

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 833 OF 2015**

(Against the Order dated 31/07/2015 in Complaint No. 13/2012 of the State Commission  
Gujarat)

1. JADAR GROUP COOP. JIN MILL LIMITED

THROUGH ITS PRESIDENT MAGANBHAI, KODARBHAI  
TATEL, AT & POST JADAR, TALUKA IDAR,  
DISTRICT-SABARKANTHA,

.....Appellant(s)

Versus

1. PRAKASHCHANDRA SUTHAR

GANGAPUR, NR. CENTREAL HOSPITAL, TAL.  
GANGAPUR,  
DISTRICT-BHILWADA,  
STATE RAJASTHAN

2. DELTED VIDE ORDER DATED 05.12.2016

.....Respondent(s)

**BEFORE:**

**HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER**

FOR THE APPELLANT : MR. RAJIV KAPUR & MS. RIYA SOOD, ADVOCATES

FOR THE RESPONDENT : MR. B.S. SHARMA, ADVOCATE FOR R-1

**Dated : 11 July 2024**

**ORDER**

1. The present First Appeal (FA) has been filed by the Appellant against Respondents as detailed above, under section 19 of Consumer Protection Act 1986, against the order dated 31.07.2015 of the State Consumer Disputes Redressal Commission, Gujarat (hereinafter referred to as the 'State Commission'), in Consumer Complaint (CC) No. 13/2012 inter alia praying for setting aside the impugned order dated 31.07.2015 passed by the State Commission.

2. The Appellant was the Complainant and the Respondents were Respondents in the said No.13/2012 before the State Commission. Notice was issued to the Respondent(s) on 04.11.2015. On the request of Petitioner, name of Respondent No. 2 was deleted from the array of parties vide order dated 05.12.2016. Parties filed their Written Arguments/Synopsis on 23.10.2023 (Petitioner) and 20.02.2024 (Respondent-1) respectively.

3. The Appeal has been filed with a delay of 45 days. IA/7383/2015 has been filed by the Appellant for condonation of delay. The delay in filing the First Appeal is condoned after considering the reasons stated in the condonation of delay application.
  
4. Brief facts of the case, as emerged from the FA, Order of the State Commission and other case records are that: -

The Appellant is a cooperative Society registered under the Gujarat Cooperative Societies Act, 1961 and is engaged in pooling cotton (i.e. collecting cotton) from its members and said cotton is processed in ginning and pressing. By process of pressing of cotton, the same is being converted into bales, and bales are being sold in the market on behalf of its members (farmer) only. After receiving sale consideration, firstly total expenditure is being deducted and the balance sale consideration is equally distributed among the members (farmers) from whom cotton was pulled. The Society is not carrying any business and is not engaged in any commercial activity, as there is no profit earned by the society. The society is a welfare organization for the members (farmers). The bye-laws of the society establish that it is a non-profit organization. The Appellant had placed an order for purchasing of the Hydraulic Automatic Revolving Double Box Press (hereinafter referred to as "said press") to Respondent-1-M/s Vishwakarma Engineering Works. Respondent submitted its quotation worth Rs.32,00,080/- to the Appellant on 14.05.2011. The Appellant confirmed the quotation as per the terms and conditions strictly mentioned in the said quotation dated 14.05.2011 and the same was intimated by the Appellant to the Respondent on 31.05.2011. After receipt of the full amount from the Appellant, the Respondent had installed the said press machine on 10.12.2011. After installation, the Appellant came to know that the said press was not as per the specifications given in the quotation by the Respondent and instead of Hydraulic Automatic Revolving Double Box Press machine, the Respondent installed a Hydraulic Manual Single Box and the capacity of the press was also not as per the specifications mentioned in the quotation. The Appellant had raised an objection of not installing the press as per the specifications and the Respondents were advised that the press installed was not acceptable by the Appellant. Despite several requests made by the Appellant, the Respondent neither replaced the press nor had rectified the defects. Hence, the Appellant filed complaint before the State Commission.

5. Vide Order dated 31.07.2015, the State Commission rejected the complaint filed by the Appellant herein, holding that Appellant cannot be covered within the definition of 'consumer' as specified in the Act.

6. Appellant has challenged the Order dated 31.07.2015 of the State Commission mainly on following grounds:-

- i. The impugned order passed by the State Commission is erroneous in law and on facts is liable to be set aside. The State Commission failed to appreciate that the Appellant society has been formed on 'no profit no loss' basis as it is only a selling agent on behalf of its members/farmers. After collection of cotton from its members, the said cotton is being processed for ginning and pressing, by virtue of which the same is converted into bales, and the bales are then being sold in the market. After receiving the sale consideration, the society recovers the expenditure incurred thereof and distributes the average price to its members/farmers, hence there is no profit earned by the Appellant society. The State Commission failed to appreciate that the term "commercial purpose" must be interpreted considering facts and circumstances of each case. In the present case, the intent of the Appellant in purchasing the machinery/press is not for profiteering and the same is for benevolent interest. The State Commission failed to appreciate that goods purchased or services hired are not intended to generate profit, hence it would not be termed as for a 'commercial purpose'. Hence, the Appellant comes within the purview of section 2(1)(d) and section 2(1)(o) of the Consumer Protection Act, 1986.
- ii. The State Commission failed to appreciate the judgment of this Commission in the case of Harsolia Motors Vs. National Insurance Co. Ltd. 1 (2005) CPJ 27 (NC) and in the case of Sarat Equipment Vs. Interuniversity Consortium- 1986-89 Consumer 4244 (NS).
- iii. The State Commission failed to appreciate that there is a distinction in the use of phraseology in exclusion clause because the legislature has provided exclusion with regard to 'availing' of the services and not for 'hiring' of the services. The meaning of the words 'avail' and 'hire' is different. The State Commission failed to appreciate that in the case of Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, III (1999) CPJ 36 (SC) (1999) SLT 395 (2000) 1 SCC 98, the court elaborately considered the provisions of the Sections 2(1)(d) and 2(1)(o) as well as earlier decision.
- iv. The State Commission failed to appreciate that the definition under Section 2(1)(m) of the Act includes "persons" which means even an artificial person like cooperative society would be included in the definition of consumer and therefore the State Commission was not justified in dismissing the complaint on the ground that the Appellant society was not a consumer under the Act.

- v. The State Commission has erred in law in coming to the conclusion that the purpose behind the trading of the cooperative society is to earn profit for the society and not to earn livelihood for the family. The State Commission erred in holding that it runs business for commercial purpose only.

7. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the FA, based on their FA/Reply, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

7. 1 In addition to the averments made under the grounds (para 6), the Appellant contended that Bye Laws of the society clearly states that the object of the Appellant society is to sell the bales, cotton seeds and oil seeds and products thereof after collecting the cotton seeds of the members at the highest possible price after packaging pakka bales of cotton seeds, cotton at the lowest possible expenditure and to distribute the average price to the members. The other object of the society is to make distribution of profit in proportion to the amount of pressing of the goods given to the society by the members and crushers, use entire portion of the profit or certain portion thereof for the works of social interest. Thus, the bye laws of the society establish that it is a non-profit organization. The Bye-laws of the society establishes that the Petitioner is non-profit organization and they work on “no profit no loss” basis. On 08.09.2017 this Commission granted liberty to the Appellant to file additional documents/evidence and the same has been filed along with a) Bye Laws of the Society, b)Income tax return and c) certificate of Chartered Accountant and are matter or record, which establishes that the appellant society is exempt for Income tax provision. The production of the said documents before this Commission proves the contention of the Appellant that the society is not carrying any business and is not engaged in any commercial activity, as there is no profit earned by the society at the end of the financial year. The society is a welfare organisation for the members (farmers). In support of its contentions, the Appellant has also relied upon the following judgments:

i. **Harsolia Motors V. National Insurance Co. Ltd.** I (2005) CPJ 27 (NC).

ii. **B. Madhuri Goud V. B. Damodar Reddy** (2012) 12 SCC 693.

iii. **Punjab Agriculture University Ludhiana V. UTI of India & Anr.** I (2012) CPJ 166 (NC).

7. 2 On the other Respondent-1 contended that in the complaint filed before the State Commission, the complainant/Appellant herein has specifically mentioned that complainant is doing the business of belting the cotton bales, purchasing and selling for the purpose of agriculture. It has been alleged that complainant has purchased the hydraulic automatic revolving double box press for the said business. It has been alleged that the said press was not as per the specification. Under these stated facts the complaint was preferred with the prayer to handover the press as per the quotation dated 14.05.2011 or to return the value of the press with another loss suffered by the complainant. The Respondent appeared before the State Commission and filed detailed reply against the complaint and denied the allegation of complaint on various legal as well as factual grounds. The State Commission dismissed the complaint and has rightly held that the complainant is not a consumer as per the provisions of Section 2(1)(d) of the Consumer Protection Act, 1986. The State Commission has also rightly held that the complainant has not made any averment in the complaint about the self-employment or purpose for the use of machine to earn livelihood. It has been specifically held that the co-operative society who is involved in the business as per its own averment complainant cannot be termed as consumer.

8. We have carefully gone through the orders of the State Commission, other relevant records, case-laws relied upon and rival contentions of the parties. The main issue for consideration in the present case whether the Appellant is a Consumer under the provisions of Consumer Protection Act. Appellant being a Co-operative Society and being registered under the Co-operative Societies Act is not in dispute. However, the respondents contended before the State Commission that Society being engaged in the business of trading of cotton bales cannot be treated as Consumer under Section 2(1)(d) of the Act because the purpose behind the trading of Society is to earn profit for the Society and not to earn livelihood, and the Society runs business for commercial purposes only. It was further contended that Society has purchased the machine for commercial purpose and not for livelihood of the family. A bare perusal of the order of State Commission shows that State Commission has not examined the contentions of the Appellant herein on merits while holding that it is not covered under the definition of consumer. No reasons have been given in support of its findings. This is evident from following extract of relevant paras of State Commission's order:-

*“15. Ld. Advocates appearing for the Respondent No.1 and 2 have stated that it is true that the Appellant is a Cooperative Society i.e. Jadar Group Coop. Jin Limited which runs for the farmers of Sabarkantha District and the said Coop. Society is engaged in the business of purchasing & trading of cotton in huge quantity in Sabarkantha District. The said coop. society is duly registered under the Coop. Societies Act. In this connection, Ld. Advocates for the Respondent No.1 and 2 have submitted that as per the contention of Appellant in his petition, the Appellant is a Coop. Society which is running for the farmers of Sabarkantha District and the said Coop. Society is engaged in the business of trading of cotton bales and the said coop. society is duly registered under the Coop. Societies Act. In these circumstances, the Coop. Society cannot be treated as the consumer as per the section 2(1)(D) of the Consumer Protection Act because the purpose behind the*

*trading of coop. society is to earn profit for the society and not to earn livelihood for the family. In these circumstances, the Appellant is coop. society and it runs business for commercial purposes only. Therefore, the complaint filed by the Appellant should be rejected. In support of their arguments, Ld. Advocate for the respondents have referred the judgment of Hon'ble National Commission which is cited in 2010 CTJ 1170 NC Bilani Sugar Mills Limited V/s. V. Keseles Engineering Works Pvt. Ltd. In that case, the complainant had purchased turbine for running his sugar mill and it was treated as purchase for commercial purpose and the transaction of the complainant was treated as commercial. In the case before us, the Complainant is a coop. society and the society has purchased the press-machine for commercial purpose and it cannot be said that the Coop. Society has purchased the machine to earn livelihood for his family. The profit earned by the Coop. Society is divided among the members of the credit society and therefore, the Coop. Society cannot be treated as the consumer as per the section 2(1)(D) of the Consumer Protection Act. Thus, this complaint cannot be entertained under Consumer Protection Act and therefore, the complaint filed by the Appellant Coop. Society is liable to be rejected.*

*16. After taking into consideration the submissions of both the parties and documentary evidences brought on record, the Appellant cannot be covered within the definition of 'Consumer' as specified in the Consumer Protection Act and therefore, the complaint filed by the Appellant cannot be entertained under Consumer Protection Act. Therefore, the present complaint is dismissed. Under the circumstances, I do not find to discuss the merits of the case on this ground. Accordingly, I pass the following final order.”*

9. Section 2(1)(d) defines ‘Consumer’ as follows:

“ “consumer” means any person who,—

*(i)buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or*

*(ii)hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services*

*are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose;”*

10. Section 2(1)(m) defines person as follows:-

*“ “person” includes,—*

*(i) a firm whether registered or not;*

*(ii) a Hindu undivided family;*

*(iii) a co-operative society;*

*(iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not;”*

A bare perusal of above shows that a Co-operative Society per se is included in the definition of person, and consequently in the definition of Consumer under the Act. Hence, it need to be seen whether in the present case the Society in question is engaged in commercial activities and/or has purchased the machine in question for commercial purpose or for the purpose of earning its livelihood by means of self-employment. The Appellant Society has contended that Bye Laws of the society clearly states that the object of the Appellant society is to sell the bales, cotton seeds and oil seeds and products thereof after collecting the cotton seeds of the members at the highest possible price after packaging pakka bales of cotton seeds, cotton at the lowest possible expenditure and to distribute the average price to the members. The other object of the society is to make distribution of profit in proportion to the amount of pressing of the goods given to the society by the members and crushers, use entire portion of the profit or certain portion thereof for the works of social interest. Thus, the bye laws of the society establish that it is a non-profit organization. The Bye-laws of the society establishes that the Petitioner is non-profit organization and they work on “no profit no loss” basis.

In pursuance to order of this Commission dated 08.09.2017, the Appellant placed additional documents/evidence in terms of (a) Bye laws of the Society (b) I.T. Return (c) Certificate of C.A. Based on these documents, the appellant Society contends that Appellant is not engaged in any commercial activity, it is a welfare organization for the members.

11. We have considered the rival contentions of the parties on the issue whether the Appellant herein is consumer under Consumer Protection Act or not in the light of various

judgments of Hon'ble Supreme Court on the subject, in particular of the following:

1. **Shriram Chits (India) Private Limited (Earlier known as Shriram Chits (K) Pvt. Ltd.) Versus Raghachand Associates SPL (Civil) No. 15290 of 2021.**
2. **Nandan Biomatrix Ltd. Vs. Ambika Devi and Ors., Civil Appeal Nos. 7353-76 of 2010, decided on March 6, 2020.**
3. **National Insurance Company Vs. Harsolia Motors & Ors. 2023 (5) Scale 793.**
4. **Canara Bank Vs. United India Insurance Co. Ltd. & Ors. (2020) 3 SCC 455.**
5. **Rohit Chaudhary and Anr. Versus Vipul Limited, (2024) 1 Supreme Court Cases 8.**
6. **Shrikant Mantri Versus Punjab National Bank, Civil Appeal No. 11397 of 2016, decided on 22.02.2022.**
7. **In Paramount Digital Colour Lab & Ors. V. Agfa India Private Limited & Ors. (2018) 14 SCC 81.**
12. **In National Insurance Company Vs. Harsolia Motors & Ors. (supra), the Hon'ble Supreme Court held as follows:**

*“31. The exposition of law on the subject was further considered by this Court in [Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers and Others](#)<sup>4</sup> in which one of us (Rastogi, J.) was a member and the question arose for consideration was whether the purchase of flats for the purpose of providing accommodation to nurses employed by the Lilavati Kirtilal Mehta Medical Trust hospital qualifies a purchase of services for commercial purpose and whether the Hospital Trust was excluded from the definition of “consumer” under Section 2(1)(d) of the Act, 1986,*



*this Court after revisiting the scheme of the Act, 1986 and taking note of the law of precedence in Laxmi Engineering Works of which a reference has been made and placing reliance on the judgment of this Court in [Paramount Digital Colour Lab and Others v. AGFA India \(P\) Limited](#) held that a person whether or not a consumer or other activities meant for commercial purpose will always depend upon the facts and circumstances of each case.*

*32. It may be a case that a person who is engaged in commercial activities has purchased goods or availed of service for his personal use or consumption or for the personal use of a beneficiary and such purchase is not linked to their ordinary profits generating activities or for creation of self-employment, such a person may still claim to be a consumer and after discussion of various illustrations summarized the discussion after taking note of the broad principles that were culled out for determination whether the activity or transaction is for a commercial purpose, held as under: (**Lilavati Kirtilal Mehra Medical Trust case**, SCC p. 277, para 19)*

*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 determining whether an activity or transaction is “for a commercial purpose”:*

*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.*

*19.2. The purchase of the good or service should have a close and direct nexus with a profit-generating activity.*

*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.*

*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.”*

13. In **Shriram Chits (India) Private Limited** (Supra) Hon’ble Supreme Court observed:

*“20. As we have shown above, the definition of consumer has three parts. The significance of deconstructing the definition into three parts was for the purpose of explaining on whom lies the onus to prove each of the different parts. There can hardly be any dispute that the onus of proving the first part i.e. that the person had bought goods/availed services for a consideration, rests on the complainant himself. The carve out clause, in the second part, is invoked by the service*

*providers to exclude the complainants from availing benefits under the Act. The onus of proving that the person falls within the carve out must necessarily rest on the service provider and not the complainant. This is in sync with the general principle embodied in Section 101 and 102 of the Evidence Act that 'one who pleads must prove'. Since it is always the service provider who pleads that the service was obtained for a commercial purpose, the onus of proving the same would have to be borne by it. Further, it cannot be forgotten that the Consumer Protection Act is a consumer-friendly and beneficial legislation intended to address grievances of consumers. Moreover, a negative burden cannot be placed on the complainant to show that the service available was not for a commercial purpose.*

*21. Having held that the onus to prove that the service was obtained for a commercial purpose is on the service provider, we may clarify the standard of proof that has to be met in order to discharge the onus. The standard of proof has to be measured against a 'preponderance of probabilities'. The test to determine whether service obtained qualified as a commercial purpose is no longer res integra in view of this Court's decision in Lilavathi v. Kirittal (supra). Para 19 sets out the principles on which it must be determined whether the onus of proving 'commercial purpose' has been properly discharged by the service provider.*

*22. If and only if, the service provider discharges its onus of showing that the service was availed, in fact for a commercial purpose, does the onus shift back to the complainant to bring its case within the third part, i.e. the Explanation (a) to Section 2(7) - to show that the service was obtained exclusively for the purpose of earning its livelihood by means of self-employment.*

*23. In this background, we must consider the plea of Sri Shailesh Madiyal that the complainant has not pleaded nor proved that the service was obtained for earning his livelihood through the means of self employment. His argument relates to the third part of the definition of consumer. The question of inquiring into the third part will only arise if the service provider succeeds in crossing the second part by discharging its onus and proving that the service obtained was for a commercial purpose. Unless the service provider discharges its onus, the onus does not shift back to the complainant to show that the service obtained was exclusively for earning its livelihood through the means of self-employment. In the facts of this case, the OP has merely pleaded in its version that the service was obtained for a commercial purpose. No evidence has been led to probabilise its case other than merely restating its claim on affidavit. It is now well too settled that a plea without proof and proof without plea is no evidence in the eyes of law.”*

14. In **Rohit Chaudhary and Anr. Vs. Vipul Ltd.** (2024) 1 SCC 8, Hon'ble Supreme Court considered at length the scope of Section 2(1) (d) of the Act in the light of earlier judgments of the Hon'ble Supreme Court on the subject. In this case, Hon'ble Supreme Court, inter alia, observed as follows:

- Persons buying goods either for resale or for use in large scale profit making activity will not be a consumer entitled to protection under the Act.

- The expression ‘Commercial purpose’ has not been defined under the Act. In the absence thereof we have to go by its ordinary meaning.....
- The explanation added by Amendment of 1993 excludes certain purposes from the purview of the expression “Commercial Purpose” ---- Explanation clarifies that even purchases in certain situations for ‘Commercial Purposes’ would not take within its sweep the purchaser out of the definition of expression ‘Consumer’ ---- if the Commercial use is by the purposes himself for the purpose of earning his livelihood by means of self-employment, such purchases or goods would continue to be a ‘Consumer’.
- A straightjacket formula cannot be adopted in every case and the broad principles which cannot be culled out for determining whether an activity or transaction is for commercial purpose would depend on facts and circumstances of each case.
- If the dominant purpose of purchasing the goods or services is for a profit motive and this fact is evident from the records, such purchases would not fall within the four corners of the definition of ‘Consumer’. On the other hand, if the answer is in the negative, namely, if such person purchases the goods or services not for any commercial purpose and for one’s own use, it cannot be gainsaid even in such circumstances the transaction would be for a commercial purpose attributing profit motive and thereby excluding such persons from the definition of ‘Consumer’.
- When there is an assertion in the complaint that such goods are purchased for earning livelihood, such complaint cannot be nipped at the bud and dismissed. Evidence tendered by parties will have to be evaluated on the basis of pleadings and thereafter conclusion arrived at.
- It is not the value of goods that matters but the purpose for which the goods bought are put to.

- The several words employed in the Explanation viz “uses by himself”, “exclusively for the purposes of earning his livelihood” and “ by means of self-employment” make the intention of the Parliament abundantly clear, that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood.
- Whether the purpose for which a person has bought goods is a “commercial purpose”: within the meaning of the definition of expression “consumer” in Section 2(1)(d) of the Act is always a question of fact to be decided in the facts and circumstances of each case.

15. In **Paramount Digital Colour Lab & Ors. V. Agfa India Private Limited & Ors.** (supra), the Hon’ble Supreme Court held that:

*“12. In this case, since the appellants have purchased the machine, Section 2(1)(d) of the Act is applicable. "Consumer" as defined under Section 2(1)(d) of the Act does not include a person who obtains goods for a "commercial purpose". The Explanation supplied to Section 2(1)(d) clarifies that "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of "self-employment". If both these provisions are read together, it leads to the conclusion that if a person purchased the goods for consideration not for any commercial purpose, but exclusively for the purposes of earning his livelihood by means of "self-employment", such purchaser will come within the definition of "consumer". If a person purchases the goods for a "commercial purpose" and not for the purposes of earning his livelihood by means of "self-employment", such purchaser will not come within the definition of "consumer". It is therefore clear, that despite "commercial activity", whether a person would fall within the definition of "consumer" or not would be a question of fact in every case. Such question of fact ought to be decided in the facts and circumstances of each case.*

*13. "Self-employment" necessarily includes earning for self. Without earning generally there cannot be "self-employment". Thus, if a person buys and uses the machine exclusively for the purposes of earning his livelihood by means of "self-employment", he definitely comes within the definition of "consumer". In the matter on hand, the quality of ultimate production by the user of the machine would depend upon the skill of the person who uses the machine. In case of exigencies, if a person trains another person to operate the machine so as to produce the final product based on skill and effort in the matter of photography and development, the same cannot take such person out of the definition of "consumer".*

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*17. ....Since there is nothing on record to show that they wanted the machine to be installed for a commercial purpose and not exclusively for the purposes of earning their livelihood by means of self-employment, the National Commission was not justified in concluding that the appellants have utilised the services of an*

*operator or a helper to run a commercial venture. One machine does not need many operators or helpers to complete the work entrusted. Since the appellants were two partners, they must have been doing the work on their own, of course, may be with the aid of a helper or an operator. The machine would not have been used in a large-scale profit-making activity but, on the contrary, the appellants purchased the machine for their own utility, personal handling and for their small venture which they had embarked upon to make a livelihood. The same is distinct from large-scale manufacturing or processing activity carried on for huge profits. There is no close nexus between the transaction of purchase of the machine and the alleged large-scale activity carried on for earning profit. Since the appellants had got no employment and they were unemployed graduates, that too without finances, it is but natural for them to raise a loan to start the business of photography on a small scale for earning their livelihood.”*

16. The Appellant herein is a Co-operative Society. A Co-operative Society is an association of persons who joins the organization willingly to protect their economic and social interest. Co-operative Societies are registered under the Co-operative Societies Act framed by respective States or Central Government. Co-operative Societies are formed with the aim of helping their members. This type of business organization is formed mainly by weaker Sections of the Society to prevent any type of exploitation from the economically stronger sections of the Society. If the Co-operative Society earns profit, it is shared among the members. There are many types of Co-operative Societies like Consumer Co-operative, Producer Co-operative, Credit Co-operative, Housing Co-operative etc. Main objective of a Co-operative Society is the common welfare of its members though self help and collective efforts and not to earn profit.

17. In view of the foregoing, and after careful consideration of all the facts and circumstances of the case, we are of the considered view that the Appellant Society is not engaged in commercial activities. The State Commission went wrong in concluding that Society is not a Consumer under the Consumer Protection act, hence the order of the State Commission cannot be sustained and the same is hereby set-aside. **The matter is remanded back to State Commission for fresh disposal of the complaint on merits, treating the Society in question as Consumer under the provisions of Consumer Protection Act.**

18. The pending IAs in the case, if any, also stand disposed off.

.....  
**DR. INDER JIT SINGH**  
**PRESIDING MEMBER**