ECGC Limited vs. Mokul Shriram EPC JV

Whether the more onerous pre-deposit condition of 50% of the entire awarded amount under Section 67 of the Consumer Protection Act, 2019 would apply to appeals arising from complaints filed under the Consumer Protection Act, 1986, or whether the less oner

Date of Order: February 15, 2022
Case Law No: GIB-SC-2022-04
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CASE DESCRIPTION / SUMMARY

BACKGROUND

The National Consumer Disputes Redressal Commission directed the appellant to pay Rs.265.01 Crores with interest at 10% p.a. from 19.09.2016. The complainant had obtained two insurance policies from the appellant by paying a premium of Rs.10,38,03,912/-, obtained for a construction contract awarded by the Government of Basra, Iraq. When the contract was withdrawn due to internal conflict and payments were suspended, the appellant rejected the insurance claim. The complaint was filed and decided under the Consumer Protection Act, 1986. The appellant filed an appeal before the Supreme Court under Section 23 of the 1986 Act, depositing Rs.50,000/- as pre-deposit in accordance with the 1986 Act. However, the Consumer Protection Act, 2019 had come into force on 20.07.2020, and under Section 67 of the 2019 Act, the condition for filing an appeal is deposit of **50% of the entire awarded amount** — with no upper ceiling — which would mean depositing approximately Rs.132 Crores.

FACTS

The pre-deposit condition under the two Acts is starkly different. Under the 1986 Act, the condition was 50% of the awarded amount **or Rs.50,000, whichever is less**. Under the 2019 Act, it is a flat **50% of the awarded amount** with no ceiling whatsoever. The appellant filed an Interlocutory Application praying that the appeal be entertained under the conditions prescribed by the 1986 Act, i.e., the law applicable at the time the complaint was filed and proceedings were initiated. The respondent contended that the 2019 Act applies as it was in force at the time of filing of the appeal and that pre-deposit is a mere procedural requirement, hence retrospective. The Court examined a long line of Constitution Bench judgments on the doctrine of vested right of appeal and whether imposition of a more onerous pre-deposit condition amounts to curtailing a substantive right that had already accrued.

COURT OBSERVATIONS (Verbatim)

(From Hoosein Kasam Dada — approved and relied upon by the Court): "The true implication of the above observation as of the decisions in the other cases referred to above is that the pre-existing right of appeal is not destroyed by the amendment if the amendment is not made retrospective by express words or necessary intendment. The fact that the pre-existing right of appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal must also exist to support the continuation of that right. As the old law continues to exist for the purpose of supporting the pre-existing right of appeal that old law must govern the exercise and enforcement of that right of appeal and there can then be no question of the amended provision preventing the exercise of that right."

(From Garikapati Veeraya — Constitution Bench principles approved and applied): "(ii) The right of appeal is not a mere matter of procedure but is a substantive right. (iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit. (iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal. (v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

(From State of Bombay v. Supreme General Films Exchange — applied by the Court): "it has been held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment."

(Court's own final conclusion — Para 34): "In view of the binding precedents of the Constitution Bench judgments referred to above, we hold that onerous condition of payment of 50% of the amount awarded will not be applicable to the complaints filed prior

to the commencement of the 2019 Act."

FINAL VERDICT

The Interlocutory Application was **allowed**. The Supreme Court held that the more onerous pre-deposit condition of 50% of the entire awarded amount under Section 67 of the Consumer Protection Act, 2019 will **not apply** to appeals arising from complaints filed prior to the commencement of the 2019 Act. The right of appeal is a **vested substantive right** governed by the law in force at the time of initiation of the proceedings, and it cannot be curtailed by the new law unless the new law expressly or by necessary intendment says so.

IN FAVOUR OF APPELLANT

KEY CASES REFERRED AND RELIED UPON BY THE COURT

#	Case Name	Citation
1	Nogendra Nath Bose v. Mon Mohan Singha Roy & Ors.	AIR 1931 Cal. 100 (Calcutta HC — approved by SC)
2	Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh & Ors.	AIR 1953 SC 221 (Supreme Court)
3	Garikapati Veeraya v. N. Subbiah Choudhry & Ors.	AIR 1957 SC 540 (Constitution Bench)
4	State of Bombay v. M/s. Supreme General Films Exchange Ltd. & Anr.	AIR 1960 SC 980 (Three-Judge Bench)
5	Vitthalbhai Naranbhai Patel v. Commissioner of Sales Tax, M.P., Nagpur	AIR 1967 SC 344 (Constitution Bench)
6	M/s. Hardeodas Jagannath v. State of Assam & Ors.	AIR 1970 SC 724 (Supreme Court)
7	K. Raveendranathan Nair & Anr. v. Commissioner of Income Tax & Ors.	(2017) 9 SCC 355 (Supreme Court)
8	Anant Mills Co. Ltd. v. State of Gujarat & Ors.	(1975) 2 SCC 175 (Four-Judge Bench)

#	Case Name	Citation
9	Ramesh Singh & Anr. v. Cinta Devi & Ors.	(1996) 3 SCC 142 (Supreme Court)
10	M/s Gurcharan Singh Baldev Singh v. Yashwant Singh & Ors.	(1992) 1 SCC 428 (Supreme Court)
11	Thirumalai Chemicals Limited v. Union of India & Ors.	(2011) 6 SCC 739 (Supreme Court)
12	Neena Aneja & Anr. v. Jai Prakash Associates Ltd.	2021 SCC OnLine SC 225 (Supreme Court)
13	Newtech Promoters and Developers Pvt. Ltd. v. State of UP & Ors.	2021 SCC OnLine SC 1044 (Three-Judge Bench)
14	New India Assurance Co. Ltd. v. Smt. Shanti Misra	(1975) 2 SCC 840 (Supreme Court)
15	M/s. Dream Castle & Anr. v. Union of India & Ors.	W.P. No. 13431 of 2015 decided on 18.04.2016 (Madras HC, Division Bench)