IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3897 OF 2025

DCB Bank Limited ...Petitioner

Versus

Ajoy Kumar Mehta and anr. ...Respondents

Mr. Ashutosh Marathe, a/w Sakshi Fale, for the Petitioner.
Mr. Faran Khan, a/w H. K. Sudhakara, i/b M/s. HKS Legal, fo the Respondents.

CORAM: N. J. JAMADAR, J.
DATED: 19th NOVEMBER, 2025

ORDER:-

1. By this petition under Article 227 of the Constitution of India the petitioner takes exception to an order dated 19th November, 2024 passed by the National Consumer Dispute Redressal Commission ("National Commission"), whereby the appeal preferred by the petitioner i.e. First Appeal No.694 of 2023 against a judgment and order 11th May, 2023 passed by the Maharashtra State Consumer Disputes Redressal Commission ("State Commission"), came to be dismissed.

2. The respondents – complainants had opened a joint account with the petitioner Bank. The respondent No.1 is a Chartered Accountant. Post retirement, the respondent No.1 had shifted to Kuwait. The respondents sons were pursuing studies abroad. Respondent No.1 had, thus, availed an Over Draft (OD) facility from the petitioner against a deposit of Rs.2 Crore, and OD facility with a limit of Rs.1,80,00,000/- was sanctioned.

3. Respondent No.1 had given a standing instruction to transfer a sum of 2,500 US$ per month to Mr. Anchit Mehta, the son of the respondents, who was then studying in USA. Blank signed RTGS instruction forms were, thus, kept in the custody of the Manager of the petitioner.

4. In the month of January, 2015, the respondents noticed two fraudulent remittances of 25,000 and 28,000 US$ from their account without their instructions. It eventually transpired that on account of the deficiency in service, the amounts were fraudulently transferred from the account of the respondents on the basis of fraudulent e-mails, which were not verified by the Manager of petitioner Bank. Though the petitioner Bank made efforts to retrieve the amount, it could not succeed as the fraudulent transferee had withdrawn the amount. Thus, the respondents lodged a complaint before the State Commission.

5. By a judgment and order dated 11th May, 2023, the State Commission allowed the complaint and directed the petitioner to pay to the respondents a sum of Rs.32,88,628/- alongwith interest at the rate of 9% p.a. from the date of the transfer of the amount till its realization. In addition, compensation of Rs.1,00,000/- and costs of Rs.50,000/- were directed to be paid.

6. Being aggrieved, the petitioner preferred First Appeal No.694/2023. The respondents had also preferred First Appeal No.835/2023, being partly aggrieved by the order passed by the State Commission.

7. By the impugned order, both appeals were dismissed by the National Commission. It was, *inter alia,* held that the principal contentions of the petitioner that the complainants were not the consumer within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986 and there was no deficiency in service on the part of the petitioner, were unsustainable.

8. Being aggrieved, the petitioner has invoked the writ jurisdiction.

9. Mr. Marathe, the learned Counsel for the petitioner, submitted that though the National Commission had framed two issues namely; whether the State Commission had the pecuniary jurisdiction to entertain and decide the complaint as OD limit was Rs.1,80,00,000/-, and whether the complainants were the consumers ?, yet, the first issue was not at all determined by the National Commission and the second one was decided in derogation of the settled legal position. Therefore, the impugned order warrants interference in exercise of writ jurisdiction.

10. On the first count, Mr. Marathe placed reliance on the Full Bench judgment of the National Commission dated 7th October, 2016 in the case of ***Ambrish Kumar Shukla and ors. vs. Ferrous Infrastructure Pvt. Ltd.*[1]*,*** wherein it was enunciated that if the aggregate value of the goods purchased or the services hired or both, by the consumer, when added to the compensation, if any, claimed in the complaint, exceeds Rs.1 Crore, it is the National Commission alone, which would have pecuniary jurisdiction to entertain the complaint.

11. In the case at hand, Mr. Marathe submitted that since OD limit was of Rs.1,80,00,000/- and the complainant had claimed compensation, the claim clearly exceeded the pecuniary limits of the jurisdiction of the State Commission and, therefore, the order passed by the State Commission was a nullity.

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1 (2017) CPJ 1 (NC).

12. On the second count, placing reliance on the decision in the case of ***Shrikant G. Mantri vs. Punjab National Bank***[2]***,*** it was submitted that, since the OD facility was utilized in connection with immovable property and to trade in shares, it cannot be said that the services were availed of by the complainant exclusively for the purpose of earning his livelihood.

13. In opposition to this, Mr. Khan, the learned Counsel for the respondents, submitted that none of the grounds merits consideration. It was urged that, by subsequent judgments, the National Commission has clarified that the complaints, which were filed prior to the decision in the case of ***Ambrish Kumar*** (supra) and decided by the concerned forums, are not governed by the decision in the case of ***Ambrish Kumar*** (supra). Attention of the Court was invited to a judgment of the National Commission dated 8th September, 2025 in ***Satbir Singh Sawhney vs. JMD Limited***[3]***.***

14. In the said case, after noting previous judgments, the National Commission observed that as on the date of the filing of the complaint in the said case, settled position was that the pecuniary jurisdiction was to be computed on the basis of the value of the claim together with the compensation sought, and

2 (2022) 5 SCC 42.

3 MANU/CF/0413/2025.

not on the total sale consideration of the goods or services. Revisiting the question of pecuniary jurisdiction after years, based solely on subsequent interpretation of law, would be contrary to the object and spirit of the Consumer Protection Act.

15. This Court finds that the National Commission has consistently taken the view that the decision in the case of ***Ambrish Kumar*** (supra) does not govern the complaints, which were filed before the said decision and entertained by the concerned forums.

16. To now entertain the objection to jurisdiction of the State Commission on the basis of the judgment in the case of ***Ambrish Kumar*** (supra) would certainly defeat the very object and purpose of the Consumer Protection Act. Thus, the first ground of challenge does not merit acceptance.

17. The second ground of the complainants not being consumers is also not worthy of countenance. Mr. Khan rightly emphasised the factual context in which the decision was rendered in the case of ***Shrikant Mantri*** (supra). The Supreme Court noted that the appellant had opened an account with the respondent Bank, took OD facility to expand his business profits and subsequently from time to time the OD facility was enhanced so as to further expand his business and increase his profits. The relations between the appellant and the respondent was purely, "business to business relationship". Thus, the transaction would squarely fall within the ambit of commercial purpose and it cannot be said that the services were availed exclusively for the purpose of earning the appellants livelihood by means of self-employment.

18. The legal position is well neigh settled. A profitable reference can be made to the decision of the Supreme Court in the case of ***Lilavati Kirtilal Mehta Medical Trust vs. Unique Shanti Developers and others[4],*** wherein the Supreme Court enunciated the propositions which bear upon the determination of the vexed question as to whether the complainant is a consumer within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986; which is essentially rooted in facts. They read as under:

> "19. To summarise from the above discussion, though a strait jacket formula cannot be adopted in every case, the following broad principles can be culled out for deter-mining whether an activity or transaction is "for a commercial purpose:
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> 19.1. The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, "commercial purpose" is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities.
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> 19.2. The purchase of the good or service should have a close and direct nexus with a profit-generating activity.

4 (2018) 14 SCC 81.

> 19.3. The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.
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> 19.4. If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of generating livelihood by means of self-employment" need not be looked into."

19. Applying the aforesaid tests to the facts of the case, it becomes abundantly clear that the OD facility was availed to meet the expenses of the complainants, especially those of the sons of the complainants, who were then pursuing education. The mere fact that, in the application form, the purpose was indicated as “business” would not be of decisive significance. The National Commission has, upon analysis of the utilization of the funds from the OD Account, recorded a justifiable finding that the transactions in the OD Account indicate utilization of the funds for personal requirement as well as for some other payments.

20. The endeavour of Mr. Marathe to bank upon few selective entries in the OD Account, especially that of transfer of the amount for Phoenix shop and credit of the amount to the accounts of the share broker, does not advance the cause of the submission on behalf of the petitioner Bank. The amounts were utilized for a host of purposes; the majority of which appeared to be personal, household and other requirements of the complainants and their family members. Utilization of the amount for a couple of transactions in securities would not justify an inference that the OD facility was availed for business purpose.

21. Lastly, Mr. Marathe made an endeavour to urge that, on merits it could not be established that, there was deficiency in service on the part of the petitioner Bank. The State commission and National Commission have recorded concurrent findings of facts that there was deficiency in service on the part of the petitioner Bank in as much as the amounts were transferred on the basis of fraudulent e-mails, despite the standing instruction to transfer an amount of 2,500 US$ only, to the account of the son of the complainant. The contemporaneous correspondence between the petitioner Bank and Standard Chartered Bank, to which the amount was transferred, also indicates that the said transactions were fraudulent. The petitioner Bank had not taken the care as was expected of it as a professional Banker, in verifying the authenticity of the e-mail and obtaining confirmation from the complainants before making such huge payment, in the face of the standing instruction of a substantially lower amount. Thus, this Court in exercise of writ jurisdiction, does not find such infirmity in the impugned order as to warrant interference.

22. The petition stands dismissed.

[N. J. JAMADAR, J.]