



CIVIL

# Arbitration Agreements and the Non-Derogable Jurisdiction of Consumer Fora: A Critical Analysis of T.K.A. Padmanabhan v. Abhiyan Cooperative Group Housing Society Ltd.

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The interplay between alternative dispute resolution mechanisms and statutory consumer remedies has long been a contested terrain in Indian jurisprudence. The tension between the contractual sanctity of arbitration agreements and the protective mandate of consumer legislation came to the fore once again in the case of *T.K.A. Padmanabhan v. Abhiyan Cooperative Group Housing Society Ltd.*, decided by the Supreme Court of India on 4 June 2016 in Civil Appeal No. 10724 of 2016. A Bench comprising Hon'ble Justice Vikram Nath and Hon'ble Justice V. Mohana delivered a ruling that not only restored a languishing consumer complaint to the adjudicatory forum but also reinforced the inviolability of consumer jurisdiction once a complaint has been duly admitted under the Consumer Protection Act, 1986.

The appellant before the Supreme Court was T.K.A. Padmanabhan, an allottee who had become a member of the respondent society, Abhiyan Cooperative Group Housing Society Ltd., in January 2003. Having paid the entire consideration for the allotment of Flat No. 232, the appellant entered into a formal agreement with the society on 27 February 2004. The core grievance that propelled the appellant to the consumer forum was an alleged deficiency in service attributable to an inordinate delay in the handing over of possession of the allotted flat. In the ordinary course, a consumer complaint alleging such deficiency would be adjudicated on its merits by the competent District Consumer Disputes Redressal Commission. However, the present case took a protracted and circuitous route through multiple fora over the span of more than a decade, principally because the respondent society sought to invoke the arbitration clause embedded in the agreement between the parties.

On 8 August 2005, the appellant instituted Consumer Complaint No. 579 of 2005 before the District Consumer Forum-VII, New Delhi, seeking compensation for the delay in possession. The complaint was duly admitted, and notice was issued to the respondent. Rather than contesting the merits of the delay or the entitlement to compensation, the respondent filed an application under Section 8 of the Arbitration and Conciliation Act, 1996, praying that the dispute be referred to arbitration in view of the arbitration clause in the agreement. By order dated 21 September 2005, the District Forum rejected the application, reasoning that the remedy available under the Consumer Protection Act, 1986, is an additional remedy and operates in conjunction with, rather than in substitution of, other remedies available under law. The respondent was dissatisfied with this order and approached the Delhi High Court by way of C.M.(M) No. 2405 of 2005. The High Court, by its order dated 30 March 2007, set aside the District Forum's order and remitted the matter for reconsideration by a reasoned order. The respondent thereafter filed Special Leave Petition (Civil) No. 9962 of 2007 before the Supreme Court, which was dismissed on 28 July 2008.

Upon reconsideration, the District Forum, by order dated 27 July 2009, allowed the respondent's application under Section 8 of the Arbitration Act and referred the parties to arbitration. The appellant challenged this order before the Delhi State Consumer Disputes Redressal Commission in First Appeal No. 680 of 2009. The State Commission, by its order dated 26 February 2013, dismissed the appeal and affirmed the order of the District Forum. Aggrieved, the appellant moved the National Consumer Disputes Redressal Commission in Revision Petition No. 1942 of 2013. In a rather surprising turn, the National Commission, by its impugned order dated 4 January 2016, dismissed the revision petition not on the jurisdictional question of whether a consumer complaint could be referred to arbitration, but on the ground that the appellant was no longer a consumer because he had already taken possession of the flat without protest. This reasoning effectively closed the door on the appellant's grievance without any adjudication on the merits of the alleged deficiency in service. It was against this backdrop that the appellant approached the Supreme Court.

The primary question that fell for determination before the Supreme Court was whether the consumer complaint, having been admitted by the District Forum, could validly be referred to arbitration without adjudication on the merits. A collateral yet significant issue was whether the National Commission had been justified in dismissing the revision petition on the premise that the appellant was not a consumer at the time of filing the complaint. The Court, after hearing the appellant in person and the learned counsel for the respondent, embarked upon a detailed analysis of the statutory framework governing consumer protection and the limits of arbitration in the consumer context.

Section 3 of the Consumer Protection Act, 1986, is the cornerstone of the legislative scheme. It expressly declares that the provisions of the Act are in addition to, and not in derogation of, the provisions of any other law for the time being in force. This statutory declaration of the supplementary nature of the consumer remedy is not merely a declaratory provision but a fundamental policy choice by Parliament to ensure that consumers are not left without a forum merely because an alternative remedy or an alternative mode of adjudication may be available elsewhere. The Court observed that the 1986 Act is a beneficial legislation intended to provide a simple, inexpensive, and expeditious remedy to a consumer who complains of a defect in goods or a deficiency in service. The existence of another forum or another mode of adjudication does not by itself exclude the jurisdiction of the consumer fora.

The Court fortified this conclusion by placing reliance on a consistent thread of precedents. In *Fair Air Engineers Pvt. Ltd. v. N.K. Modi*, the Supreme Court had held that the remedy under the 1986 Act is an additional remedy and that the existence of an arbitration clause would not automatically oust the jurisdiction of the consumer forum. The same principle was reiterated in *Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha*, where the Court held that the remedy under the 1986 Act is available notwithstanding the existence of remedies under the cooperative societies law. The decision in *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy* further emphasised that the availability of an alternative statutory remedy is not a bar to the maintainability of a consumer complaint. The position was put beyond doubt in *Emaar MGF Land Ltd. v. Aftab Singh*, where the Supreme Court held that even where an agreement contains an arbitration clause, the consumer forum is not denuded of its jurisdiction to entertain and decide a consumer complaint. The reason, as explained by the Court, is that the 1986 Act creates a special and additional remedy for consumers, and the jurisdiction so conferred cannot be displaced merely by reference to an arbitration agreement between the parties.

The Court then turned its attention to the procedural safeguard embodied in Section 12 of the 1986 Act. Sub-section (4) of Section 12 deals with the manner in which a complaint may be proceeded with before the District Forum. The proviso thereto contains a clear and unambiguous legislative restraint. It states that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force. The significance of this proviso lies not merely in its textual clarity but also in the statutory policy it reflects. Once a consumer complaint is admitted and the special adjudicatory mechanism under the 1986 Act is validly invoked, the consumer cannot be driven out of that forum merely because the agreement between the parties contains an arbitration clause. A private contractual clause cannot be permitted to defeat the continued operation of a statutory remedy which Parliament has expressly made additional to other remedies under Section 3 of the 1986 Act. The Court held that Section 12(4) must be read harmoniously with Section 3, and together they ensure that a consumer complaint, once admitted, is not rendered illusory by compelling the consumer to begin afresh before another forum or authority.

The Court also found the reasoning of the National Commission to be unsustainable. The National Commission had dismissed the revision petition on the ground that the appellant was not a consumer because he had already taken possession of the flat without protest. The Supreme Court held that this approach failed to address the central jurisdictional question arising from the orders of the District Forum and the State Commission. The appellant's complaint was not merely for the delivery of possession simpliciter. His grievance was that there had been a delay in handing over possession of the flat and that he was entitled to compensation for such delay. A claim for compensation for delayed possession necessarily arises from the period prior to the actual delivery of possession. The subsequent receipt of possession, even if accepted, cannot by itself extinguish the right of the allottee to seek adjudication of a claim for compensation for the alleged delay. Whether there was in fact any delay, whether such delay was attributable to the respondent, whether the appellant had accepted possession unconditionally, and whether any compensation is payable are all matters which require adjudication on merits. The consumer complaint had not been adjudicated on merits at any stage. The claim of the appellant for compensation on account of the alleged delay had neither been accepted nor rejected after evidence. The defence of the respondent society had also not been examined on merits. These issues could not have been concluded at the threshold by holding that the appellant ceased to be a consumer merely because possession had been delivered before the complaint was filed.

In light of the above analysis, the Supreme Court concluded that the proper course was to restore the consumer complaint for adjudication on merits. The parties were to be afforded due opportunity of hearing and of leading evidence. All questions relating to deficiency in service, delay, waiver, acceptance of possession, entitlement to compensation, and all other issues on merits were to remain open to be considered by the competent consumer forum in accordance with law. The Court noted that during the intermediary period, the District Consumer Disputes Redressal Commission had been set up at Dwarka, and both parties were stated to be residing in Dwarka. In order to avoid further inconvenience and delay, the Court directed that the complaint be placed before the District Consumer Disputes Redressal Commission, Dwarka.

Accordingly, the Supreme Court allowed the appeal, set aside the judgment and order dated 4 January 2016 passed by the National Commission in Revision Petition No. 1942 of 2013, set aside the order dated 26 February 2013 passed by the State Commission in First Appeal No. 680 of 2009, and set aside the order dated 27 July 2009 passed by the District Forum. Consumer Complaint No. 579 of 2005, stated to have been renumbered as Complaint No. 712 of 2007, was restored and directed to be placed before the District Consumer Disputes Redressal Commission, Dwarka, for decision on merits. The District Commission was directed to decide the complaint after affording due opportunity of hearing and leading evidence to both parties. Given that the complaint was of the year 2005, the District Commission was directed to make an endeavour to decide the same

preferably within a period of one year from the date of receipt of a copy of the Supreme Court's order.

The judgment in *T.K.A. Padmanabhan v. Abhiyan Cooperative Group Housing Society Ltd.* stands as a significant reaffirmation of the principle that the jurisdiction of the consumer forum, once properly invoked and a complaint admitted, is not a transient or tentative jurisdiction that can be overridden by private contractual arrangements. The decision highlights the protective intent of the Consumer Protection Act and ensures that consumers are not left remediless by procedural manoeuvres that divert their grievances away from the forum specially constituted for their benefit. In an era where arbitration clauses are routinely inserted into standard form contracts, the ruling serves as a necessary reminder that statutory rights cannot be contractually extinguished, and that the consumer's remedy, once awakened, must be allowed to proceed to its logical conclusion on merits.

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