

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1065 OF 2021

(Against the Order dated 28/07/2021 in Appeal No. 123/2021 of the State Commission
Rajasthan)

1. HDB FINANCIAL SERVICES LTD.Petitioner(s)

Versus

1. M/S. SOMANIS & ANR.Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER : FOR PETITIONERS : MS. VASUDHA ARORA, ADVOCATE

FOR THE RESPONDENT : FOR RESPONDENTS : MR. AJIT KUMAR THAKUR,
ADVOCATE
(THROUGH VC)

Dated : 29 August 2024

ORDER

1. The present Revision Petition is filed under Section 58(1)(b) of the Consumer Protection Act, 2019 (the "Act") against order dated 28.07.2021, passed by the State Consumer Disputes Redressal Commission, Jaipur ('State Commission') in FA No. 123 of 2021. In the impugned order, the Appeal by Petitioners/OPs was dismissed, thereby, upholding the order of District Consumer Disputes Redressal Forum, Jaipur-IV (District Forum) in CC No. 741 of 2017 dated 06.01.2021, wherein the Complainant's complaint was partly allowed.

2. As per report of the Registry, there is 32 days delay in filing the Appeal. For reasons stated in IA/9787/2021, the same is condoned.

3. For convenience, the parties in the present matter are referred to as per the Complaint before District Forum. HBD Financial Services Ltd is referred as the OP (Petitioner herein). M/s. Somanis (Respondent No. 1 herein) and Mrs. Sarita Somani (Respondent No. 2 herein) is referred as Complainants 1 & 2 respectively.

4. Brief facts of the case, as per the Complainant, are that the Complainant No. 2 applied for a business loan, which was approved by the OPs on 30.09.2015 and a Rs.4,00,00,000 was disbursed vide Loan Account No. 1131756. The repayment was scheduled to be made in 120 monthly instalments at a floating interest rate. However, it was subsequently found that only

116 instalments were paid. The Complainant made all monthly payments diligently, without omission. Upon a decrease in the interest rate, the Complainant decided to repay the loan in a lump sum and secure financing from another institution. The Complainant filed a request with the OPs to accept a lump sum payment of Rs. 3,93,66,053.87 as full settlement of the loan. The OPs allegedly agreed to this proposal but calculated the remaining interest and prepayment penalty arbitrarily, charging Rs.17,00,851.40 as a prepayment fee. It is the complainant case that this penalty was contrary to Reserve Bank regulations, which prohibit penalties for early repayment, thus constituting a deficiency in service. Therefore, the complainant sought Rs. 17,00,851.40 refund along with interest @ 18% per annum, along with Rs. 2,00,000 as compensation and Rs. 75,000 for litigation expenses from the OPs.

Top of Form5. The OP filed its written objection denying and disputing the case of the complainant, asserting that the above amount was recovered as per rules and requested the complaint to be dismissed.

6. The learned District Forum vide Order dated 06.01.2021, partly allowed the complaint with the following reason /findings:

***“Facts of the complaint were perused and reply to the complaint and documents of the Opposite Parties were duly perused and along with this the legal citations submitted on behalf of both the parties were respectfully perused. The affidavits of the complainants, the documents submitted by them were perused and considered. The Commission comes to this conclusion that the services provided by the Opposite Parties have been unsatisfactory and unfair trade practice has been committed by them by recovering Rs.17,00,851.40 from the complainants as pre-payment charges due to which the complainants had to file their complaint unnecessarily before the Commission and they had to face the inconveniences, therefore, in the interest of justice, it is found appropriate to provide the following relief to the complainants from the opposite parties.*”**

ORDER

“Consequently, the complainant's complaint against the

***opposite party is accepted and ordered that the Opposite Parties should pay the amount of Rs.17,00,851/- recovered from the complainants in the form of pre-payment charges from the date of filing the complaint i.e. 02.08.2017 with the realization along with the interest @ 12% per annum to the complainants within one month from today and also, should pay the amount of Rs.25,000/- as compensation of financial and mental suffering and Rs.5000/- should also be paid to the complainants as litigation expenses in a month from today. In case of non-compliance of this order within a month, the opposite parties will be liable to pay interest at the rate of 15 per cent per annum till the date of payment of the said amount to the complainants.*”**

Rest of the prayer of the complainants is rejected.

7. Being aggrieved, the OP filed FA No. 123/2021 and the State Commission vide order dated 28.07.2021 dismissed the appeal with following observations: -

“Thus, in perspective of the above legal citation of Hon'ble Kolkata High Court and Circular of Reserve Bank of India dated 07th May 2014 -Annexure-7, the legal citation submitted on behalf of the appellants i.e. IIFL Home Finance Ltd. Vs. Preetpal Singh Arora (above) does not provide any benefit to the appellants and in Annexure-7 the circular of Reserve Bank of India dated 07" May, 2014, it has been clearly instructed by Reserve Bank of India that penalty charges cannot be taken on the pre-payment of loan despite that the appellants/Opposite Parties have committed mistake in taking the charge of pre-payment. As far as other circular is concerned, they are after depositing the pre-payment charges, therefore, does not provide any benefit to the appellants. Considering all these facts, the Ld. Subordinate District Commission has partially accepted the complaint of the complainant, in which it does not seem appropriate to intervene on the basis of the arguments presented and this appeal is found to be immaterial, which is hereby rejected.”

8. Being dissatisfied by the Impugned Order dated 28.07.2021 passed by the State Commission, the OP filed the instant Revision Petition No. 1065 of 2021 mainly advancing the following grounds in the Revision Petition:

- A. The impugned orders failed to accurately interpret the sanction and terms of the loan agreement, especially the prepayment charges" stipulated in Clauses 11 and 15 of Schedule 1, thereby resulting in an erroneous interpretation of the agreement.
- B. The forums did not acknowledge that the Complainant had not objected to prepayment charges at the time of signing the loan agreement or while availing the loan facility. It is presumed that a person signing a document has read and understood its contents in the absence evidence of fraud or coercion. The complaint was unfounded. The orders erroneously held OPs liable for deficiency in service despite their adherence to the loan agreement.
- C. The fora erred in disregarding that the loan was obtained for business purposes, which exempts it from the said RBI circular prohibiting prepayment charges for 'individual borrowers'. Moreover, the Complainant being a proprietorship firm, was not considered a 'consumer' under the Act, 2019, and thus, the complaint should have been dismissed.
- D. The State Commission and District Forum failed to understand the loan recovery and pre-closure processes as practiced by financial institutions. The District Forum should have recognized that payments by a borrower are first applied to interest and then to principal, and that financial institutions impose prepayment charges to mitigate potential losses from early repayment.
- E. The fora overlooked that prepayment charges were consistent with the loan agreement and the applicable RBI guidelines for business loans. The OPs adhered to the contractual terms, and the prepayment charges as duly communicated to him. The

impugned judgments were thus, based on misrepresentations by the Complainant and failed to appreciate the terms of the agreement and relevant RBI regulations.

9. In her arguments, the learned Counsel for the Petitioner/OP reiterated the factual background, evidence, and written statements submitted to the lower forums. She asserted that the OP and the Complainant were bound by the terms and conditions of the Loan Agreement, including the prepayment charges, which were imposed in accordance with these terms mutually agreed upon by the parties. The lower fora erred in not recognizing their lack of jurisdiction to alter the terms of the agreement. Given the factual disputes, she argued that the forums should have refrained from modifying the agreement's terms and instead referred the matter to the Civil Court. The State Commission and District Forum should not interfere with agreements that have been duly executed and are binding between the parties. To support her argument, she cited several judicial precedents:

- i. *Bharathi Knitting Co. Vs. DHL Worldwide Express Courier* [(1996) 4 SCC 704];
- ii. *Patel Roadways Ltd. Vs. Birla Yamaha Ltd.* [(2000) 25 (SC)];
- iii. *Citicorp Maruti Finance Ltd Vs S Vijayalakshmi* [(2012)1 SCC 1];
- iv. *HDFC Bank Ltd Vs Kanwar Ohri & Ors.* [RP No. 2001 of 2012];
- v. *Tamil Nadu Electricity Board and Ors vs N. Raju Reddiar and Ors.* [(1996) 4 SCC 551];
- vi. *M/s Dynamic Continental Pvt. Ltd. Vs. UCO Bank* [CS(OS) 1061/2007, I.A. No. 6752/2007, Order dated 21.01.2011].

10. The learned counsel for OP further referred to Clauses 11.2 and 15 of Schedule-I, and Clauses (d) and (e) of Schedule 1A of the Loan Agreement to assert that the prepayment charges were levied as per the agreement's. According to RBI circulars, consumer courts are not to interfere in fiscal matters related to loan agreements. She placed reliance on RBI circulars being, RBI/2019-20/29/DBR Dir BC.No.08/ 13.03.00/2019-20 dated 02.08.2019, RBI/2019-20/30 DNBR (PD) CC. No. 101/03.10.001/2019-20 dated 02.08.2019, RBI/2013-14/582/ DBOD.Dir.B.C. No.110/13.03.00/2013-14 dated 07.05.2014 and RBI/ 2011-12/589/DBOD. No.Dir.BC. 107/13.03.00/2011-12 of 05.06.2012. She also cited *ICICI Bank Ltd & Ors vs I.C.M. Poultry Farm* [(2016) CPJ 562 (NC)], *Haryana Financial Corporation and Ors. vs. Khushal Chand* [(2017) CPJ 635 (NC)], and *M/s CG Worldwide Impex Pvt Ltd Vs Bombay Mercantile Cooperative Bank* (Original Petition No. 226 of 2022) and argue that the Complainant did not qualify as a consumer under the Act, 2019, as the transaction between them was one of a creditor and a borrower.

11. The learned counsel for the complainants emphasized the factual background of the Complaint and asserted that the denial of entitlement to exemptions or refunds was arbitrary and inconsistent with legal principles, as a proprietary firm and its proprietor were legally regarded as one entity. He argued that decisions of the lower forums were well-reasoned and on merit. He further contended that the RBI's Circular dated 07.05.2014 clearly prohibited penalties for early repayment, a regulation which the OP violated, causing significant financial and mental distress to the Complainant. It was urged that the present petition it be dismissed with costs.

12. I have examined the pleadings and associated documents placed on record and rendered thoughtful consideration to the arguments advanced by the learned Counsels for both the parties.

13. Admittedly, the complainant is a proprietorship concern and had borrowed a loan of Rs.4,00,00,000 from the OP. It is not disputed that according to the agreement the complainant had to pay this loan in 120 months. It is also undisputed that the instalments of the loan had been regularly paid by the complainant every month on the stipulated time and no omission had been made in it. The main issue to be determined by us is whether the complainant will be considered as an 'individual borrower' so as to absolve itself from the prepayment of charges in accordance with the relevant RBI circulars.

14. In **S Manoharan v. Reserve Bank of India and others** (2023 LiveLaw (Mad) 92), decided on 08.03.2023 the petitioner was a sole Proprietor of M/s. Murugan Idli Shop. A loan had been obtained under the name of the said shop. The above case is also based upon similar contentions wherein the petitioner contended that he being an "individual borrower" within the meaning of the RBI circular dated 07.05.2014 and 02.08.2019, was entitled to avail the benefit of waiver of foreclosure charges, whereas the Respondent in the above case argued that waiver of foreclosure charges was applicable only to the "individual borrowers" and in the said case, the borrower was "M/s. Murugan Idli Shop", represented by its sole proprietor and therefore, it could not be construed as an "individual borrower" within the meaning of the circular issued by the RBI. The interpretation of the scope of the term "individual borrower" in the said circulars given by the Hon'ble Madras High Court in the said case is of import to the present case and is produced as below:

"14. The learned counsel for the writ petitioner states that the 2019 circular cannot be given retrospective effect and it is rightly so, even as per the circular. Perusal of the circular reveals that foreclosure charges/pre- payment penalties need not be recovered from the "individual borrowers". However, the term "individual borrowers" cannot be applied to the firms or companies etc., ... Even the loan document signed by the petitioner would reveal that it was signed for "M/s. Murugan Idli Shop" by its Proprietor.

15. Though the writ petition is filed by one Mr.S.Manoharan, Sole Proprietor of "M/s. Murugan Idli Shop", in the loan document he has signed for "M/s. Murugan Idli Shop" as its Proprietor. Thus, "Murugan Idli Shop" being a brand name and the loan borrowed for running the business by Mr. S. Manoharan, who filed the writ petition as Sole Proprietor of M/s.Murugan Idli Shop" cannot be considered as an "individual borrower" within the meaning of the circular issued by the Reserve Bank of India on May 07, 2014.

16. Regarding the subsequent circular dated 2nd August 2019, it clarifies that the co-obligant(s), who jointly borrowed loan, also can be considered as an “individual borrower” for the purpose of grant of waiver of foreclosure charges. However, the said circular cannot have any implication in respect of the sole proprietary concern of the petitioner i.e., “M/s. Murugan Idli Shop”.

17. If at all the definition of “individual borrowers” within the meaning of the circular is to be expanded, it is to be considered only by the Reserve Bank of India within the provisions of the Statute and certainly, the High Court cannot expand the scope of the definition of the “individual borrowers”, so as to grant waiver of foreclosure charges / pre-payment penalties, which is otherwise agreed upon to be paid by the petitioner by signing the loan document.”

15. In the present case, it is essential to note that the loan was obtained by the complainant on behalf of the proprietorship firm, and not in individual capacity. In the present matter, it is essential to note that the loan was acquired by the Complainant on behalf of the proprietorship firm, and not in an individual capacity. The loan agreement, which was duly executed and entered into by the parties, explicitly included provisions regarding prepayment charges. The terms and conditions, including the prepayment charges, were clearly agreed upon by both parties. Additionally, the loan was obtained in 2015, whereas the RBI circular concerning the prohibition of prepayment charges was issued in 2019. As a matter of law, regulatory changes such as those introduced by RBI circular which have impact on contractual obligations already mutually agreed upon and financial implications cannot be applied retrospectively, unless specifically provided for by the issuing authority. The position is same even in the event of such RBI circulars with adverse implication on the complainant. Thus, the provisions of the 2019 RBI circular are not applicable to the loan agreement executed in 2015.

16. Based on the above discussions and on careful perusal of material on record and the order of the learned High Court, I find merit in the arguments led by the Petitioner/OP. Accordingly, the orders of the learned District Forum in CC No. 741 of 2017 dated 06.01.2021 and the learned State Commission in FA No. 123 of 2021 dated 28.07.2021 are set aside. The present Revision Petition No. 1065 of 2021 is allowed.

17. There shall be no orders as to costs.

18. All pending applications, if any, also stand disposed of accordingly.

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**AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER**