IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6291 OF 2024

Padmavati Enterprises
Through it's Proprietor
Mukesh S/o Balasaheb Kalange
Age :- 37 years, Occ : Business,
R/o Fulsaundar Chowk, Maliwada,
Vishal Ganpati Road, Ahmednagar.
..PETITIONER

VERSUS

1. The Manager,
New India Assurance Company Ltd.,
Head Office at New India Assurance Building,
87, M.G. Road, Fort, Mumbai - 400 001

2. The Regional Manager,
New India Assurance Company Ltd.,
Regional Office, Sharda Centre, 11/1,
Erandavana, Karve Road, Pune - 411 004.

3. The Senior Divisional Manager,
New India Assurance Company Ltd.,
Divisional Office (151800) Abbott Building,
Second Floor, New Ashoka Hotel,
King Road, Ahmednagar - 414 001

4. The Manager,
The United India Insurance Company Ltd.,
Kisan Kranti Building, Station Road,
Market Yard, Ahmednagar 414 001.

..RESPONDENTS

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Mrs. Rashmi S. Kulkarni h/f Mr. S.M. Mule, Advocate for petitioner.
Mr.M.R. Deshmukh, Advocate for respondent nos.1 to 3
Mr. S.R. Bagal, Advocate for respondent no.4.

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CORAM : ROHIT W. JOSHI, J.
RESERVED ON : 5th AUGUST, 2025
PRONOUNCED ON: 18th AUGUST, 2025

JUDGMENT :

The present petition is filed against order dated 14.01.2020 passed by the learned Maharashtra State Consumer Dispute Redressal Commission, Mumbai (hereinafter referred to as “the State Commission”) in Consumer Complaint No.49/2019, thereby dismissing the Complaint at the stage of hearing before admission as also order dated 06.03.2023 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as “the National Commission”), dismissing First Appeal No.301/2020 assailing the said order dated 14.01.2020.

2. The petitioner is the original complainant in Complaint filed before the State Commission. The case of the petitioner is that he was running a business of sale and service of mobile hand sets and associated accessories under the name and style as "Padmavati Enterprises" as a sole proprietor for earning his livelihood. He claimed that he had obtained insurance cover for his shop from respondent no.1 for a period from 27.10.2017 to 26.10.2018. It is the case of the petitioner

that on 26.05.2018, at around 1.00 a.m., there was theft in the shop in which entire stock in the shop was stolen. According to the petitioner, the entire stock in the shop was worth Rs.39,17,535/-. The petitioner claims that respondent no.1 – insurance company was liable to make good the said loss, however, respondent no.1 had settled the claim for Rs.12,53,675/-. Dissatisfied with the amount of claim paid by the respondent – insurance company, the aforesaid Consumer Complaint was filed by the petitioner.

3. In Nutshell, the case set up in the complaint is that on 26.05.2018, there was theft in the shop of the petitioner, regarding which F.I.R. was lodged with the concerned Police Station on 26.05.2018 and as per the prescribed procedure Surveyor of the respondent – insurance company was also appraised about the theft. The petitioner has stated that he had submitted stock report on 26.05.2018, in which the value of balance stock was mentioned as Rs.7,17,544/-. The petitioner stated that the claim was submitted as per advise and direction of Surveyor. Perusal of the pleadings will further demonstrate that according to the petitioner, the Surveyor had collected stock details and a loss

report from him after the theft. Perusal of the pleadings further demonstrate that the Surveyor had informed the petitioner that his claim could be considered only upto Rs.10,58,757/-, which was subsequently revised at Rs.14,49,734/-. The petitioner states that due to the financial distress, he has shown his willingness to accept an amount of Rs.14,49,734/- vide application dated 30.03.2019. The petitioner then states that the Surveyor had initially prepared the report as fire survey report, however, thereafter the Surveyor on his own account stated that out of the total stock of Rs.39,17,535/-, balance stock in the shop was worth Rs.22,61,643/- and the loss was accordingly assessed at Rs.16,55,892/-. The petitioner has stated that he had obtained loan for running his business and the lender bank had also obtained insurance for the shop from another insurance company about which the petitioner was not aware and on the ground that the petitioner had also obtained insurance from another company, the respondent – insurance company paid a sum of Rs.12,53,675/-, being 75% of the total amount of loss assessed. The petitioner has stated in the complaint that the Surveyor obtained his signature on request application dated 30.03.2019, pursuant to which the insurance company had closed the claim of the petitioner on 14.05.2019. The petitioner has also alleged that respondent nos.1 to 3 had taken his signature on bank receipt without mentioning the amount in which subsequently amount of Rs.12,53,675/- was mentioned.

4. It will be pertinent to mention that in the F.I.R. lodged by the petitioner, reference to which is made in the complaint itself it is stated that around 20 mobile hand sets worth Rs.3,00,000/- and cash amount of Rs.40,000/- (approximately) were stolen.

5. As stated above, the learned State Commission has dismissed the Complaint at the stage of hearing before admission on 14.01.2020. The learned State Commission has taken note of the fact that in the F.I.R. lodged on the date of incident, the petitioner had claimed that mobile hand sets worth Rs.3,00,000/- and cash amount of Rs.40,000/- approximately was stolen. The learned State Commission has taken note that it was not even the case of the petitioner that during the investigation he had provided proper details to the

Investigation Agency giving accurate figures of the alleged loss. The learned State Commission has also observed that the allegations in the Complaint were against the Surveyor. It is observed that except for bare statement, the petitioner did not adduce any evidence to counter the report. In view of such reasons, the learned State Commission expressed that the petitioner had prima facie failed to make out a case of deficiencies in service or unfair trade practice and that grievance of the petitioner was required to be decided by Civil Court.

6. It appears that there is an inadvertent error in stating that the petitioner did not adduce evidence to counter the report. The Commission probably intended to state that the petitioner did not produce any documents to counter the report. Since the complaint is rejected at the stage of admission itself question of adducing evidence did not arise.

7. Aggrieved by the aforesaid order, the petitioner filed Appeal before the National Commission, which came to be dismissed vide order dated 06.03.2023. The National

Commission has broadly concurred with the reasons recorded by the learned State Commission. It is observed that the petitioner had himself come up with the case that the stock of Rs.7,17,544/- was the available stock as communicated by him to the Surveyor. It is observed that the Surveyor had given his report based on information provided by the petitioner. The National Commission has observed that the Surveyor had made assessment of loss ignoring the statement of the petitioner in the F.I.R. that total value of hand sets stolen was only Rs.3,00,000/-. It is observed that the payment made by the respondent - insurance company was also accepted by the petitioner. In view of the aforesaid, the learned National Commission concurred with the learned State Commission and dismissed the Appeal.

8. It will be however pertinent to mention that the respondent - insurance company had paid only 75% of the amount assessed loss towards compensation on the ground that the petitioner had availed insurance from another insurance company. The National Commission has directed the respondent - insurance company to pay the entire amount of loss assessed on the ground that no clause in the policy could

be pointed out for deduction of 25% amount on the ground that the insured had also taken another policy.

9. Heard Mrs. Rashmi S. Kulkarni, the learned Advocate for the petitioner. The learned Advocate contends that both the authorities have erred in holding that the dispute could not be raised under the provisions of the Consumer Protection Act and that the appropriate remedy for the petitioner was to file a Civil Suit. She has placed reliance on the judgment of the Hon'ble Apex Court in the matter of ***Dr. J.J. Merchant and others Vs. Shrinath Chaturvedi, (2002) 6 SCC 635*** to contend that merely because the disputed and complicated questions of facts arise for adjudication in the Consumer Complaint, the Consumer Complaint should not be dismissed by relegating the consumer to Civil Court. The relevant portion of the judgment is extracted hereinbelow :-

> *"12. It was next contended that such complicated questions of facts cannot be decided in summary proceedings. In our view, this submission also requires to be rejected because under the Act, for summary or speedy trial, exhaustive procedure in conformity with the principles of natural justice is provided. Therefore, merely because it is*

mentioned that Commission or Forum is required to have summary trial would hardly be a ground for directing the consumer to approach the Civil Court. For trial to be just and reasonable long drawn delayed procedure, giving ample opportunity to the litigant to harass the aggrieved other side is not necessary. It should be kept in mind that legislature has provided alternative efficacious, simple. Inexpensive and speedy remedy to the consumers and that should not be curtailed on such ground. It would also be totally wrong assumption that because summary trial is provided, justice cannot be done when some questions of facts are required to be dealt with or decided. The Act providers sufficient safeguards."

10. The learned Advocate for the petitioner then places reliance on the judgment in the matter of ***CCI Chambers Coop. Hsg. Society Ltd., Vs. Development Credit Bank Ltd., (2003) 7 SCC 233.*** The Hon'ble Supreme Court has observed in the said judgment as under :-

"6. ..... Merely because recording of evidence is required, or some questions of fact and law arise which would need to be investigated and determined, cannot be a ground for shutting the doors of any forum under the Act to the person aggrieved.

> *7. .... The decisive test is not the complicated nature of the questions of fact and law arising for decision. The anvil on which entertainability of a complaint by a forum under the Act is to be determined is whether the questions, though complicated they may be, are capable of being determined by summary enquiry i.e. by doing away with the need of a detailed and complicated method of recording evidence."*

11. Reliance is also placed on judgment in the matter of ***Punj Lloyd Limited Vs. Corporate Risks India Pvt. Ltd., (2009)2 SCC 301***, wherein the same legal principle is reiterated and it is further held as under :-

> *"15. we are of the view that the decision arrived at by the Commission is premature. The Commission ought to have issued notice to the respondent and placed the pleadings on record. When pleadings of both the parties were made available before the Commission, only then the Commission should have formed an opinion as to the nature and scope of enquiry, i.e., whether the facts which arose for decision on the basis of the pleadings of the parties required a detailed and complicated investigation of facts which was incapable of being undertaken in a summary and speedy manner, then only the Commission should*

> *have justifiably formed an opinion on the need of relegating the complaint to a civil court."*

12. Placing reliance on the said judgments, the learned Advocate for the petitioner contends that the learned State Commission could not have dismissed the Complaint at the stage of admission. She contends that the Complaint deserves to be admitted and decided on merits. Likewise, the learned Advocate has relied on several judgments to contend that the report of Surveyor could not have been considered to be final or sacrosanct and that the learned authorities have erred in dismissing the Complaint by placing reliance on the report of the Surveyor.

13. Per contra, Mr. M.R. Deshmukh, learned Advocate for respondent nos.1 and 2 supports the orders. He contends that the respondent - insurance company has paid the amount to the petitioner as per the report submitted by the Surveyor. Referring to the provisions of the Insurance Act, 1938, he contends that the Surveyor is not an employee of the insurance company and that he is an independent person, who has made independent assessment of loss, which has

been honoured by the respondents. He contends that it cannot be said that the insurance company has committed unfair trade practice or there is any deficiency in service since the claim is paid in accordance with the amount quantified by the independent Surveyor. He has placed reliance on Section 64-UM in support of his contention.

14. Perused the orders passed by both the authorities. The learned State Commission has dealt with the pleadings in the Complaint and considered the same in the light of the documents produced on record by the petitioner. It is observed that in the initial report lodged by the petitioner with police authority, it was stated that 20 mobile hand sets were stolen. Value of the same was mentioned at Rs.3,00,000/-. The learned State Commission has taken into consideration that although, the F.I.R. was lodged on the very day on which the incident had occurred, even subsequently the petitioner did not apprise authorities about the actual loss allegedly suffered by him. The learned State Commission has also found that there was inconsistency in the pleading of the petitioner. The learned State Commission has referred to the survey report and found that Surveyor visited the shop of the petitioner and

found that mobile hand sets were stolen and other goods/accessories were found to be intact. As per the Surveyor, value of available mobile hand sets was Rs.7,17,544/-. It is observed in paragraph 9 of the judgment that the complainant has himself admitted that the stock of Rs.7,17,544/- was available as per the communication issued by him to the Surveyor. The order also records that the Surveyor accepted the value of stock available as on the date of theft as Rs.39,17,535/-. The learned State Commission has taken note of inconsistency in the value of stock stolen in the F.I.R., in the information provided by the petitioner to Surveyor and in a case set up in the complaint before the State Commission. On these grounds, it is held that the petitioner had failed to make out a prima facie case for entertaining the Complaint. The learned State Commission has however observed that the forum of Civil Court may be available to the petitioner for ventilating his grievance. As stated above, the learned National Commission has broadly concurred with the observations.

15. The findings recorded by the authorities take a note of the pleadings in the complaint. In paragraph 6 of the

complaint, the petitioner has stated that he had submitted a stock report dated 26.05.2018 in which value of remaining stock detail after the theft was mentioned as Rs.7,17,544/-. This figure of Rs.7,17,544/- tallies with the figure of value of available mobile hand sets assessed by the Surveyor. The Surveyor has held that only mobile hand sets were stolen and accessories were intact. Perusal of F.I.R. will also demonstrate that the petitioner had reported about the theft of mobile hand sets only. He did not refer to theft of any accessories. The Surveyor has also accepted the total stock value stated by the petitioner.

16. Apart from this, it must be stated that the petitioner has accepted the amount paid to him towards compensation. There are pleadings in the complaint about the issuance of receipt and also consent for accepting Rs.14,49,734/- towards settlement of the claim. The pleadings in the complaint also demonstrate that according to the petitioner, the Surveyor was constantly in touch with him and was making inquires with the petitioner regularly in order to assess the loss. Most importantly, it is also stated that the details of the claim, which was being computed were also

shared by the Surveyor. Apart from this, the petitioner has also levelled allegations against respondent nos.1 to 3 stating that they had obtained a signature on a blank receipt. Respondent Nos.1 to 3 are officials of the insurance company having their respective offices at Mumbai, Pune and Ahmednagar. Prima facie, it appears that having accepted the amount of compensation computed by the insurance company, the petitioner wants to retract and claim higher compensation. The learned Commission has, therefore, found that prima facie case of deficiency in service or unfair trade practice is not made out and the remedy of the petitioner lies in filing a Civil Suit.

17. The view taken by the learned authorities is possible view. It is taken after considering the pleadings in the complaint and other material produced by the petitioner. The view is possible view, which does not warrant interference at the hands of this Court in exercise of its jurisdiction under Article 226 and 227 of the Constitution of India.

18. As regards the judgments on which the reliance is

placed by the petitioner, it must be stated that all these judgments unanimously state that only because some complicated questions of facts arise for consideration, the adjudicatory forums under the Consumer Protection Act should not refuse to entertain the complaints by relegating the consumer to Civil Court. In the present case, the principal allegations appear to be against the Surveyor. The Surveyor is not a party to the Consumer Complaint. Likewise, the allegations are made against the officials of the insurance company regarding obtaining signatures on the blank receipts. Stand of the petitioner in the F.I.R., loss report submitted to Surveyor and pleadings in the complaint do not go hand in hand. In the considered opinion of this Court, the averment in the complaint itself discloses that mixed questions of facts arise for consideration in the Consumer Complaint, which will involve recording lengthy evidence, which will be beyond the scope of summary inquiry, which the adjudicatory forums under the Consumer Protection Act are expected to undertake. As regards the judgment in the matters of ***CCI Chambers Coop. Hsg. Society Ltd., and Himanshu Trading Co. (supra),*** which lay down that normally notice should be issued and after the pleadings of the respondents are found, the

Commission should form opinion as to nature and scope of inquiry to determine as to whether the facts of the case warrant relegating the consumer to the Civil Court or not. Whereas, the said legal principle cannot be disputed and is also binding on this Court, it needs to be stated that the Hon'ble Supreme Court has also held that when facts of case involve adjudication by recording lengthy evidence, which is beyond jurisdiction of a forum undertaking summary inquiry, consumer should be asked to work out the matter in a full dressed trial in a summary suit. It is well settled that the ratio of every judgment must be interpreted and understood in the backdrop of peculiar facts of each case. In the facts of the present case, the pleadings and material on record relied upon by the petitioner would by itself indicate that complicated questions of facts involving lengthy evidence will have to be led. There are personal allegations made against the Surveyor and officials of the insurance company. There is also contradiction in the pleadings and the documents. Likewise, the loss claimed in the complaint, report to Surveyor and F.I.R. is also not for the same amount. Having regard to the totality of the circumstances, in the considered opinion of this Court, the impugned orders do not warrant any interference and the petition is liable to be dismissed.

19. Writ Petition is, therefore, dismissed with no orders as to costs.

20. Needless to mention that since the impugned orders do not adjudicate the case on merit but only express that the appropriate remedy for the petitioner will be to file a civil suit, observations made in the said orders as also in the present judgment will not binding on the Civil Court while deciding the Civil Suit.

21. Civil Applications, if any, stand disposed of.

[ROHIT W. JOSHI, J.]

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