

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution: 09.01.2023

Date of Hearing: 02.09.2024

Date of Decision: 18.11.2024

FIRST APPEAL NO.- 10/2023

IN THE MATTER OF

MR. RAJAT JAIN
174, 1ST FLOOR,
SUKHDEV VIHAR,
NEW DELHI-110025

(Through: P.C. Gupta, Advocate)

...Appellant

VERSUS

M/S INDEPAY NETWORK PRIVATE LIMITED
EROS CORPORATE TOWER
15TH FLOOR, NEHRU PLACE,
NEW DELHI-110019

(Through: Sanjiv Narang, Advocate)

...Respondent

CORAM:**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)****HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

Present: Appellant in person.

Mr. Sanjiv Narang, counsel for the respondent on VC.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,**PRESIDENT****JUDGMENT**

1. The facts of the case as per the District Commission record are:

“Through this complaint, complainant seeks refund of an amount of Rs. 2,06,974.50/- along with interest claiming that the said amount was deposited by him with OP, an amount of Rs. 2100/- per day with effect from 17.09.2018 towards loss of job, compensation for mental harassment and litigation cost. Complainant and OP is into the work for payment transactions and related services which involves transfer of public money to their respective family members in their bank account. The service was initiated on 05.04.2018 and cash amount used to be deposited with OP in order to facilitate the service. An agreement was signed with OP but copy of the same was not given to him. It is further submitted that out of the said job complainant used to earn Rs.2100/- per day and after making payment of office rent, electricity and internet bill etc, he was able to feed his family from the balance earning. the OP had abruptly stopped the services without assigning any reason which not only resulted in loss of earning to complainant but also resulted loss of customers who used to come for transactions. Complainant also submits that as per the statement of account generated by OP, Ex. C-1, Rs. 2,06,974.50/- is lying with OP which was deposited by an amount of the complainant and was not given to him despite his many requests. Legal notice dated 11.02.2019, Ex. C-2, served upon OP asking for the refund of the above stated amount with

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interest with effect from 17.09.2018 till payment along with Rs. 2100/- per day for the loss of earning from the said date, was also not replied by OP. The complainant submits that such act and omission on the part of OP amounts to deficiency in service and unfair trade practice and praying for refund of the above stated amount of Rs. 2,06,574.50/- along with interest at the rate 12% per annum with affect from 17.09.2018 along with Rs.2100/- per day from the date till payment, cost of litigation and compensation for harassment etc.”

2. The District Commission after taking into consideration the material available on record passed order dated **22.11.2022**, whereby it held as under:

“Both the parties have filed their respective evidence affidavits as well as written arguments. This Commission has gone through the entire material on record. The preliminary question for consideration before considering the merit of the case is whether the complainant is consumer or not under the Consumer Protection Act, 1986, the account statement, Ex.- C1, as submitted by the complainant, shows the details of the total commerce done, that the commission earned and the applicability of the GST and TDS thereupon which clearly establish that complainant was working under OP and extending services of the OP to the customers on commission basis. The account statement also shows the details commission earned on month-to-month basis and customer charges statement from April 2018 to September 2018. The complainant also admitted that services were provided by the complainant to the customers as IEO/I SL or agent of OP. The agreement on record also shows that agent shall be IEO/ISL personal who facilitate the services/non-customer services/enrolment process. The customer agreement bears the signature of the complainant on all pages. The agreement further shows that the work of the complainant was to render the products and services of the OP to the customers. The termination clause of the said agreement also mentioned that in the event of the termination of the agreement, the office shall be entitled to publicize such

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termination so as to ensure that its customers do not continue to entertain the IEO/ISL. In view of the admitted position, it is very much clear that complainant is not the customer of the OP but an agent of the same. Complainant himself has stated that he had earning from the said job and also claimed earning of Rs. 2100/- per day for loss of job. Therefore, it is established that the relationship between complainant and OP was of master and agent and not of service provider and consumer, consequently, complainant is not a consumer under CPA, 1986, and the complaint is outside the purview of Consumer Forum. In view of the same, the complainant is dismissed without cost.”

3. Aggrieved by the order passed by the District Commission, the Appellant/Complainant has filed the present appeal, asserting that the District Commission erred in failing to properly consider the substance of the complaint and the facts presented by the Appellant. The Appellant contends that he is rendering services as a consumer, in the course of his livelihood, and not as a commercial entity. Consequently, the judgment of the District Commission is flawed in not recognizing the Appellant as a consumer under Section 2(d)(ii) of the Consumer Protection Act, 1986. Furthermore, the Appellant submits that the District Commission wrongly classified him as a representative of the Respondent in relation to the money transfer transactions, whereas the transactions were initiated by the Appellant in the course of his work. The Appellant also contends that the District Commission failed to acknowledge that the Respondent had deducted GST/TDS from the Appellant's payments, yet did not provide any certification for such deductions. The Appellant argues that the deduction of GST/TDS does not, in and of itself, serve as a basis to classify his activities as commercial, in light of the legal definition of "consumer." Additionally, the Appellant submits that the District Commission erred in omitting reference to the deduction of GST/TDS by the Respondent in its order, and in failing to address the issue

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of the Respondent's failure to provide a certificate for the same. The Appellant also argues that the District Commission incorrectly defined the mode of payment (commission) for the work done by the Appellant, thereby misclassifying the payment structure as indicative of a commercial activity.

4. The Respondent, on the other hand, contended that the impugned judgement dated 22.11.2022 of the District Commission whereby the District Commission dismissed the Complaint of the Complainant/Appellant is just, legal & valid and calls for no interference by the State Commission, as the District Commission has dealt with the submissions of counsels, relevant proposition of law, relevant precedents and thereafter, passed their reasoned judgment.
5. The Respondent further claims that the fact that the Appellant has been providing services to customers of the Respondent/OP becomes evident from the account statement, which specifies the commission received by the Appellant from the Respondent company. Furthermore, the same statement of accounts also indicates that the commerce done amounts to Rs. 3,93,85,711/- and the commission earned amounts to Rs. 2,81,825/- which indicates that the commerce done was in reference to customers and thus the Appellant is not a consumer as defined U/s 2(d)(ii) of the Consumer Protection Act, 1986 and further contended that the Appellant is trying to mislead the court, and prays for the dismissal of the present appeal.
6. We have perused the Appeal, Reply to the Appeal of the Respondents and the Impugned Judgement and the judgement passed by the Hon'ble Supreme Court in *Laxmi Engineering Works vs. P.S.G. Industrial Institute 1995 AIR 1428, 1995 SCC (3) 583*.
7. The main question for consideration before us is ***Whether the District Commission erred in determining that the Complainant does not qualify as a "consumer" under Section 2(d)(ii) of the Consumer Protection Act, 1986, and whether the relationship between the Complainant and the Opposite***

Party should be classified as that of principal and agent, rather than as a service provider and consumer.

8. On perusal of record, it is evident that the Appellant entered into an agreement with the Respondent to facilitate financial transactions as an agent, earning a commission for each transaction. The account statements clearly indicate that the Appellant was remunerated on a monthly basis, with commissions paid after deductions for GST and TDS, which were applicable to the nature of the Appellant's work. The District Commission rightly observed that the Appellant's services were rendered on behalf of the Respondent to third-party customers, thereby establishing a relationship of principal and agent, rather than that of consumer and service provider.
9. The Appellant's claim for daily earnings, and the alleged loss thereof, further supports the conclusion that the Appellant was engaged in a commercial activity for remuneration, acting as an agent or employee. This further substantiates the fact that the Appellant was not engaged in personal activities as a consumer. As such, the Appellant falls outside the definition of "consumer" under Section 2(d)(ii) of the Consumer Protection Act, 1986.
10. The Appellant's assertion that he was involved in this activity solely for his livelihood lacks merit, as the record reflects that the Appellant facilitated substantial commercial transactions on behalf of the Respondent, with applicable deductions for commercial tax liabilities such as GST and TDS. This confirms the commercial nature of the Appellant's engagement. The District Commission has correctly interpreted the law, analyzing the evidence thoroughly and concluding that the Appellant's role as an agent disqualifies him from being recognized as a "consumer" under Section 2(d)(ii) of the Consumer Protection Act, 1986.
11. Based on the foregoing, we find no error in the judgment passed by the District Commission. The relationship between the Appellant and the Respondent is one of principal and agent and does not fall within the scope

of "consumer and service provider" as defined under the Consumer Protection Act, 1986.

12. Consequently, we are in agreement with the reasons given by the District Commission and fail to find any cause or reasons to reverse the findings of the District Commission. ***Therefore, we uphold the order dated 22.11.2022 passed by the District Consumer Disputes Redressal Commission-X, Udyog Sadan, New Delhi-110016.***
13. Resultantly, ***the present Appeal stands dismissed*** with no order as to costs.
14. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
15. The judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
16. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
18.11.2024

L.R.SM