

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on : 11.03.2010
Date of decision : 26.03.2010

+ WP (C) No.1387/2001

ANKUR EXPORTS PVT. LTD.....PETITIONER

Through : Mr.Abhinav Vashisht,
Mr. Debojit Bhattacharya,
Ms.Harshita Priyanka,
Advocates

- V E R S U S -

MONOPOLIES AND RESTRICTIVE
TRADE PRACTICES COMMISSION AND ORS.

... ..RESPONDENTS

Through : R-1: Proforma Party.

Ms.Praveena Gautam
and Mr.Abhishek Baid,
Advocates for R-2 (a) to
(d).

Ms.Parul Sharma and
Mr.Sanjeev Kohli,
Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MS. JUSTICE VEENA BIRBAL

Whether the Reporters of local papers
may be allowed to see the judgment? YES

To be referred to Reporter or not? YES

Whether the judgment should be
reported in the Digest? YES

SANJAY KISHAN KAUL, J.

1. The present writ petition has been filed under Article
226 of the Constitution of India seeking to challenge the

impugned order dated 13.11.2000 of the Monopolies and Restrictive Trade Practices Commission ('the Commission' for short) which raises the issue of interpretation of Section 12-B of the Monopolies and Restrictive Trade Practices Act, 1969 ('the said Act' for short).

2. It is the case of the petitioner that an application under Section 12-B of the said Act for compensation is maintainable as a separate legal remedy irrespective of the other legal proceedings initiated by the petitioner while on the other hand Respondent No.2, Bank of Baroda, claims that such an application is not maintainable in view of the earlier legal proceedings instituted by the petitioner.
3. The facts of the case are that the petitioner-Company was incorporated and registered as a private limited company under the Companies Act, 1956 in the year 1975 and is a recognized export house dealing with export of carpets, durries and other allied products. The petitioner rooted its transaction in trade through Bank of Baroda since its very inception. The petitioner claims to have authorized one Mr. Girwar Singh, Manager and Mr.Sharad Shah, Accountant to jointly operate its accounts with R-2/Bank in pursuance to resolutions passed on 01.06.1987 and 12.05.1989. These two persons were divested of the power to operate the

account by resolution dated 31.05.1990 and 24.02.1993 respectively.

4. It is the claim of the petitioner that in view of its adherence to the financial discipline of R-2/Bank, the facilities advanced by R-2/Bank were enhanced including grant of packing credit facilities to the extent of Rs.75 lakhs and foreign bill purchase of the export consignment up to the extent of Rs. 95 lakhs.
5. In February, 1996 when Mr.Sharad Shah went on leave, the Director had an occasion to deal with R-2/Bank when for the first time it came to light that there have been numerous illegal acts of omission and commission in respect of the funds of the petitioner and there had been mis-utilization and mis-appropriation out of the accounts with respondent no.2/Bank. It is alleged that such acts were in collusion with certain officials of R-2/Bank including its then Chief Manager resulting in large scale defalcation of the funds of the petitioner-Company.
6. The petitioner requested its auditors to conduct an independent enquiry and reports were submitted. R-2/Bank, however, refused to co-operate. The petitioner claims that there have been improper transaction of funds and on non-crediting to the account of the petitioner. All endeavours to sort out the disputes failed. On the other hand, the R-2/Bank started taking steps to freeze the accounts and credit facilities of the petitioner-

Company and the petitioner changed its bankers in July, 1996.

7. The petitioner instituted three civil suits against R-2/Bank in respect of the alleged void cheques on which unlawful monies were drawn from its accounts and for rendition of accounts. A writ petition was also filed in the Rajasthan High Court in respect of the unlawful transfer of funds and the failure of the petitioner to co-operate.
8. These proceedings were followed up by an application filed by the petitioner under Section 12-B of the said Act on the assertion of the petitioner that the respondents had indulged in unfair and restrictive trade practices which caused grave loss to the petitioner and thus the respondents were liable to compensate the petitioner for the losses.
9. The aforesaid application was contested by R-2/Bank. The said respondent pleaded that in view of the earlier proceedings initiated by the petitioner, the application under the said Act was not maintainable. In terms of the impugned order, the Commission agreed to the said plea of the respondents and came to the conclusion that the Trial Court proceedings could not go on in view of the certain orders even earlier passed by the Commission in different proceedings to that effect.

10. In order to appreciate rival plea of the parties, it is necessary to re-produce Section 12-B of the said Act, which reads as under:

“12-B. POWER OF THE COMMISSION TO AWARD COMPENSATION.

(1) Where, as a result of the monopolistic or restrictive, or unfair, trade practice, carried on by any undertaking or any person, any loss or damage is caused to the Central Government, or any State Government or any trader or class of traders or any consumer, such Government or, as the case may be, trader or class of traders or consumer may, without prejudice to the right of such Government, trader or class of traders or consumer to institute a suit for the recovery of any compensation for the loss or damage so caused, make an application to the Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person, of such amount as the Commission may determine as compensation for the loss or damage so caused.

(2) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Commission, make an application, under that sub-section, for and on behalf of, or for the benefit of, the persons so interested, and thereupon the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon.

(3) The Commission may, after an inquiry made into the allegations made in the application filed under sub-section (1), make an order directing the owner of the undertaking or other person to make payment, to the applicant, of the amount determined by it as realisable from the undertaking or the owner thereof, or, as the case may be, from the other person, as compensation for the loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair, trade practice carried on by such undertaking or other person.

(4) Where a decree for the recovery of any

amount as compensation for any loss or damage referred to in sub-section (1) has been passed by any court in favour of any person or persons referred to in sub-section (1), or, as the case may be, sub-section (2), the amount, if any, paid or recovered in pursuance of the order made by the Commission under sub-section (3) shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance, if any, left after such set off."

11. It is the case of the petitioner that while Section 12-B (1) aforesaid enables an application to be filed for compensation, Section 12-B(4) provides that the amount of compensation recovered in pursuance to the order of the Commission, would be set off against the amount if any payable under any decree of any other court passed in favour of the applicant. It is thus the submission of the petitioner that the general principal of parallel proceedings not being maintainable would not apply in case of a special statute like the said Act where a specific provision has been made for claiming damages under the said Act with a right of set off against the amount payable under civil proceedings.
12. The aforesaid plea is sought to be fortified by Regulation 77 of the Monopolies and Restrictive Trade Practices Commission Regulations, 1991 which provides that every application made under Section 12-B shall be supported by an affidavit of the applicant in the form appended to the Regulations and the format of the affidavit in turn inter alia provides as under:

“(5) I undertake that if I receive any amount from any source in connection with or relating to the aforesaid compensation, I will intimate the same to the MRTTP Commission.”

13. It was thus the submission of learned counsel for the petitioner that reading of Section 12-B(4) and Regulation 77 along with format of the affidavit left no manner of doubt that two or more parallel proceedings were envisaged, but there would be no duplication in respect of the payment of damages. Thus, instead of debarment of parallel proceedings Section 12-B it is stated to recognize such parallel proceedings being maintained simultaneously. Section 12-B being a substantive provision, the rights so acquired were submitted to be one without prejudice to right of an applicant to institute inter alia suit for recovery of compensation for loss/damages and the only exception to the same is that there should not be another proceedings filed on the same cause of action before the Commission or before any authority under the Consumer Protection Act, 1986 as set out in Regulation 77, which reads as under:

“77. Application for compensation

1) Every application made under Section 12B of the Act for compensation shall be supported by an affidavit of the person making the application in the form appended to these regulations stating the particulars and the extent of the loss or damage caused as a result of the alleged monopolistic, restrict or unfair trade practice and also stating that he has not filed any application either before the Commission or before any authority under the Consumer Protection Act, 1986 (68 of 1986) and be

filed with the Secretary with five extra copies and one additional copy for each respondent.

2 The Commission may, before making any order under Section 12A or section 12B of the Act, direct the Director-General to make such investigation as may be deemed necessary into the allegations and submit a report thereon.”

14. Learned counsel for the petitioner in order to substantiate his pleas referred to the judgment M/s Pennwalt (I) Ltd v. Monopolies and Restrictive Trade Practices Commission; AIR 1999 Del 23. In terms of the judgment, a distinction was drawn between Section 12-B on one side and Section 11 and Section 36C on the other side of the said Act inasmuch as there was no requirement for a parallel investigation by the Director General into the allegations levelled in the claim petition under Section 12-B of the said Act.

Under Section 12-B the applicant was required to prove not only the quantum of compensation on account of loss and damage, but was also required to prove the indulgence by an undertaking or by any person in monopolistic or restrictive or unfair trade practice.

15. In Man Roland Druckmaschinen Ag. V. Multicolour Offset Ltd; (2004) 7 SCC 447, the Supreme Court categorically concluded that the remedies available under the said Act are in addition to the other remedies under other statutes and the proceedings under the said Act are thus in addition to and distinct from those before a civil court particularly in view of Section 4(1) and Section 12-B of

the said Act. Para 10 of the said judgment reads as under:

"10. But although the Commission rejected the first submission of the appellant on an untenable ground, nevertheless, the conclusion arrived at was correct. The principle which we have outlined in the previous paragraph is applicable to a situation where the court is called upon to enforce rights arising under a contract which contains such a jurisdictional clause. The principle does not apply to proceedings under the Act which provide for statutory remedies in respect of statutorily defined offences. The remedies available under the Act are additional to the usual remedies available under the Contract Act to the parties. This is clear inter alia from Sections 4(1) and 12-B(1) of the Act, both of which indicate that the proceedings under the Act are additional to, and therefore distinct from, proceedings before a civil court. The powers invoked by the complainant under the Act are not exercisable otherwise than under the Act and they are certainly not exercisable by courts in Germany. The jurisdictional clause in the contract would, therefore, not apply to proceedings before the Commission. This is so even assuming that the Commission is a "court" as contended by the appellant on the basis of *Canara Bank v. Nuclear Power Corpn. of India Ltd.* and *P. Sarathy v. State Bank of India.*"

In order to appreciate the aforesaid observations, we consider it appropriate to reproduce Section 4 (1) of the said Act as under:

**"4. APPLICATION OF OTHER LAWS
NOT BARRED.**

(1) Save as otherwise provided in subsection (2) or elsewhere in this Act, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force."

16. The judgment in Reckitt Benckiser (India) Ltd v. Hindustan Lever Limited; 2008 (5) RAJ 664 (Del) also is to the aforesaid effect. The relevant paragraphs are reproduced below:

"53. As pointed out above, even the submissions made by the learned Counsel for the defendant on the basis of the provisions of the MRTP Act, had been advanced more as an issue disentitling the plaintiff from the relief of injunction than as a jurisdictional one. The learned Counsel for the defendant was candid in this regard, perhaps, being aware of the fact that the MRTP Act does not set up any bar, either express or implied, to the institution of the present suit. The provisions of Section 9 CPC are clear and the decision of this Court in the case of Citicorp & Another (supra) is also clear. The plaintiff's right to seek the common law remedy in the civil courts has not been taken away by the enactment of the MRTP Act. The provisions of Section 4 as well as Section 12B of the MRTP Act put the case beyond any doubt that the MRTP Act does not in any way bar the institution of a suit such as the present one.

54. As regards the arguments purportedly based on Section 41(h) of the Specific Relief Act, 1963, it must be noted that it only deals with injunctions. The present suit concerns itself not only with injunction but also damages and punitive damages. Apart from this, Section 41(h) carries several important expressions. They being: "equally efficacious relief"; "can certainly be obtained"; and "by any other usual mode of proceedings." The remedies under the MRTP Act are certainly not as efficacious a relief as an injunction granted by a court. Section 36D of the MRTP Act, as indicated above, empowers the Commission to inquire into any unfair trade practice which may come before it for inquiry and, if, after such inquiry, it is of the opinion that the practice is prejudicial to the public interest, or to the interest of any consumer

or consumers generally, then the Commission may by order direct, inter alia, that the practice shall be discontinued or shall not be repeated. It is clear that the Commission has to examine the case of an unfair trade practice from the stand-point of prejudice to public interest or to the interest of any consumer or consumers generally. It does not examine or inquire into an unfair trade practice from the stand-point of competitor which is purely a private interest. therefore, the scope of an inquiry into an unfair trade practice before the MRTTP Commission is entirely different from the scope of consideration of an unfair trade practice in a civil court in a suit instituted by a competitor against another competitor with regard to disparaging advertisement. I do not see how the directions which may be passed under Section 36D of the MRTTP Act can be regarded as an equally efficacious relief."

(emphasis supplied)

17. Learned counsel for the petitioner pleaded that the rationale of the impugned order is the doctrine of election of remedies i.e. the petitioner/claimant must choose between or elect one of the two or more conflicting remedies available. The said doctrine was pleaded to have no application as it applies to the adoption of an unequivocal act of one or two or more inconsistent remedial rights which has the effect of precluding a resort to the others. The remedy under Section 12-B of the said Act being independent of any other remedy, there could not be any conflict or repugnance between the remedies.
18. To explain the operation of the doctrine of election of remedies, learned counsel drew our attention to the American jurisprudence (2nd Edition) Vol.25 Pages 652-

656, more specifically to the specific provisions which are as under:

“ 8. Generally

It is apparent from the definition and character of the doctrine of election of remedies that certain well-recognized conditions must exist before the election becomes operative. They may be termed the ‘elements of election’, and their presence is essential in every instance in which the doctrine is to be successfully invoked. Stated briefly, these essential conditions or elements are: 1) the existence of two or more remedies; 2) the inconsistency between such remedies; and 3) a choice of one of them. If any one of these elements is absent, the doctrine will not apply to preclude the remedy not exercised.”

10. Inconsistent remedies

The doctrine of election of remedies is applicable only where there are two or more co-existent remedies available to the litigant at the time of the election which are repugnant and inconsistent. This rule is upon the theory that, of several inconsistent remedies, the pursuit of one necessarily involves or implies the negation of the others. The rule of irrevocable election does not apply where the remedies are concurrent or cumulative merely, or where they are for the enforcement of different and distinct rights of the redress of different and distinct wrongs.

12. Concurrent or cumulative and consistent remedies

The doctrine of election of remedies does not apply where the available remedies are concurrent or cumulative and consistent. Where the remedies are not inconsistent, but are alternative and concurrent there is no bar until satisfaction has been obtained, unless the plaintiff has gained an advantage or the defendant has suffered a disadvantage. Because satisfaction is the bar, in some cases, parties have been allowed to take judgment independently on more than one remedy on the same set of facts.

Applying the test of inconsistency of remedies, it is held that a remedy is not inconsistent where it

merely seeks further relief which the court may grant inconsistent with that already given, or is of such a character as to indicate that the adoption of one is not an intentional relinquishment of the other or others.

13. Distinct and independent grounds of action

Distinct and independent grounds of action arising from the same transaction and which may be concurrently or consecutively pursued to satisfaction are not subject to the doctrine of election of remedies. Accordingly, an action on a contract induced by fraud is not inconsistent with an action for damage for the fraud. Nor is an action against an insurer for failure to pay under an insurance policy for damages to an automobile inconsistent with an action for conversion against the insurer for taking possession of the automobile without authorization.”

(emphasis supplied)

19. The aforesaid doctrine has also been elucidated in the case of Transcore v. Union of India & Anr.; (2008) 1 SCC 125 in the context of banks or financial institutions which have elected to seek a remedy in terms of Recovery of Debts due to Banks and Financial Institutions Act, 1993 invoking also the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for realizing the secured assets without withdrawing or abandoning the original application filed under the DRT Act. It was observed in para 64 as under:

64. In the light of the above discussion, we now examine the doctrine of election. There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of them. If any one of the

three elements is not there, the doctrine will not apply. According to *American Jurisprudence*, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to *Snell's Principles of Equity* (31st Edn., p.119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application.

20. It is in the aforesaid context that learned counsel for the petitioner pleaded that the remedies availed of by the petitioner were concurrent or cumulative and consistent and based on distinct and independent grounds of action albeit arising from the same set of transactions/facts.
21. Learned counsel further submitted that the courts must weigh against interpreting a provision of law in such a manner that part of it is nugatory or otiose which is what would happen if the impugned order is sustained.
22. Section 12-B of the said Act provides for a set off/adjustment of amounts recovered in other proceedings which in turn would entitle the petitioner to maintain both, the proceedings under the said Act and civil proceedings simultaneously. Each and every provision of statute must be given effect to and no provision should be rendered invalid or ineffective. In this context, learned counsel relied upon the observations of the Full Bench of this Court in Badru

135 as under:

"13.The office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private comodo, and to add force and life to the cure and remedy, according to the true intent of makers of the Act. Pro bono publico. (See in this connection Maxwell on the Interpretation of Statutes, Twelfth Edition page 40). It has been observed on page 45 of that book:

"If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

It is well settled that in construing the provisions of a statute courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute (See in this connection Siraj-ul-Haq v. S. C. Board of Waqf, U. P.; AIR 1959 SC 198. In the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, [1960]1SCR890 = AIR 1960 SC 137, the Supreme Court while dealing with legislation conferring further protection on the tenants, observed:

"In interpreting provisions of such beneficial legislation the Courts always lean in favor of that interpretation which will further the beneficial purpose of that legislation."

23. Learned counsel for the petitioner pleaded that despite his best endeavour, he could not locate any identical provision in a statute in other countries though in Australia and Canada provisions do exist for awarding damages/compensation by taking into account any other amounts paid or ordered to be paid by the person against whom the order was made and that in any proceedings a claimant cannot recover damages greater than the damages actually suffered having regard to the damages previously recovered by the claimant in respect of such damage/loss. Halsbury's laws of India has done a study/comparison with respect to anti-monopolistic laws of various countries and the laws in other countries in that behalf provide for compensation or damages for prohibited trade practices. In USA, Section 7 of the US Sherman Act, 1890 and Section 4 of the Clayton Act, 1914 provide that any person who has suffered loss or damage as a result of any act or omission forbidden or declared to be unlawful under those laws may claim threefold damages or 'triple damages' besides the cost. In Australia, Section 82 of the Australian Trade Practices Act, 1974 provides that a person who suffers loss or damage by conduct of another person that was done in contravention of a provision of Part IV or V of that Act may recover the amount of the loss or damage by action against that other person or against any person involved in the

contravention. Similarly, in Canada, the Canadian Compensation Act, 1985 also provides for the remedy of compensation for breach of anti-trust laws in that country.

24. Learned counsel for R-2 & R-3 (R-1 being the Commission itself) on the other hand sought to support the impugned order and pleaded that this was the consistent practice of the Commission as is apparent from the earlier orders passed by the Commission.
25. Learned counsel for the respondents referred to the historical aspect of introduction of Section 12-B of the said Act which was not contained in the Act as originally framed but came to be incorporated in pursuance to the recommendations of the Sachar Committee. By reference to the report of the Committee, it was pleaded that the same does not suggest parallel proceeding in respect of the same relief, but on the contrary suggested that the Commission should be the sole authority to decide on the compensation and damages aspect if the respondent entity was found to be indulging in monopolistic, restrictive or unfair trade practices.
26. Learned counsel rightly could not dispute the reading of the plain language of Section 12-B of the said Act but contended that what was envisaged was a proceeding under Section 12-B of the said Act and thereafter a suit to be filed. The said Section did not envisage a similar leave being available to the aggrieved party to file an

application under Section 12-B of the said Act if he had already filed a civil suit in a court of competent jurisdiction. The rationale for the same was that a civil court covers a wider area as under Section 9 of the Code of Civil Procedure, 1908, the civil court has jurisdiction to try all suits of civil nature except the suits of which cognizance is either expressly or impliedly barred. In case of an illegal or prohibited practice or a monopolistic, restrictive or unfair trade practice, a civil suit could be filed to recover damages which might have been caused because of such practice but the jurisdiction under Section 12-B of the said Act was restrictive and such a practice was a pre-requisite to any claim of compensation.

27. Learned counsel also submitted that the proceedings under the said Act were not summary proceedings, but in the given facts of the case would be time consuming. Such proceedings may not come to an end during the period of three years which would be the limitation to file a civil suit. In order to obviate a party from being remediless, in case he did not succeed in an application under Section 12-B of the said Act, leave to file a civil suit has been envisaged, the scope of which is wider in respect of the reliefs which can be claimed and granted.
28. In view of the aforesaid, learned counsel sought to interpret the provisions of Section 12-B of the said Act to imply that an aggrieved party has an option to initiate

proceedings either under Section 12-B of the said Act or to initiate a civil suit. Both could not be initiated simultaneously. The option did not provide for an aggrieved party to file a civil suit first and then to file an application also under Section 12-B of the said Act. However, during the pendency of the proceedings under Section 12-B of the said Act, civil suit could be filed.

29. Learned counsel sought to draw strength from the observations of the Full Bench of the Commission in Y.P.Mahna v. Bharat Television; 1994 81 Company Cases 277 where the provision for awarding of compensation by the Commission for loss or damage caused by monopolistic, restrictive or unfair trade practice under Section 12-B of the said Act was held to provide an additional forum to the aggrieved party while preserving the remedy before the civil court. It is in this context that the amount held by the commission to be payable under Section 12-B(3) of the said Act is to be set off against the amount payable under decree for recovery of any amount as compensation for loss or damage referred in Section 12-B(1) of the said Act. These observations, it may noted, were in the context of the fact that introduction of Section 12-B of the said Act, did not imply that prior to the said enactment, the aggrieved consumer had no right to claim compensation with regard to restrictive trade practices. Section 12-B of the said Act was thus held not to enact a substantive

provision but to deal with the matter of procedure and would have prospective operation for unfair trade practices but retrospective operation for monopolistic and restrictive trade practices.

30. The said observations were sought to be utilized by learned counsel for the respondents to plead that filing of proceedings under Section 12-B of the said Act preserved the right to file a civil suit but not vice versa.
31. Learned counsel further pointed out that even in Man Roland Druckmaschinen Ag. V. Multicolour Offset Ltd's case (supra) the Supreme Court had held the proceedings under Section 12-B of the said Act to be in the nature of additional proceedings and not derogatory to the civil proceedings, but the judgment did not deal with a situation where a suit had already been initiated and during the pendency of the civil court proceedings, an application was sought to be filed under Section 12-B of the said Act.
32. The substratum of case of the respondent rests on the general principle that neither law nor jurisprudence encourages parallel proceedings for the same relief unless it is specifically so provided and referred to the consistent view taken by the Commission in this behalf. Learned counsel referred to the judgment of the Division Bench in M.S. Shoes East Ltd v. MRTP & Ors.; 107 (2003) DLT 595 but in our considered view the judgment would really have no application because it dealt with the issue

of the Commission dismissing the petitioner's claim as barred by limitation under Section 12-B of the said Act. It was held that that the legislature in its wisdom has not specified the period of limitation but the claim should be filed within a reasonable period of time and thus logically be filed within three years. Learned counsel also submitted that the doctrine of election has been emphasized by the Supreme Court in various pronouncements so that a party which has chosen to redress its grievance cannot agitate the same before another forum and the subsequent proceedings cannot be permitted to continue.

33. In Pragati Construction Co.v. Otis Elevators Co.(India) Ltd.; (1993) CTJ 397 the Commission took a view against continuation of parallel proceedings under Section 12-A of the said Act on the grounds that the Commission has been consistently discouraging parallel proceedings raising substantially the same issues of fact before two forums – one before the Commission and the other before some other adjudicatory body, tribunal or court.
34. In Prem Nath Motors Ltd v. Ind Auto Limited; (I) 2003 CPJ 17, the Commission held that once the remedy of arbitration was availed of, parallel proceedings under Section 13(2) of the said Act could not be maintained.
35. The National Consumer Dispute Redressal Commission in M/s.Special Machines, Karnal v. Punjab National Bank & Ors.; I (1991) CPJ 78 held that where a subject matter

was sub judice before a civil court, the Consumer Commission would not deal with the same subject matter.

36. In Ram Sumer Puri Mahant v. State of UP and Ors.; (1985) 1SCC 427 in case of a pending civil litigation relating to a property, it was held that there was no justification to initiate parallel proceedings under Section 145 of CPC. In State of HP and Ors.v. Surinder Singh Banolta; (2006) 12 SCC 484 in the context of an election in respect of elections to zila parishad or panchayat it was held that two parallel proceedings should not be maintained.
37. Learned counsel for the respondents in the end contended that the petitioner had filed not only one but three civil suits against the respondent in respect of the same subject matter and transaction. It also filed a writ petition and another complaint before the National Consumer Dispute Redressal Commission. All the proceedings were still pending. The three suits and the writ petition were filed prior to the application under Section 12-B of the said Act. The respondents had filed a suit for recovery against the petitioner before the DRT which was pending. Thus the petitioner had taken recourse to civil remedy and could not be permitted to maintain parallel proceedings before the said Commission.

38. We have examined the aforesaid submission in the context of the limited controversy as to whether parallel proceedings under Section 12-B of the said Act can be maintained. There is no doubt about the general principle of law that parallel proceedings on the same course of action should be discouraged. Rationale for the same is based on the concept of election of remedies. What are the essential ingredients while determining this principle of election of remedies has been elucidated in American jurisprudence which has been extracted aforesaid. The essential conditions are :
- i) The existence of two or more remedies.
 - ii)The inconsistencies between such remedies.
 - iii)A choice of one of them.
39. It has been clearly explained that absence of even one of those elements would imply that the doctrine will not preclude any remedy. It has no application where remedies are concurrent or cumulative or where for enforcement of different and distinct rights. In case of alternative and concurrent remedies, there is no bar till satisfaction has been obtained unless the plaintiff has gained an advantage or the defendant has suffered a disadvantage. The moot point which thus arises for consideration is not only whether the aforesaid parameters are satisfied which in turn would depend on the interpretation of Section 12-B of the said Act, but if the legislature has specifically given the right to

maintain a parallel proceeding, the will of the legislature cannot be taken away by giving a different interpretation to the statute.

40. If in the aforesaid context, the provisions of Section 12-B of the said Act are examined, more specifically sub section 4, it is abundantly clear that the provision envisages the grant of damages under sub section (1) and simultaneously damages also being payable under a decree of a civil court. In order that the claimant does not derive any undue advantage, adjustment of compensation under sub section (1) of Section 12-B of the said Act has to be set off against the amount payable under a decree. Thus a person cannot get an advantage of a dual amount and the effect would be that the total quantum of damages payable would be the higher amount determined and the lower amount would be set off against the higher amount. The regulations framed under the said Act provide in Regulation 77 that every application under Section 12-B of the said Act has to be supported by an affidavit in the prescribed format. The format in para 5 specifically requires for an undertaking to be given by the claimant that if he/she receives any amount from any source, in connection or relation to the compensation, he would intimate the same to the Commission. Thus if a decree is passed in his favour, the said fact would have to be informed to

the Commission. This is in order to facilitate adjustment as provided for in Section 12-B(4) of the said Act.

41. We are unable to accept the plea of leaned counsel for the respondents that there are three eventualities and parallel proceedings can be maintained only in one eventuality. The eventualities set out by learned counsel for the respondents are as under:

i) Proceedings are filed simultaneously in the civil court and under Section 12-B of the said Act.

ii) Proceedings are filed by way of a civil suit and subsequently the application is filed under Section 12-B of the said Act.

iii) Proceedings are pending under Section 12-B of the said Act and during such pendency a civil suit is filed.

42. The respondents sought to deny the maintainability of proceedings under Section 12-B of the said Act in the first two eventualities. We find no such limitation on a plain reading of the Act.

43. We fail to appreciate how if during the pendency of an application under Section 12-B of the said Act a suit can be filed (which position is not disputed by learned counsel for the respondents) the vice versa is not permissible. The plea that the jurisdiction of a civil court being wider and thus only a subsequent civil suit is maintainable is spacious. The affidavit to be filed under Regulation 77 itself envisages the possibility of a civil court decree and the damages therefrom to be intimated

to the Commission determining the application under Section 12-B(4) of the said Act.

44. Thus as to whether a suit is filed first or an application under Section 12-B of the said Act first is immaterial to determine whether parallel proceedings can be maintained. Either such parallel proceedings are maintainable or they are not maintainable. As we have observed aforesaid, from a plain reading of Section 12-B of the said Act such parallel proceedings are maintainable.
45. Our aforesaid view finds support from the observations of the Supreme Court in Man Roland Druckmaschinen Ag. V. Multicolour Offset Ltd's case (supra) as the remedies available under the said Act were held to be additional to the usual remedies available under the contract act to the parties and in that context a reference was specifically made to Section 12-B(1) of the said Act.
46. Justice Badar Durrez Ahmed, J. in Reckitt Benckiser (India) Ltd. v. Hindustan Lever Limited's case (supra) in the context of disparaging advertisements explained that the Commission has to examine the case of an unfair trade practice from the stand-point of prejudice to public interest or to the interest of any consumer or consumers generally, but it does not examine or inquire into an unfair trade practice from the stand-point of competitor which is purely a private interest. Thus, it was held that the scope of an inquiry into unfair trade

practice before the Commission was entirely different from the scope of consideration of an unfair trade practice in a civil court in a suit instituted by a competitor against another competitor with regard to disparaging advertisement.

47. We also find that from a plain reading of Section 4 of the said Act that the provisions of the said Act are in addition to and not in derogation of any law for the time being in force.
48. We are in agreement with the submissions of learned counsel for the petitioner that a reading of the statutory provisions to the contrary would make part of the provisions of Section 12-B(4) of the said Act otiose and such an interpretation has to be clearly avoided in view of the observations in Badru Ram Dhanna Ram v. Ram Chander Khibru's case (supra).
49. The respondents cannot be permitted to plead that the Sachar Committee which formed the basis of introduction of Section 12-B of the said Act did not suggest parallel proceedings and thus the said Section should take colour from a reading of the report of the Sachar Committee. The Sachar Committee made suggestions and ultimately the Parliament enacted the law. The enacted law must be given its full effect. If Section 12-B of the said Act as enacted permits parallel proceedings, then the same cannot be restricted. In fact, learned counsel for the respondents argued that

the relief under Section 12-B is restrictive in nature. If it is so, it is only within those parameters that the remedy of damages would be available on the claimant establishing a monopolistic, restrictive or unfair trade practice. There is no disadvantage to the respondents inasmuch as the petitioner cannot recover the amount twice over. No doubt, the respondents would have to defend legal proceedings in more than one forum, but then that is what has been specifically permitted by Section 12-B of the said Act and the principle of election of remedies cannot be imported to deny parallel proceedings if such parallel proceedings have been specifically permitted even if in the past the Commission has taken a view to the contrary.

50. We are thus of the considered view that as per the clear mandate of Section 12-B (4) of the said Act, an application for compensation is maintainable even if a civil suit is pending and the application must proceed in accordance with law.
51. We thus set aside the impugned order dated 13.11.2000 and direct the Commission (now the succeeding authority being Competition Commission of India under the The Competition Act, 2002) to proceed in accordance with law.
52. The petition is accordingly allowed leaving the parties to bear their own costs.

53. The parties are directed to appear before the Competition Commission of India on 26.04.2010.

SANJAY KISHAN KAUL, J.

MARCH 26, 2010
dm

VEENA BIRBAL, J.