman cannot oust the jurisdiction of the civil



O.S.A.(CAD) No.97 of 2023 & etc. batch

court. As per Section 16(2)(e) of the Ombudsman Scheme, the Ombudsman may reject a complaint at any stage, if the complaint requires consideration of elaborate documentary and oral evidence.

14.1. It is an elementary rule of civil jurisprudence that a plaintiff cannot be rejected in part. For applying the principles under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 *vis-a-vis*, the bar of jurisdiction of the civil court, if a plaintiff in entirety is capable of rejection, then only the plaintiff can be rejected. If any part of the relief cannot be granted under the other Acts or law, then the plaintiff cannot be rejected in part. In view thereof, it is not necessary to refer to the case laws relied by the plaintiffs on their side.

14.2. Order VII Rule 11(d) of the Code of Civil Procedure, 1908, applies to those cases only where a suit made by the plaintiff in the plaintiff, without any doubt or dispute, shows that the suit is barred by any law in force. An application for rejection of plaintiff can be filed if the allegations made in the plaintiff considered on face value and taken to be correct in its entirety appear to be barred by



O.S.A.(CAD) No.97 of 2023 & etc. batch

any law. The power to reject a plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 ought not to be exercised except in a clear cut case. The question of rejection of plaint has to be decided on mere perusal of the plaint. The Court can only look into the plaint filed and the documents submitted by the plaintiff, but cannot look into the defendants' defence. As such, the contention of the learned Senior Counsel for the plaintiffs that the plaintiffs can amend the plaint and seek compensation in future cannot be considered at this stage at the time of deciding the application for rejection of plaint.

14.3. It is also trite that while considering the application under Order VII Rule 11 of the Code of Civil Procedure, 1908, the strength or weakness of the plaint are not to be examined. The plaint, without addition or subtraction, must show that it is barred by any law under Order VII Rule 11 of the Code of Civil Procedure, 1908.

15. As observed above, we will have to go through the



O.S.A.(CAD) No.97 of 2023 & etc. batch

averments made in the plaint to determine whether the suit of the plaintiffs would be barred by the provisions of the Act of 2002 or the PSS Act, 2007. The averments made in the plaint will have to be considered in its entirety.

16.1. We refer to the facts from C.S.(Comm.Div.)No.109 of 2023, *People Interactive (I) Pvt. Ltd. vs. Alphabet Inc. and others*. In the plaint, the plaintiff avers that at present, two mobile phone operating systems exist, namely, "Android (owned and operated by Google)" and "iOS (owned and operated by Apple Inc.)". As on 2022, the percentage of mobile phones running on the Android Operating System in India is 96% (approx). The plaintiffs' customers make payment for both subscription services as well as in-App purchases, through Debit Cards/Credit Cards/Net-Banking/UPI/UPI QR Code and a very nominal and a mutually agreed fee is paid to the System Providers/Payment Processors offering the above payment methods.

16.2. The defendants are the Google group. The mobile



O.S.A.(CAD) No.97 of 2023 & etc. batch

phones running on Android Operating system would have "Google Play Services" for its operations and will, by extension, have "Google Play Store" pre-installed. The Google Play Store is an unavoidable and indispensable trading partner for an App Developer, particularly in India.

16.3. The plaintiff, in paragraph 22 of the plaint, contends that any App Developer in India, who wishes to be enlisted in the Google Play Store, is required to accept all non-negotiable terms and conditions set out in the digital version of Developer Distribution Agreement (DDA) of the third defendant therein, which is filled with one-sided and arbitrary clauses. In case of refusal on the part of an App Developer to accept the aforesaid DDA, the App of the said App Developer shall not be enlisted in Google Play Store.

16.4. In paragraph 24 of the plaint, the plaintiff refers to the order passed by the Competition Commission of India dated 25.10.2022 against defendants 1, 2, 6 and 7, while making extensive references to defendants 3 and 5. It has quoted the order



O.S.A.(CAD) No.97 of 2023 & etc. batch

passed by the Competition Commission of India.
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16.5. In paragraph 25 of the plaint, the plaintiff avers that instead of choosing to comply with the directions of the Competition Commission of India, in its true letter and spirit, the defendants have found an innovative way of circumventing and side-stepping the said order by permitting the App Developers in India to use Alternate Billing System/User Choice Billing alongside and in addition to the GPBS. Under the guise of giving Alternate Billing System/User Choice Billing to the App Developers, the defendants still mandate the integration of GPBS by the App Developers in their respective applications.

16.6. In paragraph 28, the plaintiff contends that the defendants have still not made it clear whether the refusal to integrate GPBS, in addition to Alternate Billing System, would entail removal/de-listing of its Apps from Google Play Store.

16.7. In paragraph 29, the plaintiff avers that despite the



O.S.A.(CAD) No.97 of 2023 & etc. batch

challenge by some or all of the defendants herein to the order of the Competition Commission of India before the National Company Law Appellate Tribunal (NCLAT), New Delhi, the plaintiff understands that barring directions relating to penalty and certain other compliances, a substantial part of the directions issued by the Competition Commission of India remains operational. Reliance is placed on the interim order passed by the NCLAT in the said paragraph.

16.8. In paragraph 30 of the plaint, the plaintiff contends about the defendants violating the provisions and clauses of the PSS Act, 2007 and the Rules and Regulations framed thereunder. The plaintiff has detailed about the breaches and violation under the PSS Act, 2007 *vis-a-vis* the GPBS in the plaint. The plaintiff avers violation of Section 10-A of the PSS Act, 2007. The defendants had never clarified that it shall not charge commission for payment processing through GPBS from App Developers for the electronic modes on payment, such as Debit Card powered by RuPay, Unified Payment Interface and Unified Payment Interface Quick Response



Code. On the contrary, the defendants have been maintaining that it would charge a blanket 15% or 30%, as the case may be, for all payment transactions through GPBS or 11% or 26% through UCB, giving a complete go-by to the legal provisions. It further avers that the defendants, being Payment Aggregators/Payment System under the PSS Act, 2007, are statutorily restrained from imposing any charges to the person making payment through the above exempted modes of payments, either directly or indirectly.

16.9. The plaintiff further avers about the violation of Clause 8 (Settlement and Escrow Account Management) of the RBI Guidelines, which states that "8.4.1. *Wherein PA is responsible for delivery of goods/services the payment to the merchant shall not be later than on Ts+1 basis; 8.4.2. Where merchant is responsible for delivery, the payment to the merchant shall not be later than on Td+1 basis; 8.4.3. Where the agreement with the merchant provides for keeping the amount by the PA till expiry of refund period, the payment to the merchant shall be not later than on Tr+1 basis.*" While the said timelines are applied to a transaction, on the



O.S.A.(CAD) No.97 of 2023 & etc. batch

contrary, Clause 12 of the above Service Seller Agreement contemplates that, *"if the seller's service account is linked to any Google Marketplace pursuant to this Section 12, or if the Seller uses the Service to process Google Payments for digital goods, GPC or GPC's affiliates acting on its behalf will use commercially reasonable efforts to electronically transfer funds for payment transactions submitted for capture by seller within a calendar month to seller's settlement account before close of business on the 15th day of the following calendar month."*

16.10. In paragraph 48 of the plaint, the plaintiffs avers that the Competition Commission of India, in paragraph 290 of the order dated 25.10.2022, observed that the defendants failed to observe strict timeline when it comes to making payment to App Developers, wherein, the payments are released after a gap of 15 to 46 days from the day of the transaction. Despite such stern observations and directions, the defendants herein continue to retain Clauses in its Service-Seller Agreement, which permit it to retain the funds of the plaintiff between 15 to 45 days, whereas it has to release within



O.S.A.(CAD) No.97 of 2023 & etc. batch

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16.11. The breaches of the PSS Act, 2007 are also alleged *vis-a-vis* UCB. The defendants intend to restrict the number/list of payment processors/aggregators that the plaintiff should use in its applications.

16.12. The plaintiff further alleges that the defendants are causing damage to the operation of the Payment Systems, which is being protected and regulated by the PSS Act, 2007. In paragraph 60 of the plaint, the plaintiff avers that on account of RBI's inaction to issue appropriate directions to prevent such abuse by the defendants, the plaintiff requests this Court to pass appropriate orders under Sections 17 and 18 of the PSS Act, 2007.

16.13. It also avers that the order of the Competition Commission of India, to the following effect, is also being given a go-by by the defendants with impunity:

"Google shall allow, and not restrict app developers



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O.S.A.(CAD) No.97 of 2023 & etc. batch

from using any third-party billing/payment processing services, either for in-app purchases or for purchasing apps. Google shall not discriminate or otherwise take any adverse measures against such apps using third party billing/payment processing services, in any manner.”

16.14. In paragraph 64, the plaintiff avers that the policies, terms and conditions shall be declared illegal and restrain the defendants from taking any illegal or unlawful action that would affect the continuity of the plaintiff's Apps in Google Play Store, for the plaintiff's refusal to subscribe to the aforementioned arbitrary policies.

16.15. In paragraph 65, the plaintiff avers that the arbitrary and lop-sided clauses and conditions, which directly violate the PSS Act, 2007 and the RBI Guidelines/Regulations are allowed to be implemented, which would cause severe financial loss and indescribable hardship to the plaintiff. The Reserve Bank of India, being the Regulator under the PSS Act, 2007, ought to have taken



O.S.A.(CAD) No.97 of 2023 & etc. batch

suo motu cognizance of the conduct of the defendants and taken immediate steps to restrain the defendants from implementing the above arbitrary policies and also to issue appropriate directions/guidelines to the Payment System, System Participants, Payment Aggregators and to the System Provider. The RBI did not come forward to initiate any action in this regard.

16.16. In paragraph 66, the plaintiff alleges the dominance of the Google Play Store and exercise of undue influence by the defendants on the plaintiff to get unfair advantage, amounting to unconscionability.

16.17. In paragraph 71 of the plaint, the plaintiff refers to the gaining unfair advantage by using dominant position, as such, violating the provisions of the ICA, 1972. In the same paragraph, it refers to the order dated 25.10.2022 of the Competition Commission of India coming down heavily on such abusive and dominant practices adopted by the defendants. The plaintiff further avers that the order of the Competition Commission of India may be treated as



O.S.A.(CAD) No.97 of 2023 & etc. batch

part and parcel of the plaint, with a leave to the plaintiff to make extensive reference to all the relevant portions of the said order. It further goes on to aver in paragraph 73 that the defendants continue to adopt "take it or leave it" approach, despite the warnings issued by the Competition Commission of India.

16.18. It is on the basis of the aforesaid facts, the plaintiff has filed the plaint, seeking relief to declare the Google Payments Terms of Service Seller posted on 02.06.2022, Payment Policies, Policies relating to Service Fees, Terms and Conditions, posted by the defendants' on its Websites/Portals/Webpages on various dates, all relating to the implementation of the Google Play Billing System and User Choice Billing/Alternative Billing System *vis-a-vis* the mobile applications owned and operated by the plaintiff in Google Play Store in India as illegal and unenforceable. A further declaration is sought to declare that any charges levied by the defendants under the Google Play Billing System and/or Alternate Billing System/User Choice Billing System as illegal, void and unenforceable *vis-a-vis* the mobile applications owned and operated by the plaintiff in Google



O.S.A.(CAD) No.97 of 2023 & etc. batch

Play Store. The plaintiff further sought declaration that the definition of "Authorized Provider" and Clause 15.3 of the Developer Distribution Agreement (effective as of 03.10.2022) as unconscionable, illegal and unenforceable. The plaintiff also sought a consequential relief of injunction.

17.1. Reading the plaint as it is, there is no manner of doubt that the plaintiffs have relied upon the order passed by the Competition Commission of India. The order of the Competition Commission of India, relied by the plaintiffs, is in matters filed by Alliance of Digital India Foundation, Match Group, inc. and XYZ (confidential) in Case No.07 of 2020.

17.2. The conclusion drawn by the Competition Commission of India is as under:

"392.1. making access to the Play Store, for app developers, dependent on mandatory usage of GPBS for paid apps and in-app purchases constitutes an imposition of unfair condition on app developers. Thus, Google is found to be in violation



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O.S.A.(CAD) No.97 of 2023 & etc. batch

of the provisions of Section 4(2) (a)(1) of the Act.

392.2. Google is found to be following discriminatory practices by not using GPBS for its own applications i.e., YouTube. This also amount to imposition of discriminatory conditions as well as pricing as YouTube is not paying the service fee as being imposed on other apps covered in the GPBS requirements. Thus, Google is found to be in violation of Section 4(2)(a)(i) and 4(2)(a) (ii) of the Act.

392.3. mandatory imposition of GPBS disturbs innovation incentives and the ability of both the payment processors as well as app developers to undertake technical development and innovate and thus, tantamount to limiting technical development in the market for in-app payment processing services. Thus, Google is found to be in violation of the provisions of Section 4(2)(b)(ii) of the Act.

392.4. mandatory imposition of GPBS by Google, also results in denial of market access for payment aggregators as well as app developers, in violation of the provisions of Section 4(2)(c) of the Act.

392.5. practices followed by Google results in leveraging its dominance in market for licensable mobile OS and app stores for Android OS, to protect



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O.S.A.(CAD) No.97 of 2023 & etc. batch

its position in the downstream markets, in violation of the provisions of Section 4(2)(e) of the Act.

392.6. different methodologies used by Google to integrate its own UPI app vis-à-vis other rival UPI apps with the Play Store results in violation of Sections 4(2) (a)(ii), 4(2)(c) and 4(2)(e) of the Act.”

17.3. The order passed by the Competition Commission of India is as under:

"393. In view of the foregoing analysis, the Commission delineates the following relevant market(s) in the present matter:

a. Market for licensable OS for smart mobile devices in India

b. Market for app stores for Android smart mobile OS in India

c. Market for apps facilitating payment through UPT in India

394. The Commission holds Google to be dominant in the first two relevant markets i.e., market for licensable OS for smart mobile devices in India and market for app store for Android smart mobile OS in India. Further, Google is also found to have abused its dominant position in contravention



of the provisions of Section 4(2)(a)(i), Section 4(2)(a)(ii), Section 4(2)(b)(i), Section 4(2)(c) and Section 4(2)(e) of the Act, as already discussed in the earlier part of this order.

Remedies

395. Accordingly, in terms of the provisions of Section 27 of the Act, the Commission hereby directs Google to cease and desist from indulging in anti-competitive practices that have been found to be in contravention of the provisions of Section 4 of the Act, as detailed in this order. Some of the measures, in this regard, are indicated below:

395.1. Google shall allow, and not restrict app developers from using any third-party billing/payment processing services, either for in-app purchases or for purchasing apps. Google shall also not discriminate or otherwise take any adverse measures against such apps using third party billing/payment processing services, in any manner.

395.2. Google shall not impose any Anti-steering Provisions on app developers and shall not restrict them from communicating with their users to promote their apps and offerings, in any manner.

395.3. Google shall not restrict end



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O.S.A.(CAD) No.97 of 2023 & etc. batch

users, in any manner, to access and use within apps, the features and services offered by app developers.

395.4. Google shall set out a clear and transparent policy on data that is collected on its platform, use of such data by the platform and also the potential and actual sharing of such data with app developers or other entities, including related entities.

395.5. The competitively relevant transaction/consumer data of apps generated and acquired through GPBS, shall not be leveraged by Google to further its competitive advantage. Google shall also provide access to the app developer of the data that has been generated through the concerned app, subject to adequate safeguards, as highlighted in this order.

395.6. Google shall not impose any condition (including price related condition) on app developers, which is unfair, unreasonable, discriminatory or disproportionate to the services provided to the app developers.

395.7. Google shall ensure complete transparency in communicating to app developers, services provided, and



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O.S.A.(CAD) No.97 of 2023 & etc. batch

corresponding fee charged. Google shall also publish in an unambiguous manner the payment policy and criteria for applicability of the fee(s).

395.8. Google shall not discriminate against other apps facilitating payment through UPI in India vis-à-vis its own UPI app, in any manner.

396. The anti-competitive clauses of different policies of Google, as identified in this order, shall not be enforced by Google, with immediate effect.

397. Google, however, is allowed three months from the date of receipt of this order to implement necessary changes in its practices and/or modify the applicable agreements/ policies and to submit a compliance report to the Commission in this regard."

17.4. The Competition Commission of India also imposed a penalty of Rs.936.44 Crores upon Google.

18. It would now appear that, the further policy dated 02.06.2022 is being assailed. In the matter before the Competition Commission of India, the Competition Commission of India considered



O.S.A.(CAD) No.97 of 2023 & etc. batch

that many Payment Aggregators in India charged fee within the range of 0% to 3% and Google charged excessive service fee from 15% to 30%. The Competition Commission of India has also passed an order against Google not to discriminate against other Apps, facilitating payment through UPI in India *vis-a-vis* its own UPI App, in any manner. It further prohibited Google from enforcing the anti-competitive Clauses of different policies of Google, as identified in the order.

19.1. We will have to navigate through the provisions of the Act of 2002 and the PSS Act, 2007 to arrive at a conclusion of ouster of civil courts jurisdiction or otherwise.

19.2 Section 61 of the Act of 2002 bars the jurisdiction of the civil court in respect of matters of which cognizance can be taken by the Competition Commission of India. Section 62 of the Act of 2002 provides that the provision under the Act of 2002 shall be in addition to and not in derogation of other Acts. For ready reference, the said provisions read thus:



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O.S.A.(CAD) No.97 of 2023 & etc. batch

"61. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the [Commission or the Appellate Tribunal] is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

62. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

20. Let us examine the nature of the matters, which can be dealt with by the Competition Commission of India and whether the case put forth by the plaintiffs would be within the realm of the powers conferred on the Competition Commission of India.

21.1. The Act of 2002 details the duties of the Commission. It shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade



O.S.A.(CAD) No.97 of 2023 & etc. batch

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carried on by other participants in the markets in India.

21.2. Section 4 of the Act of 2002 prohibits an enterprise or group from abusing its dominant position. There shall be an abuse of dominant position if the enterprise or group directly or indirectly imposes unfair or discriminatory (i) condition in purchase or sale of goods or services; or (ii) price in purchase or sale (including predatory price) of goods or service. Under Section 19 of the Act of 2002, the Commission may inquire into any alleged contravention of the provisions contained in Sub-Section (1) of Section 3 or Sub-Section (1) of Section 4, either on its own motion or on receipt of any information.

21.3. Section 21-A of the Act of 2002 provides that where in the course of a proceeding before the Commission an issue is raised by any party that any decision, which the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of the Act of 2002 whose implementation is entrusted to a Statutory Authority, then the Commission may make



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a reference in respect of such issue to the Statutory Authority. On receipt of a reference under Sub-Section (1), the Statutory Authority shall give its opinion within sixty days of receipt of such reference to the Commission, which shall consider the opinion of the Statutory Authority and thereafter give its findings, recordings, reasons therefor on the issues referred in the said opinion.

21.4. Section 26 of the Act of 2002 provides a detailed procedure for inquiry under Section 19 of the said Act. Where after inquiry the Commission finds that any agreement referred to in Section 3 or action of an enterprise in a dominant position is in contravention of Section 3 or Section 4 of the Act of 2002, as the case may be, it may pass any orders enumerated in Section 27 of the Act of 2002. The same are extracted hereunder:

(a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;



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O.S.A.(CAD) No.97 of 2023 & etc. batch

(b) impose such penalty, as it may deem fit which shall be not more than ten per cent of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse;

(c) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

(d) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;

(e) omitted by Act 39 of 2007; Prior to its omission; recommend to the Central Government for the division of an enterprise enjoying dominant position;

(f) pass such other [order or issue such directions] as it may deem fit.

21.5. Under Section 33 of the Act of 2002, the Commission has powers to issue interim directions also. Section 39 of the Act of 2002 provides for execution of orders of the Commission, imposing



O.S.A.(CAD) No.97 of 2023 & etc. batch

monetary penalty. If the order of the Commission is contravened, the Commission is entitled to impose penalties under Chapter VI of the Act of 2002. Appeal is also provided against the order of the Commission.

22. The genesis of the plaintiffs' case is that the defendant Google is in a dominant position and by exercising its dominant position has imposed certain conditions, which are unconscionable and hit by Section 23 of the ICA, 1872. The relationship between the parties is not disputed. The same is an accepted position. If a party abuses its dominant position, then the Commission can take cognizance of the same as referred to in Section 4 of the Act of 2002. Under Section 27 of the Act of 2002, the Commission can direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission.

23. The Commission can also injunct a party, abusing the dominant position, to discontinue and to not re-enter such agreements and or discontinue such abusing of dominant position.



O.S.A.(CAD) No.97 of 2023 & etc. batch

The Commission also has got powers to pass such other orders or issue such directions as it may deem fit. The Commission, if it comes to the conclusion that the defendant has abused its dominant position, can pass multifarious orders and grant relief to the plaintiffs. The same would be within the ambit and jurisdiction of the Commission under the Act of 2002.

24.1. One of the arguments of the learned Senior Counsel for the plaintiffs is that if the Competition Commission of India is to be given the status of a Court, then it should have the powers of collecting evidences, summoning witnesses, inspection of documents.

24.2. Regulation 41 of the Competition Commission of India (General) Regulations, 2009, empowers the Competition Commission of India to admit evidences. So also admit on record every documents, entries in the books of accounts, information of persons, opinion of the handwriting expert and various provisions of the ICA, 1872 are also made applicable. Under Regulation 42, the supporting



O.S.A.(CAD) No.97 of 2023 & etc. batch

facts, by filing an affidavit, can also be submitted. The Competition Commission of India can also permit production of additional evidences. A detailed procedure is also prescribed. Under the Act of 2002, even provision for execution of the order is provided. The Act of 2002, as such, is a complete code in itself.

25.1. In the case of *Indian Medical Association (supra)*, the Apex Court was considering the provisions of the Consumer Protection Act, 1986. The Apex Court observed that, "*Section 3 of the Act which prescribes that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, preserves the right of the consumer to approach the civil court for necessary relief.*" In the said matter, the Apex Court was of the view that sometimes, complicated questions, requiring recording of evidence of experts, may arise in a complaint about deficiency in service based on the ground of negligence in rendering medical services by a medical practitioner and as such, in complaints involving complicated issues, requiring recording of evidence of experts, the complainant can be asked to approach the civil court for appropriate relief. In that context, the Apex Court relied upon Section



O.S.A.(CAD) No.97 of 2023 & etc. batch

3 of the Consumer Protection Act, 1986.
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25.2. In the cases of *M.Hariharasudan (supra)* and *The State of Karnataka vs. Vishwa Bharathi House Building Coop. Society and Ors. (supra)*, it has been observed that, *"By reason of the provisions of Section 3 of the Act, it is evident that remedies provided thereunder are not in derogation of those provided under other laws. The said Act supplements and not supplants the jurisdiction of the civil courts or other statutory authorities."* The Apex Court further held that *"primarily the jurisdiction of the forums/Commissions is to grant damages. In that event, a complainant feels that he will have a better and effective remedy in a civil court as he may have to seek for an order of injunction, he indisputably may file a suit in an appropriate civil court or may take recourse to some other remedies as provided for in other statutes"*.

26. Section 62 of the Act of 2002 would apply to those cases, wherein the Competition Commission of India does not have the power or authority under the Act of 2002 to pass orders. In that case,



O.S.A.(CAD) No.97 of 2023 & etc. batch

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the provisions of other statutes are not barred.

27. Section 62 of the Act of 2002 will have to be read to mean, “will not negate Section 61 of the Act of 2002, which specifically bars the jurisdiction of the civil court in matters to be dealt with by the Competition Commission of India”.

28. Sections 61 and 62 of the Act of 2002 should be read in conjunction to give a holistic meaning to the applicability of these provisions. Merely because Section 62 states that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, it cannot be interpreted to mean that any individual can institute proceedings in a commercial court alleging abuse of dominance, while completely ignoring Section 61 of the Act of 2002. The above view is fortified by a judgment of the Apex Court in the case of *Gujarat Urja Vikas Nigam Ltd. vs. Essar Power Ltd.*⁵². In the said case, the Apex Court read the provision of the Electricity Act, 2003, which is *pari materia*

⁵² (2008) 4 SCC 755



O.S.A.(CAD) No.97 of 2023 & etc. batch

to Section 62 of the Act of 2002 in conjunction with other provisions of the subject statute. The Apex Court observed that *"Section 175 of the Electricity Act, 2003 states that the provisions of the Act are in addition to and not in derogation of any other law. The inconsistency may be express or implied."* The Apex Court further held that Section 174 and Section 175 of the Electricity Act, 2003 will have to be reconciled and read harmoniously. This can be done by holding that when there is any express or implied conflict between the provisions of the Electricity Act, 2003, and any other Act, then the provisions of the Electricity Act, 2003 will prevail, but when there is no conflict, express or implied, both the Acts are to be read together.

29.1. Reliance on the judgment of the Apex Court in the case of *Competition Commission of India vs Bharati Airtel Lmt. and Ors. (supra)* may not be of much avail. The Apex Court observed that *"Section 27 empowers the CCI to pass certain kinds of orders, stipulated in the said provision, after inquiry into the agreements for abuse of dominant position and also it is within the exclusive domain of CCI to find out as to whether a particular agreement will have appreciable adverse effect on competition within the relevant market"*



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in India... Unless TRAI finds fault with the IDOs on the jurisdictional aspects, i.e., whether IDOs were under any obligation to provide POIs during test period, whether demand for POIs made by RJIL were reasonable or not, whether there was any delay/denial in provisioning of POIs etc., the matter cannot be taken further even if CCI has the jurisdiction to deal with the complaints/information filed before it.”

The Apex Court further observed that, “balance is maintained by permitting TRAI in the first instance to deal with and decide the jurisdictional aspects which can be more competently handled by it and once that exercise is done and there are findings returned by TRAI which lead to prima facie conclusion that the IDOs have indulged in anti-competitive practices, CCI can be activated to investigate the matter going by the criteria laid down in the relevant provisions of the Competition Act and take it to its logical conclusion.”

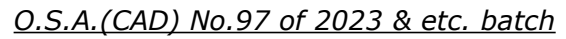
29.2. It would appear that, Section 21A of the Act of 2002 has been introduced in the Act of 2002 by way of an amendment with effect from 24.09.2007. We have referred that Section 21A of the Act of 2002 empowers the Commission to make reference to a



O.S.A.(CAD) No.97 of 2023 & etc. batch

statutory authority, where in the course of proceeding before the Commission, an issue is raised by any party that any decision which the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of the Act, whose implementation is entrusted to a statutory authority. The Commission also may *suo motu* make reference to the statutory authority. As such, Section 21A of the Act of 2002 strikes a balance, which the Apex Court observed in the case of *Competition Commission of India vs Bharati Airtel Lmt. and Ors. (supra)*.

30. The grievance raised by the plaintiffs can be dealt with by the Commission under the Act of 2002 and it is not beyond the purview of the Act of 2002. Some of the plaintiffs have approached the Competition Commission of India under the Act of 2002 and were also granted reliefs. There is no reason for not approaching the Commission once again. In fact, the plaintiffs Matrimony and People Interactive Private Limited had approached the Commission. The pleadings in the plaint also contain the averments of the order passed by the Competition Commission of India holding Google to



31. The scheme of the PSS Act, 2007 is as under:

(i) The PSS Act, 2007, identifies RBI as its own Expert Authority for overseeing the implementation and enforcing of the PSS Act, 2007. The RBI is the authority, empowered to deal with the violations of the provisions of PSS Act, 2007. The RBI is empowered to issue directions, guidelines and orders to system participants for proper compliance with or in violation of the provisions of the PSS Act, 2007. The RBI is a sectoral regulator. Sections 10, 17 and 18 of the PSS Act, 2007 empowers RBI to regulate payment system by prescribing standards, issuing guidelines, policy and directions, either generally or with respect to a particular payment system.

(ii) The intention of the Legislation in enacting the PSS Act, 2007 is to enable RBI to restrict the payment system or system participants from indulging in acts detrimental to the payment



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system or monetary policy or the credit policy. The RBI has the power to take preventive action. Under Section 24(3) of the PSS Act, 2007, the dispute between a "System Participant" and a "System Provider" shall be referred to the RBI. The decision of the RBI, under Section 24(3) of the PSS Act, 2007 has been given finality under Section 24(4) of the PSS Act, 2007. The RBI has the power, as the designated authority, to permit regulated entities to start, continue and prevent as well as terminate any rights and obligations under the PSS Act, 2007.

(iii) The scheme of the PSS Act, 2007 demonstrates that the Act provides for a complete and coherent scheme of statutory provisions for attainment of object and purpose of the Act, i.e., regulation of the payment systems. The provisions of the PSS Act, 2007, as such, would, by necessary implication, bar the jurisdiction of the civil court. As has been rightly observed by the learned Single Judge, the RBI is an expert and a regulator. It is appropriate that the expert regulator decides the issue between the parties in case of violation of the provisions of the PSS Act, 2007.



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32. The amended Section 21-A of the Act of 2002 provides that *“Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of this Act whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority”*. As such, before the Competition Commission of India, if an issue would arise of a party contravening the provisions of the other Acts, whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority. This is with the view to avoid conflicting decisions.

33. Reading the plaint in its entirety, it would be clear that the reliefs claimed are not beyond the realm of the authorities constituted under the Act of 2002 and the PSS Act, 2007.

34.1. In the case of *Raja Ram Bhargava (supra)*, the Apex Court



O.S.A.(CAD) No.97 of 2023 & etc. batch

observed that, *"Wherever a right, not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil court's jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil court's jurisdiction, then both the common law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inheritance."*

34.2. The plaintiffs' case is that the period provided in the agreement for payment beyond 15 to 45 days is not in conformity with the provisions of the PSS Act, 2007, which mandates T+1 basis. The plaintiffs allege violation of the PSS Act, 2007. According to the plaintiffs, the right created to them, of payment to be made by T+1 basis, is pursuant to the PSS Act, 2007, and in view of that, the agreement is erroneous. The right and obligation that the plaintiffs



O.S.A.(CAD) No.97 of 2023 & etc. batch

seek to agitate is pursuant to the PSS Act, 2007. In view of that, the judgment in the cases of *Raja Ram Bhargava (supra)* would not be of any help to the plaintiffs.

35. It would appear that the dispute between the plaintiffs and the defendants is not alien before the Competition Commission of India. The parties have approached the Competition Commission of India on the similar premise of Google exercising its dominant position, the payment/billing terms are unconscionable and against the statute. Similar averments are in the plaint also. The plaintiffs aver about the violation of the PSS Act, 2007 and further aver about the inaction of the RBI to invoke the provisions of the PSS Act, 2007. The plaintiffs certainly can approach the RBI. The grievance of the plaintiffs of Google violating the PSS Act, 2007 can be redressed by expert regulator, viz., RBI, pursuant to the power and jurisdiction bestowed under the PSS Act, 2007.

36. Considering the nature of the reliefs claimed and the earlier order of the CCI, it is appropriate that the dispute between



O.S.A.(CAD) No.97 of 2023 & etc. batch

the parties is dealt by the authorities constituted under the special statute as discussed supra, more particularly when they had already approached the said authority.

37. It would also appear that the plaintiff People Interactive Pvt. Ltd. filed a complaint before the Competition Commission of India on 18.10.2022, i.e., after the new policy was announced on 2.6.2022, seeking interim injunction to maintain *status quo* and not to collect or impose commission/services on in-app purchases of digital goods (including through UCB) and for IAP and paid app downloads, which are processed through alternative payment solutions. The plaintiff People Interactive Pvt. Ltd. has challenged the definition of “authorized provider” under the DDA in an opinion filed under Section 91 of the Act of 2002, alleging abuse of dominant position.

38. There is one more reason to conclude that the civil court may not exercise the jurisdiction in the present case, as the conditions, clauses and the payment/billing system between the parties are already tested before the Competition Commission of



O.S.A.(CAD) No.97 of 2023 & etc. batch

India and the Competition Commission of India has passed an exhaustive order. The parties are bound by the said order. In view of that, if certain further terms are executed, the same ought to be tested by the Competition Commission of India and not by the other fora.

In the result, we do not find any error committed by the learned Single Judge in rejecting the plaint under Order VII Rule 11(d) of the Civil Procedure Code, 1908. The appeals as well as the cross objections stand dismissed. However, there shall be no order as to costs. Consequently, C.M.P.Nos.18312, 18317, 18305, 18308, 18310, 18316, 18320, 18324, 18327, 18323, 18326, 18329, 18615, 18647, 18793, 18794, 18796, 18798, 18801, 18804, 18805, 18809, 18811, 18810, 18814, 18816, 18819, 18812, 18813, 18820, 18821, 18823, 18824, 18818, 18822, 18825, 18826 and 18827 of 2023 are closed.

(S.V.G., CJ.)

(P.D.A., J.)

19.01.2024

At this stage, learned advocates for the appellants seek extension of the interim order.



O.S.A.(CAD) No.97 of 2023 & etc. batch

WEB COPY 2. Learned advocates for the respondents oppose the said request.

3. As it is submitted that the interim order is in operation, to enable the appellants to exhaust the remedy of appeal, the interim relief passed earlier shall continue for a period of three weeks. Needless to state that upon lapse of three weeks, the said protection shall come to an end.

(S.V.G., CJ.)

(P.D.A., J.)

19.01.2024

Index : Yes/No
Neutral Citation : Yes/No
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O.S.A.(CAD) No.97 of 2023 & etc. batch

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESSAVALU,J.

(drm)

O.S.A.(CAD) No.97 of 2023 & etc. batch

19.01.2024