

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL  
COMMISSION**

**Date of Institution: 22.08.2022**

**Date of Hearing: 01.12.2025**

**Date of Decision: 24.03.2026**

**FIRST APPEAL NO. – 143/2022**

**IN THE MATTER OF**

**MR. HANS BATRA,  
S/O LATE SH. R.G. BATRA,  
AGED ABOUT 75 YEARS,  
R/O ED/77, TAGORE GARDEN,  
NEW DELHI 110027.**

**(Through: Mr. Anoop K. Kaushal, Advocate)**

...Appellant

**VERSUS**

**HDFC BANK,  
J-2/4, RAJOURI GARDEN,  
NEW DELHI 110027.**

**(Through: Ms. Anita Saran, Advocate)**

...Respondent

**CORAM:**

**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)**

**HON'BLE MS. BIMLA, MEMBER (FEMALE)**

Present: Mr. Anoop K. Kaushal, counsel for the Appellant.  
Mr. Rizwanulbh, clerk on behalf of Ms. Anita Saran,  
counsel for the Respondent.

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

**JUDGMENT**

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

*1. By this complaint, the complainant submits that he had a Bank Account with erstwhile Lord Krishna Bank, Rajouri Garden, New Delhi, which was opened some time in 2002. He had Certified True, excellent dealing with the said Bank said Bank and had made several FDs amounting Rs1,45,000 approximately in the name of himself and his family members in the said bank. The said Bank was merged with Centurian Bank & Centurian Bank in turn was merged with OP Bank. Real trouble was started upon merger of Centurian Bank with the OP Bank. The complainant did not have much dealings with the OP Bank and the OP has closed/swindled most of his F.D. amounts with false and manifold interest. With Lord Krishna Bank, he had taken OD amount against his DRs which he kept on paying off & on and never had an irregular balance. He did not get even single notice from either Lord Krishna or Centurian Bank for any irregularity in his OD account. However, OP Bank never bothered to get a debit confirmation from him when they took over his FD Account from the merged Banks. The OP Bank had shown Rs.51834 Rs 25,542/- as debit account against the complainant when they took over from the previous Banks. This was inflated figure which did not tally with his account. According to complainant, appears that OP Bank had made this figure as basis & had multiplied compounding interest manifold & thus wiping off capital amount of his FDRs. According to him, OP Bank had misled even RBI & had shown Kavita Batra, Siddarth Batra, Monika Batra as partners, which is absolutely wrong. These persons never opened any joint account with the complainant. When*

*basis of calculation is wrong, how could the outcome be correct. He had been requesting OP Bank to provide him statement of his account since inception, which they failed to supply. Now the OP bank is claiming that they never got original papers from the previous OP Bank has changed the numbers of the original FDs of the complainant many time create confusion & closed FDRs of complainant and his relatives on their own, without their ledge and permission. To the best of his knowledge, he had never received any notices his previous Bankers regarding any irregularity. He sincerely wanted to settle the matter amicably with OP Bank& RBI. RBI had instructed him to go to any other forum to get his rightful dues. Therefore, he had come to this Forum to settle the matter.*

*2. Complainant has prayed that OP be directed to settle his account and be instructed to pay his rightful amount with interest & penalty as deemed fit.*

*3. Alongwith the complainant, complainant has filed letters dated 21.02.2012, 22.08.2013, 23.08.2013, 22.03.2014 written to the OP Bank and copy of the complaint dated 13.11.2013 addressed to the Banking Ombudsman, order dated 08.05.2014 passed by the Banking Ombudsman, letter dated 12.01.2014 by OP to complainant showing details/status of FDs and OD account. Complainant has also placed on record, copy of the passbook of erstwhile Lord Krishna Bank, Rajouri Garden for the period from 24.04.2002 to 13.10.2007.*

*4. Upon admission of the complaint on 15.10.2014, notice was issued to the OP, who filed written statement. In the reply, OP refuted all allegations and contentions made in the complaint and submitted that the present complaint is not maintainable either in law or on facts and the same is liable to be dismissed outrightly. According to OP, this is an abuse of the process of law as it fails to establish or give rise to any cause of action under the Consumer Protection Act 1986 in favour of the complainant and against them. In fact, the present complaint is filed on frivolous and vexatious grounds to cause undue*

*advantage to the complainant and undue damage/loss to the OP.*

*5. It is submitted by the OP that the complainant held a bank account with erstwhile Lord shna Bank and made several FDs in his and his family members name and further took ODs (Overdraft amounts) against these FDs. It is further submitted that after the erstwhile Lord Krishna Bank merged with Centurion Bank and thereafter Centurion Bank amalgamated with nk in 2008, the OD accounts as well as the FDs of the complainant accordingly got transferred to the CIP tank. However, the so complainant failed to regular the said O despite reminders from the OP bank vide letters dated 23.05.2010 and 25.06.2010 with ond to OD a/e no. 13432500001259 and letter dated 22.07.2010 and 22.09.2010 with me to OD further informed try No. 1343250000921. It is submitted that thereafter the complainant the OP about the overdrawn states of his accounts and other details and was also provided statement of accounts. This fact has been concealed by the complainant. It is further submitted by the OP that upon failure of the complainant to regularize the OD accounts, the OP bank was constrained to liquidate the said FDs and adjusted the amounts towards the debit balances of the respective OD accounts in accordance with the applicable terms and conditions attached. It is father submitted that as per the statement of account provided to the complainant till 11.12.2013, the debit balances in the said OD no counts of the complainant maintained with respondent bank were Rs.51,834/- for OD a/c. no. 13432500001259 and Rs.25,542/- for OD alc no. 1343250000921 to be payable by the complainant. It is further submitted that the interest charged by the respondent bank in the said OD accounts was as per banking rules and regulations, contrary to the averments made by the complainant.*

*6. According to OP, after the merger of erstwhile Lord Krishna Bank with Centurion Bank of Punjab on 29.08.2007 and thereafter its amalgamation with them on 23.05.2008*

*under the scheme of Amalgamation under Section 44a of Banking Regulations Act, 1949, the accounts of complainant with their respective balances and fixed deposits, were transferred to them along with debit balances, if any. It is further submitted that due to the abovementioned transfer of the bank accounts and FDs to the OP bank, the FD numbers and account numbers as maintained with the erstwhile banks, also got accordingly changed as the same is a mandatory requirement after such amalgamations. It is further submitted that the same was accordingly informed to the complainant contrary to the averments made in the complaint. There was no confusion created for the complainant in this regard.*

*7.OP states that the present complaint suffers from vices of "suggestio falsie and suppressio vari". The complainant having made false averments and Incorrect facts in the complaint, the present complaint is liable to be dismissed in this ground with exemplary costs. The OP denied that the real trouble started when the erstwhile bank was merged with them. It submitted that at the time of amalgamation of erstwhile bank with the OP Bank, the debit amount got transferred from the Centurian Bank to it. When the complainant failed to regularize the said OD accounts despite reminders, the OP was constrained to liquidate the said FDs and adjust the amounts towards the debit balances of the respective OD accounts in accordance with the applicable terms and conditions.*

*8. It is further submitted by the OP that the Notice for Account in Overdrawn status dated 23/05/2010 and 28/06/2010 with respect to OD a/c 13432500001259 and dated-22/07/2010 and 22/08/2010 with respect to OD a/c 13432500000921, had been duly sent to the complainant's mailing address. It is stressed by OP that the said notice/Letter sent to the Complainant clearly mentioned that if the said account is not regularized with accrued interest on the amount within 15 days, the OP will be constrained to liquidate the fixed deposits and adjust the proceeds towards the debit balance in the complainant's respective accounts, as against the contentions*

*raised by the complainant .It is specifically denied by the OP that this is inflated figure which do not tally with complainant account. It is further denied that OP has made this figure as basis and multiplied compounding interest manifold and thus wiping off complainant's capital amount FDs. OP submitted that it has duly provided the statement of accounts to the complainant for ter understanding of the amounts with respect to his accounts from time to time, It is further interest of 18% shall be charged on the overdrawn amount.*

*9.The OP denied that it had misled even RBI and has shown Kavita Batra, Siddarth Batra, Monika Batra as partners, which is absolutely wrong. It is further denied that these persons never opened any Joint account. It is further denied by the OP that when the basis of calculation is wrong, how could the outcome be correct.*

*10. The OP further specifically denied that the complainant has been requesting to them to provide statement of complainant's account since inception, which they failed to do so. It is further denied that now the OP is claiming that they never got original papers from the previous banks.*

*11. The OP placed on record letters dated 22.7.2010, 22.8.2010, 16.4.2012 and 21.01.2014 written to the complainant but it did not place on record letters dated 23.5.2010 and 28.6.2010, alleged written to the complainant.”*

2. The District Commission after taking into consideration the material available on record, passed the order dated **02.06.2022**, whereby it held as under:

*“Oral arguments were advanced by the Complainant to 10<sup>th</sup> May, 20222. However, there was no appearance on behalf of the OP and therefore, their written arguments filed on record were considered. The complainant referred to the observations of the Banking Ombudsman made in her order dated 08.05.2014 on the complaint No.201314014004233 dated 13.11.2011 the complainant The Ombudsman, after going through the facts placed on record before her, has observed in para 4 of the final order to the effect that "the*

*Bank was not able to trace the account opening form as the same was opened with erstwhile Lord Krishna Bank which was merged with Centurian Bank and subsequently with Bank. The Bank furnished the screen shot of the overdraft account to substantiate that the overdraft account was held jointly with those people in whose names FDs were held by the complainant. The Bank also furnished account statement of some of his FDs accounts. However, the bank was not able to provide interest calculations for the period 2004 to 2008. The bank sought extension of time for submission of the same. The bank, vide its subsequent reply dated 07.03.2014 and 12.3.2014 submitted that as directed in the meeting regarding extraction of old data/information relating to details of fixed deposits, interest accrued/paid on deposits and interest charged on overdraft account, it had taken all possible efforts in extracting the data/details/information relating to the same and due to insufficient details/information, pertaining to the original deposits with erstwhile Lord Krishna Bank, however, it was unable to get all the required details from the system as the fixed deposit and the loan against the same was availed by the customer in the year 2004 with erstwhile Lord Krishna Bank and none of the initial fixed deposits booked in the year 2004 had been provided by the customer. For each and every fixed deposit a separate number was assigned by the system. The bank could not retrieve any details on the same as the data was very huge and ten years old. As regards the complainant's allegation of dwindling most of his FDR money, the bank mentioned that there was no siphoning off money by it. When the fixed deposit was opened, the maturity proceeds instructions were carried out in the system, based on the original instructions given by the depositor at the time of placement of deposit with the bank. The maturity proceeds and interest would have been raid/rolled over by the system as per the instructions conveyed by the customer while booking the original deposits with the bank. The bank certified that during the present of integration and merger of system data of two banks only the live data was migrated from one server to another server, hence the link could retrieve*

*only the live data details which they had already shared with the customer. The Ombudsman further noted the submission of the Of Bank "that it present there was no overdraft facility available in the account. It was further observed by the Ombudsman that "the Bank had furnished the details of FDRs and the interest amount debited in respect of the OD account post merger of banks. However, the bank was unable to provide complete calculation of interest of pre-merger period due to vintage and merger. The customer had also not provided complete details of deposit number/name of the depositor/start date/principal amount etc." The Ombudsman finally closed the case under clause 130 of the Banking Ombudsman Scheme, 2006 as it was felt that the resolution of the case would require consideration of elaborate documentary and oral evidence and the proceedings before the Banking Ombudsman are not appropriate for adjudication of such complaint.*

*16. Complainant relied on the copy of the Passbook of erstwhile Lord Krishna Bank to prove his case that before the ultimate merger of the said bank and Centurian Bank with the OP Bank, there was no amount due from him against the OD account maintained by him with the erstwhile banks. It is the allegation of the complainant that the OP has not taken the said passbook into consideration before arriving at the outstanding dues against his OD accounts. Further, the OP Bank has not been able to show any outstanding amount against his OD accounts. Complainant states that when the OP Bank itself admitted before the Banking Ombudsman that they did not have the old record then how could they arrive that there was outstanding balance of Rs.51834/-in his OD Account No.13432500001259 and Rs.25542-in OD A/c No.1343250000921.*

*17. After hearing the complainant and going through the facts of the case, the moot point for consideration in the present case is relating to adjustment of Overdraft Account, which amounts to commercial transaction. The complainant has nowhere stated in the complainant that the overdraft facility was taken by him for the purpose of earning his livelihood. At*

*this stage it will be necessary to refer to Section 2(1)(d) of the Consumer Protection Act, as it existed at the relevant time, which is as follows:*

*"2. (1) In this Act, unless the context otherwise requires,*

*(d) "consumer" means any person who,*

*(1) 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 service any commercial purpose,*

*Explanation For the purposes of this clause, "commercial purpose does and used by him and services availed by him exclusively for the purposes 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 selfemployment"*

*18 In this connection we may discuss here a recent judgment of the Hon'ble Supreme Court in the case of*

*Shrikant G Mantri v. Punjab National Bank, Civil Appeal No:11397 of 2016. decided on 22.02.2022 in which a similar case of overdraft facility was considered elaborately and the Hon'ble Court came to the conclusion that the OD facility comes under the purview of "Commercial Activity". However, there cannot be any straitjacket formula and such a question will have to be decided in the facts of each case, depending upon the evidence placed on record. In the said case, the Hon'ble Supreme Court observed that the purpose of the Consumer Protection Act has been succinctly described by that Court in the case of **Laxmi Engineering Works Vs. PSG. Industrial Institute, 6 (1995) 3 SCC 58312** which is as under:*

*"A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some powers a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It of the of is equally clear that these forums/commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. The forum so created is uninhibited by the requirement of court fee or the formal procedures of a court. Any consumer can go and file a complaint, Complaint need not necessarily be filed by the complainant himself, any recognized consumers association can espouse his case. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Governments can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services*

*purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for "business to consumer" disputes and not for "business to business" disputes. This scheme of the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal."*

*18. The Hon'ble Supreme Court in the case of **Shrikant G Mastri v. Punjab National Bank(supra)**, after analyzing the law laid down in the case of **Laxmi Engineering Works(supra)** further observed that: "It could thus be seen that this Court has clearly held that the idea of enacting the said Act was to help the consumers get justice and fair treatment in the matter of purchased large trading and services goods market dominated by and availed and by them in manufacturing bodies. It has been held that the entire Act revolves round the consumer and is designed to protect his interest. It provides for "business to consumer" disputes and not for "business to business disputes. It has been held that forums commissions provided by the said Act are not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services"*

*19. Based on the facts presented before us in the present complaint and following the law laid down in the aforesaid case of **Shrikant G Mantri v. Punjab National Bank(supra)**, we are of the view that the complainant cannot be termed as a consumer under Section 2(1)(d)(ii) of the Consumer Protection Act, 1986 as amended from time to time. No where in the complaint, the complainant has propounded that he had taken the*

*overdraft facility for the purpose of earning his livelihood.*

*20. We may also note here that the issue of maintainability of the complaint can be decided at any stage of the proceedings. Here we are enlightened by the observations of the Hon'ble National Commission in Koshy Varghese Vs HDFC Bank Ltd III (2017) CPJ 52 =(NC) that it is a settled law that the question in which law point is involved can be decided at any stage of the proceedings of the case. File be consigned to record room.”*

3. Aggrieved by the aforesaid order of the District Commission, the Appellant has preferred the present Appeal on the ground that the District Commission has erred in dismissing the complaint of the Appellant on the ground that the Appellant does not fall within the definition of “consumer” under Section 2(1)(d) of the Consumer Protection Act, 1986. The Appellant further submitted that the Appellant was holding individual saving bank account and not a commercial or corporate borrower. The Appellant also submitted that the District Commission has failed to appreciate that the Respondent failed to show that the Appellant was having a current bank account or overdraft account which itself shows that the Appellant falls within the definition of consumer as defined under the Consumer Protection Act, 1986.
4. The Respondent, on the other hand, contested the present Appeal and submitted that the District Commission had rightly dismissed the complaint as the overdraft facility availed by the Appellant amounted to a commercial transaction and therefore the complaint was not maintainable under the Consumer Protection Act.
5. The written submissions have been filed on behalf of the Appellant and the Respondent and the same have been duly considered by this Commission.
6. We have perused the material available on record.

7. The *main question* for consideration before us is *whether the District Commission has erred in holding that the Appellant does not fall within the definition of “consumer” under Section 2(1)(d) of the Consumer Protection Act, 1986.*
8. On perusal of the record, we find that it is an admitted fact that the Appellant had availed an overdraft facility against twelve Fixed Deposits with Lord Krishna Bank during the period 2002–2006. It is further evident that Lord Krishna Bank underwent amalgamation with Centurian Bank of Punjab Limited in the year 2007, which was thereafter merged with the Respondent Bank in the year 2008. The Appellant has contended that the Respondent Bank, without any prior intimation or authorization, has acted in an arbitrary and unauthorized manner by transferring the proceeds of the Fixed Deposit Receipts to Cash Credit Account No. 1377702000000552 and other overdraft accounts.
9. Therefore, now the main issue for consideration before us is whether the overdraft facility, availed by the Appellant falls within the “commercial purpose” as defined under Consumer Protection Act, 1986.
10. At this stage, it is necessary to refer to Section 2(1)(d) of the Act, which defines the definition of “consumer” as follows:

*(d) “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].*

*[Explanation.—For the purposes of this clause, “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;]*

11. From the above definition, it is clear that the services availed by the consumer for Commercial Purpose does not falls within the definition of Consumer unless such service is availed by the consumer exclusively for the purpose of earning his livelihood by means of self-employment.
12. Upon perusal of the record, it is evident that the District Commission has placed reliance upon the judgment of the Hon’ble Supreme Court in ***Shrikant G. Mantri v. Punjab National Bank (Civil Appeal No. 11397 of 2016, decided on 22.02.2022)***, wherein the issue pertaining to overdraft facilities was examined. However, a careful reading of the said judgment reveals that the Hon’ble Apex Court has unequivocally held that there exists no straightjacket formula for determining whether a transaction constitutes a commercial purpose, and such determination must necessarily depend upon the facts and evidence of each individual case.
13. In the present matter, it is observed that the Respondent has failed to adduce any material evidence to establish that the overdraft facility availed by the Appellant was for the purpose of carrying on any business or commercial activity. Further, we noted that the Appellant, being an individual, has not been shown to be engaged in any trade, commerce, or profit-oriented venture in relation to the said transaction.

14. Further, we find that the District Commission has failed to consider the crucial aspect as to the purpose for which the overdraft facility was availed. The judgment relied upon clearly stipulates that the determination of “commercial purpose” is dependent upon the facts and circumstances of each case; however, no such observation was made in the present case.
15. Furthermore, it is a settled principle that the burden to prove that a transaction falls within the ambit of “commercial purpose” lies upon the party asserting the same. In this regard, reliance may be placed upon the judgment of the Hon’ble National Commission in *Kavita Ahuja v. Shipra Estates Ltd.*, wherein it has been categorically held that the onus to establish the commercial nature of a transaction rests upon the party making such an allegation.
16. Additionally, mere existence of multiple Fixed Deposits and the availing of an overdraft facility against them cannot, by itself, lead to an inference that the transaction is commercial in nature. There is no material on record to suggest that the said facility was availed for large-scale business operations or with an intent to generate commercial profit.
17. It is also observed that the District Commission failed to duly appreciate the material evidence placed on record, including the passbook entries relied upon by the Appellant as well as the admission made before the Banking Ombudsman regarding the non-availability of complete historical records. Instead of adjudicating the matter on merits, the complaint came to be dismissed solely on the ground of maintainability.
18. In light of the aforesaid discussion and the principles laid down by the Hon’ble Supreme Court in *Shrikant G. Mantri v. Punjab National Bank* and by the Hon’ble National Commission in *Kavita Ahuja v. Shipra Estates Ltd.*, we are of the considered opinion that the Appellant cannot be excluded from the definition of “consumer” under Section 2(1)(d) of the Act merely on the presumption that the overdraft facility ipso facto constitutes a commercial activity, in the absence of any cogent evidence to that effect.

19. From the aforesaid dicta and considering the facts of the present case, we opine that the District Commission has erred in dismissing the Consumer Complaint no. 662/2014 on the ground that the Appellant do not fall within the definition of 'Consumer' as defined under 2(1)(d) of Consumer Protection Act, 1986.
20. Therefore, we *set aside* the order dated **02.06.2022** passed by the District Consumer Disputes Redressal Commission (West District) and *the matter is remanded to the District Consumer Disputes Redressal Commission-III, (West), C-150-151, Community Centre, Janakpuri, New Delhi-110058 to decide it upon merits.*
21. *Resultantly, the present Appeal stands allowed in the aforementioned terms.*
22. *Parties are directed to appear before the District Commission, (West Distt.) on 28.04.2026.*
23. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
24. A copy of this judgment be provided to all the parties free of cost as mandated by the Consumer Protection Act, 2019. The judgment be uploaded forthwith on <https://e-jagriti.gov>. in for perusal of the parties.
25. *Copy of the present Judgment be sent to the District Consumer Disputes Redressal Commission-III, (West), C-150-151, Community Centre, Janakpuri, New Delhi-110058.*
26. File be consigned to record room along with a copy of this Judgment

**(JUSTICE SANGITA DHINGRA SEHGAL)**  
**PRESIDENT**

**(BIMLA KUMARI)**  
**MEMBER (FEMALE)**

Pronounced On:  
**24.03.2026**

LR-AJ