

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No.20392 of 2023**

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950)

Amarnath Pradhan *Petitioner(s)*
-versus-
Prabir Kumar Dey & Ors. *Opposite Party(s)*

Advocates appeared in this case through Hybrid Arrangement Mode:

For Petitioner(s) : *Mr. Prafulla Kumar Rath, Sr. Adv.*
Along with Mr. S. Rath, Adv..

For Opposite Party(s) : *Mr. Karunakar Jena, Adv.*

CORAM:**DR. JUSTICE S.K. PANIGRAHI****DATE OF HEARING:-01.09.2023****DATE OF JUDGMENT: -20.11.2023****Dr. S.K. Panigrahi, J.**

1. The Petitioner through this Writ Petition has challenged the order dated 22.06.2023 passed by the President, State Consumer Disputes Redressal Commission, Odisha, Cuttack in C.C No.24 of 2021, the same being completely without jurisdiction, illegal and unsustainable in the eye of law.

I. FACTUAL MATRIX OF THE CASE:

2. The petitioner's deceased son being a proprietor entered into a contract to supply building materials like chips, sand & boulders and provide machineries on rent to the O.P. The O.P had made certain excess payment to

a sum of Rs. 1,03,08,600/-. Hence the proprietor issued 3 nos. of postdated cheques of different amounts and different dates for repayment of the same.

3. Unfortunately, the petitioner's son/proprietor expired due to a tragic car accident. The O.P on presenting such postdated cheques before the bank, the same returned dishonored on the ground of "insufficient funds" and "other customer deceased."
4. The O.P issued notice to the present petitioner U/s 138 (b) of Negotiable Instrument Act, 1881 although the present petitioner is not the author of the cheque nor anywhere a signatory to the agreement or has a buyer seller relationship with the O.P. The O.P thereafter filed Complaint Case No.24/2021 before the State Consumer Disputes Redressal Commission, Odisha claiming a sum of total Rs. 1,05,08,600/-
5. The said complaint petition being not maintainable before the aforesaid forum, was allowed vide order dated 22.06.2022. Hence challenging the same, this writ has been filed.

II. PETITIONER'S SUBMISSIONS:

6. Learned counsel for the Petitioner(s) earnestly made the following submissions in support of his contentions:
7. The Proforma Opposite Party No.3 since already dead, the impugned order is against a dead person. Hence, the impugned order is a nullity in the eye of law. The learned Commission completely failed to appreciate that the complaint case in absence of proper description of the Proforma Opposite Party No.3 was not at all maintainable & hence the impugned order is liable to be set aside.

8. The Commission miserably failed to consider the issue of maintainability as to whether the Complainant is coming within the definition of consumer and dispute presented before it qua the present petitioner was at all maintainable. The petitioner nowhere being a party to any of the alleged contract nor a signatory to the Cheque nor even any semblance with the business of the Proforma Opposite Party No.3, no liability could have been saddled with the Opposite Party No.1.
9. The Opposite Party No.1 as a complainant filed C.C Case No.24 of 2021 before the State Consumer Disputes Redressal Commission, Odisha, Cuttack with a prayer for payment of outstanding dues of Rs. 1,03,08,600/- and other dues. The allegation of the Complainant was that he was having some dealings with Debabrata Amarnath who is the Proprietor of Proforma Opp. Party No.3 towards purchase of Chips and Metals, for which there was transaction. It is further complained that there was over payment of Rs. 1,03,08,600/-. The Proforma Opposite Party No.3 by virtue of three Cheques had refunded the aforesaid amount. But to the misfortune the said Proforma Opposite Party No.3 died on 17.10.2020, out of unfortunate Car accident. After death of the Proforma Opposite Party No.3, the Cheques which were presented in the Bank were bounced. Subsequent thereto, the present Consumer Complaint No. 24 of 2021 was filed with the prayer as aforesaid.
10. The Commission though has specifically found that the Complainant has not filed any documents to prove the basic transaction on the issue of buyer and seller, but has held that the Complainant is entitled to claim, damages from the present petitioner, who is father of late Debebrata Amarnath. The Complainant has not filed a single piece of paper or has proved anything

showing involvement of the petitioner in the alleged transaction or business.

11. The Proforma Opposite Party No.3 was not in proper description. It was merely described as Proprietor and the said Proprietor was already dead as on the date of filing of the Consumer Complaint Petition. Therefore, the pivotal issue that fall for consideration is that the Complaint Petition involving a dead person was not maintainable from its inception. The Commission, however, has failed to consider this aspect has held the C.C Case is maintainable and passed the impugned order directing the Opposite Party No.1 to pay the Complainant's claim amount of Rs. 96,00,000/- with 9% interest and a sum of Rs.2,00,000/- for mental agony.

III. SUBMISSIONS OF OPPOSITE PARTY NO.1:

12. Per *contra*, learned Senior Standing Counsel for the Opp. Parties intently made the following submissions:
13. The Petitioner has failed to show any infirmity in the decision making process involved in the present case. It is well settled in law that Judicial Review in exercise of constitutional writ jurisdiction is permissible not in respect of the correctness of the decision, but only in respect of the correctness of the decision making process. Thus, the present Writ Petition is misconceived and liable to be dismissed.
14. The Consumer Complaint No.24 of 2021 is maintainable before the State Consumer Disputes Redressal Commission, Odisha, Cuttack & the said State Commission has jurisdiction to entertain & dispose of the same, in view of the facts of the present case & the legal position that the petitioner since only the surviving class-I legal heir of his deceased son late Debabrat

Amarnath, the petitioner is legally bound to clear up make payment of the just dues / discharge the debt / liability of his only son by making payment of the amount due towards the discharge of the debt/liability of his only son, since the petitioner being the only surviving class-I legal heir of his only son late Debabrat Amarnath.

15. It is the solemn duty / piety of the petitioner to clear up / legally bound to pay the just dues & discharge the debt / liability of his only son, since the petitioner being the only surviving class-I legal heir of his only unmarried son late Debabrat Amarnath.

16. The petitioner in not making payment of the admitted dues of the complainant relating to the cheque bearing No.063515 dated 05.03.2021 for Rs.25,00,000 drawn on the Bank of Maharashtra, Nayapali, Bhubaneswar Branch issued by late Debabrat Amarnath during his lifetime & cheque bearing No.362669 dt.03.05.2021 for Rs.36,00,000 drawn on HDFC Bank, Sankar Cinema Road, Angul Branch towards part payment of the aforesaid dues of late Debabrat Amarnath & cheque bearing No.188417 dt.11.05.2021 for Rs.35,00,000 drawn on the State Bank of India, Angul Branch which were issued by Debabrat Amarnath, son of the petitioner in favor of the Opp. Party No.1 towards part payment of his dues / discharge of debt/ liability relating to the above mentioned dishonored cheques amounts to negligence & deficiency in service & "Unfair Trade Practice" within the meaning of section-2(47) of the Consumer Protection Act, 2019 on the part of the petitioner for which the complainant is entitled to recover the amount along with the compensation & other reliefs indicated U/S-39 of the Consumer

Protection Act, 2019 for any loss or injury suffered by this Opp. Party due to the aforesaid negligence & deficiency in service of the petitioner.

17. In the present case, in view of the legal position that the petitioner being the surviving class-I legal heir of his only deceased son late Debabrat Amarnath, the petitioner is legally bound to pay/ clear up the dues by making payment of the amount due towards discharge of debt / liability of his only son, namely, Debabrat Amarnath.
18. The arrangement between the Complainant & the only son of the Opp. Party No.1 / writ petitioner was brought to the notice of the Opp. Party No.1, namely, Amarnath Pradhan, who also approved & gave a green signal to go ahead in the matter for providing materials by the son of the Opp. Party No.1 to the Complainant on payment of consideration thereof & for providing machineries on rent by Debabrat Amarnath for smooth running of the business of the Complainant, who was a bosom friend of the only son of the Writ Petitioner.
19. In view of the facts & circumstances stated above, the son of the writ petitioner Opp. Party No.1, namely, Debabrat Amarnath, who provided the Complainant / Opp. Party No.1 some materials amounting to Rs.10.00 lakhs on payment of a sum of Rs.10.00 lakhs by the Complainant towards consideration money to meet the cost of the materials subsequently. The Complainant / Opp. Party No.1 has also paid a substantial amount through his wife's account on various occasions.
20. Debabrat Amarnath the only son of the writ petitioner was regularly supplying huge quantity of different materials to the Complainant on

payment of cost thereof & was regularly making adjustment of the amount of the Complainant.

21. Subsequently, the payment towards the cost of materials was piled up and over payment was made by the Complainant to Debabrat Amarnath, the son of the writ petitioner, who failed to keep up the promise and could not make payment of the overdue amount to the Complainant on different dates in connection with multiple transactions which was within the knowledge of the writ petitioner.
22. The Complainant / Opp. Party No.1 on different occasions had received from "Auro Infrastructures" a sum of Rs.26,69,900.00 (Rupees Twenty six lakhs sixty nine thousand nine hundred) only towards over payment of cost of materials supplied to the Complainant / Opp. Party No.1 by Debabrat Amarnath. The Complainant / Opp. Party No.1 has to receive from Debabrat Amarnath total amount of Rs.1,03,08,600.00 only which is due from him.
23. When Debabrat Amamath failed to make payment of all the amount to the Complainant, he voluntarily provided handed over three postdated cheques amounting to Rs.25,00,000/- (Rupees Twenty five lakhs), Rs. 36,00,000/- (Rupees Thirty six lakhs) and Rs.35,00,000/- (Rupees Thirty five lakhs) only total amounting to Rs.96,00,000/- (Rupees Ninety six lakhs) only to ensure payment of the aforesaid amount to be paid to the Complainant / Opp. Party No.1 & on 14.10.2020 he promised to repay the balance amount of Rs.24,49,000/- (Rupees Twenty four lakhs forty nine thousand) only on 21.10.2020, out of the amount of payment that he would get from "the National Building Construction Corporation Limited" to be paid in the

name of "Auro Infrastructures" and also he would get his C.C. TopUp loan from Maharashtra Bank, latest by 24th October, 2020.

24. The postdated cheque bearing No. 063515 dt.05.03.2021 for Rs.25,00,000/- (Rupees Twenty five lakhs) only drawn on the Bank of Maharashtra, Nayapali, Bhubaneswar Branch issued by late Debabrat Amarnath during his lifetime in favour of the Complainant towards payment of the admitted dues / discharge of debt / liability was presented by the Complainant on 05.03.2021 in the Kotak Mahindra Bank Ltd., Sahid Nagar Branch, Bhubaneswar for collection & the said cheque bearing No.063515 dt.05.03.2021 was dishonored / returned by the said Bank unpaid on the ground of "Funds Insufficient" as mentioned by the Bank & intimated to the Complainant / Opp. Party No.1.
25. Similarly, the postdated cheque issued by Debabrat Amarnath in favor of the Complainant bearing cheque No.362669 dated 03.05.2021 for Rs.36,00,000/- (Rupees Thirty six lakhs) only drawn on the HDFC Bank, Shankar Cinema Road, Angul Branch towards part payment of the aforesaid dues of Debabrat Amarnath / discharge of his debt / liability was presented by the Complainant on 03.05.2021 in the Kotak Mahindra Bank Ltd., Sahid Nagar Branch, Bhubaneswar for collection & the said cheque No.362669 dt.03.05.2021 was dishonored/returned by the said Bank un paid on the ground of "Others-customers deceased" as mentioned by the Bank & intimated to the Complainant. Similarly, the postdated cheque bearing No.188417 dt.11.05.2021 for Rs.35,00,000/- (Rupees Thirty five lakhs) only, drawn on the State Bank of India, Angul Branch which was issued by Debabrat Amarnath, son of the Writ Petitioner in favor of the Complainant

towards part payment of his dues / discharge of debt / liability was presented by the Complainant on 12.05.2021 in the Kotak Mahindra Bank Ltd., Sahid Nagar Branch, Bhubaneswar for collection & the said cheque bearing No.188417 dated 11.05.2021 was dishonored/returned by the said Bank unpaid on the ground of "Funds Insufficient" as mentioned by the Bank & intimated to the Complainant.

26. Three Notices U/s 138 (b) of the Negotiable Instruments Act, 1881 were issued on behalf of the Complainant to Sri Amarnath Pradhan (Writ Petitioner), who is not only father of Debabrat Amarnath, but also his class-I legal heir demanding payment of Rs.25,00,000/- (Rupees Twenty five lakhs), Rs. 36,00,000/- (Rupees Thirty six lakhs) and Rs.35,00,000/- (Rupees Thirty five lakhs) only relating to dishonour of post dated cheques issued by Debabrat Amarnath, the only son of the Opp. Party No.1 / Writ Petitioner bearing No. 063515 dt.05.03.2021 for Rs.25,00,000/- (Rupees Twenty five lakhs), post dated cheque bearing No.362669 dated 03.05.2021 for Rs.36,00,000/- (Rupees Thirty six lakhs) and postdated cheque bearing No.188417 dated 11.05.2021 for Rs.35,00,000/- (Rupees Thirty five lakhs) only, since Amamath Pradhan (Opp. Party No.1/Writ Petitioner) was the only surviving Class-I legal heir of late Debabrat Amarnath after his death.
27. The Complainant / Opp. Party No.1 met the Opp. Party No.1 / Writ Petitioner several times and requested him to make payment of the dues of his son as he being the surviving Class-I legal heir of his only son. The Opp. Party No.1 / Writ Petitioner requested the Complainant / Opp. Party No.1 to give him a statement of the entire amount paid by the Complainant / Opp. Party No.1 to his deceased son, so that he will arrange money and clear up

the entire dues of the Complainant. Accordingly, on dated 15.05.2021 the Complainant handed over to the Opp. Party No.1 / Writ Petitioner details of the statement of the entire amount to be received by the Complainant / Opp. Party No.1 from late Debabrat Amarnath.

28. Though the Opp. Party No.1 / Writ Petitioner has promised to repay the entire amount due, to be paid by his son to the Complainant, but subsequently on 04.05.2021 he refused to make payment of the same. Due to the aforesaid negligence of the Writ Petitioner for non-payment of the aforesaid outstanding dues & for deficiency in service of the Writ Petitioner, the Opp. Party No.1 has suffered mental tension & injury / agony which the Complainant / Opp. Party No.1 has assessed & claimed a sum of Rs.2,00,000/- and is entitled to receive from the Opp. Parties as Compensation, along with outstanding admitted dues of Rs.1,03,08,600/-. The Complainant / Opp. Party No.1 claimed total amount of Rs.1,05,08,600/- to be received from the Writ Petitioner who was Opp. Party No.1 in C.C. Case No.24 of 2021.

29. However, the State Commission vide order dt.22.06.2023 passed in C.C Case No.24 of 2021 directed the Writ Petitioner/Opp. Parties to pay a sum of Rs.96,00,000 as compensation to the Complainant / Opp. Party No.1 within 45 days, failing which it will be payable with 9% interest per annum. The State Commission has further directed the Opp. Parties jointly & severally liable to pay compensation of Rs.2,00,000/- (Rupees Two Lakh) only to the Complainant for mental agony within the above period of 45 days. It has been further directed that all the payments if not paid within the above

period of 45 days, they will carry interest @ 12% from the date of filing the complaint till the date of payment is made.

30. The present Writ Petitioner is liable to pay the dues of the Complainant / Opp. Party No.1 for deficiency in service for non-payment of dues of the Complainant, the Writ Petitioner being the only surviving class-I legal heir of late Debabrat Amarnath, the only son of Sri Amarnath Pradhan. The Opp. Party No.1 & the deceased Debabrat Amarnath being the members of the joint family are Service Providers in the Consumer Complaint in question for the Complainant. This fact is clear from the Written Statement/Written Version, where the Writ Petitioner has deemed to have admitted that he has been managing the Opp. Party No.3 after the death of Debabrat, as the said fact has not been specifically denied in the Written Statement / Written Version, which is based on the principle of non-traverse.
31. The Writ Petitioner has tried to misguide the Court by bringing the case of buyer & seller without explaining at which paragraph of the impugned order the learned Commission has said so. On the other hand, the learned State Commission has observed in paragraph-14 of the impugned order that the Complainant was to get over-payment refunded from Debabrat who is the son of the Writ Petitioner.
32. It is pertinent to mention here that in view of the provisions of Section-100 of the Consumer Protection Act, 2019, the provisions of this Act shall be in addition to & not in derogation of the provisions of any other law for the time being in force. It is submitted that the question raised in paragraph-11 of the Writ Petition is not concerned with the Jurisdiction, but they are

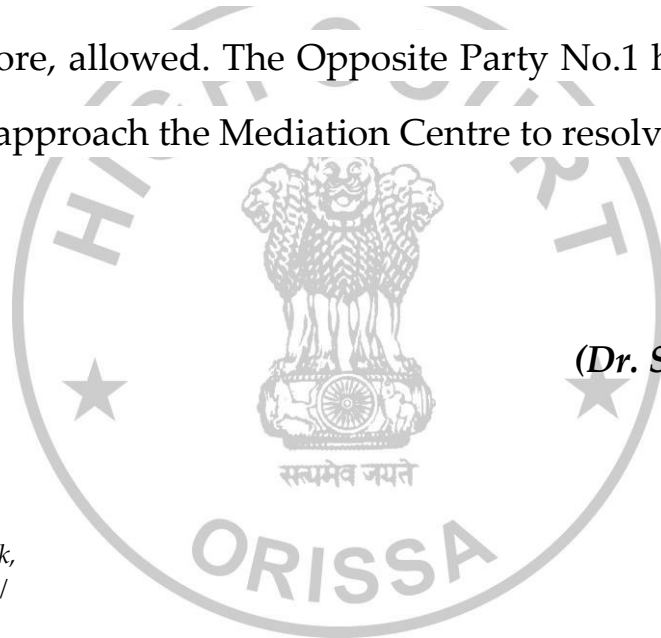
based on question of facts. Which are to be disposed of by the Fact Finding Forum, but not by Writ Jurisdiction as stated in the preceding paragraphs.

IV. COURT'S REASONING AND ANALYSIS:

33. It is not disputed that the proprietor issued 3 nos. of postdated cheques of different amounts and different dates for repayment of the same. Unfortunately, the petitioner's son/proprietor expired due to a tragic car accident. The O.P on presenting such postdated cheques before the bank, the same returned dishonored on the ground of "insufficient funds" and "other customer deceased." The O.P issued notice to the present petitioner U/s 138 (b) of Negotiable Instrument Act, 1881. The O.P thereafter filed Complaint Case No.24/2021 before the State Consumer Disputes Redressal Commission, Odisha claiming a sum of total Rs. 1,05,08,600/-
34. The Commission though has specifically found that the Complainant has not filed any documents to prove the basic transaction on the issue of buyer and seller, but has held that the Complainant is entitled to claim, damages from the present petitioner, who is father of late Debebrata Amarnath. The Complainant has not filed a single piece of paper or has proved anything showing involvement of the petitioner in the alleged transaction or business. The Proforma Opposite Party No.3 was not in proper description. It was merely described as Proprietor and the said Proprietor was already dead as on the date of filing of the Consumer Complaint Petition.
35. There is a serious issue as to jurisdictional issue involved in this case. The Complainant having failed to prove that there is any business transaction between the Complainant and the Opposite Party No.1, the Consumer Commission may not be a forum to decide the question of vicarious liability

to the present petitioner. The State Consumer Commission is completely denuded with jurisdiction over the subject matter entertained the application on the contractual judgment having passed ignoring and without answering the aforesaid basic issue that has been raised both in the Written Statement and in the Writ Petition as well. Therefore, availability of an alternate remedy will not be a bar for this Court to pass an order.

36. With respect to the aforesaid discussion, this Court is inclined to quash the order dated 22.06.2023 passed by the President, State Consumer Disputes Redressal Commission, Odisha, Cuttack in C.C No.24 of 2021. The Writ Petition is, therefore, allowed. The Opposite Party No.1 holds the liberty to file a civil suit or approach the Mediation Centre to resolve the dispute.



(Dr. S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 20th Nov., 2023/*