

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 1177 OF 2014**

(Against the Order dated 29/09/2014 in Complaint No. 14/2009 of the State Commission  
Rajasthan)

1. CENTRAL ACADEMY EDUCATIONAL SOCIETY  
AJMER

THROUGH PRESIDENT SMT. SHOBHA SUMAN MISHRA,  
W/O. LATE SHRI. T.N. MISHRA(REGISTERED  
INSTITUTION)HEAD OFFICE 5/6, KESHAV MARG,  
PANCHSHEEL, MAKADWALI ROAD,  
AJMER,  
RAJASTHAN

.....Appellant(s)

Versus

1. M/S. JAIN CONSTRUCTION COMPANY  
THROUGH PARTNER AJAY KUMAR JAIN, S/O. SHRI R.K.  
JAIN, R/O. 143/10 RAJBHAWAN, CIVIL LINES,  
AJMER  
RAJASTHAN

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER**

FOR THE APPELLANT :

**Dated : 02 August 2024**

**ORDER**

For the Appellant : Mr. Avnish Dave and Mr. Aadhar  
Saha, Advocates

For the Respondent : Mr. Kushagr Goyal, Advocate

**ORDER**

**PER SUBHASH CHANDRA**

The present Appeal challenges the order dated 29.09.2014 passed by the State Consumer Disputes Redressal Commission, Bench No.1., Rajasthan, Jaipur (for short, “the State Commission”) in Complaint No.14 of 2009 filed by the Appellant. The State Commission dismissed the Complaint on the ground that the Appellant Institution works for commercial purposes and therefore, the Complainant does not come within the classification of “Consumer” under the provisions of the Consumer Protection Act, 1986 (for short, the “Act”).

2. In brief, the facts of the case are that the Appellant, who is an educational institution, filed the Complaint before the State Commission and stated that on 12.02.2004 it had entered

into a contract with the Respondent for the construction work of its school building. Appellant had paid ₹10 Lakhs to the Respondent prior to commencement of the work. It was alleged that the Respondent did not carry out the work according to the agreement on account of which the Appellant had to suffer loss of ₹28 Lakhs towards fees as it could not commence classes and the work of the building constructed by the Respondent was also of inferior quality. It was alleged that the Respondent, despite charging rates higher than the market rate, did not execute quality work which constitutes serious deficiency in service on the part of the Respondent. The Complainant claimed ₹28 Lakhs towards loss of school fees, ₹48,02,723/- towards low standard material, construction and repair and ₹10 Lakhs towards compensation for loss on account of deficiency in service of the Respondent.

3. Contesting the Complaint, the Respondent filed his reply to the Complaint stating that the Complainant Institution provides education on commercial basis. It was stated that they had carried out the work correctly as per the contract. It was contended that the Appellant Institution never made payments at the appropriate time due to which they had filed a suit for recovery against the Appellant and others in the Court of Additional District & Sessions Judge, Ajmer. It was contended that the Appellant Institution filed the Complaint before the State Commission with the intention to escape recovery of ₹22,50,560/- outstanding against it with regard to which the last bill dated 24.03.2005 was sent to it. It was contended that as per the contract executed between it and the Appellant Institution on 12.02.2004, the building was handed over to the Appellant on 23.03.2005. It was stated that the Complaint was not filed within the prescribed period of limitation of two years and therefore, the Complaint was not maintainable as the agreement was of a commercial nature, barred by limitation and the nature of the dispute being of a civil nature. It was, therefore, prayed that the Complaint be dismissed.

4. The State Commission vide its impugned order has held and ordered as under:

“It is clear from all the discussions made above that the complainant institution works for commercial objectives, therefore, the complaint of the complainant does not come within the classification of Consumer. Therefore, the complaint is hereby dismissed. Looking to the circumstances of the case the parties will bear their own costs of the complaint.”

The Appellant is before this Commission with the prayer to:

- i. To allow the appeal;
- ii. Set aside the impugned order dated 29.09.2024 passed by the Ld. State Commission, Jaipur, Rajasthan in Complaint Case No.14/2009.
- iii. Pass any other order in the interest of Justice as your Lordships may deem fit.

5. I have heard arguments of learned Counsel for the parties and perused the record. Short synopsis of arguments have also been perused.

6. It is argued on behalf of the Appellant Institution that the Appellant is an Educational Society, registered under the Rajasthan Institutional Registration Act, 1958 (Rajasthan Act No.28 of 1958) and that the Appellant is a “consumer” as per Section 2(1)(m) of the Consumer Protection Act, 1986. It is contended that the Appellant Institution does not work

for any commercial purpose. Reliance has been placed on *Synco Textiles Pvt. Ltd. Vs. Greaves Cotton and Company Limited* (1991) 1 CPJ 499 in which elucidation of the differentiation between “commercial activity” and “commercial purpose” has been given; *Lilavati Kirtilal Mehta Medical Trust vs. M/s Unique Shanti Developers & Ors.*, Civil Appeal No.12322 of 2016 wherein the Hon’ble Supreme Court observed that the appellant Trust qualifies as a ‘consumer’ for the transaction it had engaged in, based on the principle that a transaction is considered ‘for a commercial purpose’ if it involves manufacturing/industrial activity, business-to-business transactions, or if it has a close and direct nexus with profit generation. It is further argued that the State Commission erred in not appreciating the fact that the Appellant had a continuous cause of action and therefore, the Complaint was not barred on grounds of limitation. Appellant contended that the cause of action arose after the meeting dated 25.04.2007 when the Respondent refused to remove any lacunae in the construction raised by them. It is argued that the Complaint was well within the period of limitation. He has relied on *State Bank of India vs. B. S. Agriculture Industries*, (2009) 5 SCC 121. It is prayed that the Appeal be allowed and the impugned order be set aside.

7. On behalf of the Respondent, it is argued that the Appellant Institution has not come with any documentary proof as to how Mrs. Shobha Suman Mishra, Chairperson of the Society is entitled to file the Complaint and that the complaint has been filed without authority. It is argued that the Appellant is not a “consumer” as the Appellant’s activities are of commercial nature involving setting up of academic and other industrial institutions for imparting education and other technical education by charging fees from different candidates for its services. It is argued that the suit filed by them before the District Judge Ajmer City, Ajmer and the counter claim filed by the Appellant are pending adjudication. It is contended that once a suit is pending consideration before a Civil Court, no Complaint under the provisions of the Consumer Protection Act can be filed. It is also argued that the Complaint was time barred and that the questions raised by the Appellant are complicated in nature and the same cannot be adjudicated in a summary manner in proceedings before this Forum. It is contended that not only the Complaint but also the Appeal filed by the Appellant is liable to be dismissed with heavy costs in favour of the Respondent.

8. Addressing the preliminary issues of whether Appellant qualifies as a “consumer” under Section 2(1)(d) of the Consumer Protection Act, 1986, as laid down by the Hon’ble Supreme Court in *Laxmi Engineering Works Vs P.S.G. Industrial Institute*, (1995) 3 SCC 583, the Appellant had availed services relating to construction work of its school building and merely because it runs a school it cannot be held to be a commercial purpose.

9. As regards the issue of limitation, the Agreement between the Appellant and the Respondent is dated 12.02.2004 as per which construction was to be completed by 01.07.2004. The Respondent has contended that the work was completed by 22.03.2005 and the handing over was done on 22.03.2005. According to Appellant, the period of 2 years within which the Complaint should have been filed before the State Commission needs to be reckoned from 25.04.2007 (last meeting held) when some discussions were held between the parties regarding the completion of construction. Appellant admits that the handing over was done by 22.03.2005. It also contends that quality of construction and delay resulting in loss was an issue. It does not dispute that issues of payments and recovery suit are pending

adjudication before the Civil Court, Ajmer. The argument that commencement of the period of limitation be considered from **25.04.2007** on the grounds of a continuing cause of action cannot be sustained. The construction was agreed upon to be completed by 01.07.2004 as per the agreement. Following completion, handing over was done admittedly on 22.03.2005. As per the Agreement, the promised service was, therefore concluded on this date although with delay. The period of limitation, therefore, applies from 22.03.2005 and not 25.04.2007, as claimed by the Appellant. In ***Shakti Bhog Food Industries Limited vs. Central Bank of India & Anr.*** (2020) 17 SCC 260 it has been held by the Hon'ble Supreme Court that the period of limitation cannot be extended on grounds of exchange of letters and must be strictly interpreted. In the instant case the limitation period is sought to be extended on the ground that the same was under discussion between the parties till 25.04.2007. This Agreement cannot be sustained.

**10.** The law of limitation requires delay for each day of delay to be explained after expiry of the period of limitation. It is necessary that this explanation is rational, reasonable and realistic and to be acceptable. A perusal of the application for the condonation of delay establishes beyond doubt that the delay was caused because the Appellant dealt with the case in a rather routine and casual manner.

**11.** In ***State Bank of India vs B S Agriculture Industries*** (I) (2009) 5 SCC 121 decided on March 20, 2009, it has been held by the Hon'ble Supreme Court that the expression, 'shall not admit a complaint' occurring in Section 24 A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within the limitation period prescribed thereunder.

**12.** The Hon'ble Apex Court has laid down that the settled legal proposition of law of limitation under the Consumer Protection Act has to be applied with all its rigour when the statute so prescribes, though it may harshly affect a particular party. The Appellant has not been able to provide adequate and sufficient reasons which prevented him to approach this Commission within the limitation.

**13.** The Hon'ble Supreme Court ***R. B. Ramlingam vs. R. B. Bhavaneshwari***, I (2009) CLT 188 (SC) has also held that party who has not acted diligently or remained inactive is not entitled for condonation of delay and in ***Ram Lal and Ors. Vs. Rewa Coalfields Limited***, AIR 1962 Supreme Court 361 that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right.

**14.** The burden is on the applicant to show that there was sufficient cause for the delay. The expression 'sufficient cause' has been discussed and defined by the Hon'ble Supreme Court in the case of ***Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer***, 2013 AIR SCW 6510. Further, in ***Anshul Aggarwal Vs. New Okhla Industrial Development Authority***, (2011) 14 SCC 578, the Hon'ble Supreme Court has advised the Consumer Forums to keep in mind while dealing with such applications the special nature of the Consumer Protection Act.

**15.** In the instant case, the Appellant had approached the State Commission on 02.04.2009 i.e. after 4 years. The reason for this delay stated to be a continuing cause of action cannot be sustained in view of the settled position of law as discussed above.

**16.** The Appeal is, therefore, dismissed as barred by limitation. Both the parties shall bear their own costs.

**17.** Pending IAs, if any, stand disposed of with this order.

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**SUBHASH CHANDRA**  
**PRESIDING MEMBER**