

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 895 OF 2019

(Against the Order dated 18/01/2019 in Appeal No. 405/2015 of the State Commission Delhi)

1. SHER SINGH

S/O. SHRI SUMER SINGH, R/O. VILLAGE JHARSAINTLY,
TEHSIL BALLABGARH,
DISTRICT-FARIDABAD
HARYANA

.....Petitioner(s)

Versus

1. KOTAK MAHINDRA BANK LTD.

UGF-1-11, UPPER GROUND FLOOR, AMBADEEP 14, K.G
MARG,
NEW DELHI-110001

.....Respondent(s)

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BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : FOR KOTAK MAHINDRA BANK : MR. P K SETH, ADVOCATE
MS. JYOTI, MANAGER (KOTAK BANK)

FOR THE RESPONDENT : FOR SHER SINGH : MR. VIKAS JAIN, ADVOCATE
MR. MANJEET SAINI, ADVOCATE
MR. KAMAL MAHAJAN, ADVOCATE (PROXY)

Dated : 04 November 2024

ORDER

1. The present Revision Petitions (RP) have been filed under section 21 (b) of Consumer Protection Act 1986, against the order dated 18.01.2019 of the State Consumer Disputes Redressal Commission Delhi (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 405 of 2015 in which order dated 19.05.2015 of District Consumer Disputes Redressal Commission Forum VI, New Delhi (hereinafter referred to as District Commission) in Consumer Complaint (CC) no. 799 of 2013 was challenged, inter alia praying for :

a. Enhancing the compensation amount awarded by the State Commission vide order dated 18.01.2019 in RP No. 895 of 2019

b. Setting aside the order dated 18.01.2019 of the State Commission in RP No. 1461 of 2019

2. In RP No. 1416 of 2019, the Revision Petitioner was Appellant before the State Commission and OP before the District Forum. In RP No. 895 of 2019, the Petitioner herein was the Appellant before the State Commission. For the sake of convenience, parties will also be referred to as they were arrayed before the District Forum. Notice was issued to the Respondent on 10.02.2020. Parties filed Written Arguments/Synopsis on 18.01.2024 (Complainant) and 09.10.2023 respectively.

3. Brief facts of the case as presented by the Complainant and as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that complainant got financed a commercial vehicle Ashok Leyland heavy goods vehicle for a loan amount of Rs.16,55,000/- vide loan agreement with the OP. The said loan was to be paid in 47 monthly equal instalments of Rs.45,600/- each. It is the case of the Complainant that from the beginning of the purchase of the vehicle, the vehicle got some major fault and for that complainant had to bear the huge losses, due to which complainant could not pay the instalment for the month of September on time but later he made the instalment. During the month of October-November, he could not deposit full instalment and sought time from the bank, which the bank granted and accepted the instalment on 23.11.2012.

4. It is further the case of the Complainant that on 25.11.2012 when the said vehicle reached Haidargarh, District Barabanki, Uttar Pradesh, the employee of the Bank along with 8-10 unknown musclemen forcefully stopped the said vehicle and repossessed the vehicle. The Bank on the same day issued notice of sale of truck and sold the truck in March. The complainant went to recover the truck but in vain. Complainant filed civil suit for directing the bank to deliver back the truck to him. The said suit was dismissed by the Civil Judge on the ground that suit had become infructuous as bank has already sold the truck. Being aggrieved of the said act of the OP, the Complainant filed CC before the District Forum and District Forum vide order dated 19.05.2015 allowed the complaint of the Complainant. Being aggrieved, the OP preferred an Appeal before the State Commission and State Commission vide order dated 18.01.2019 modified the order of the District Forum to the extent that OP was directed to pay Rs.5.00 lacs as compensation and Rs.50,000/- as cost of litigation. Being aggrieved of the said order of the State Commission, both the Complainant and OP have come before this Commission by way of the above RPs. Complainant has filed RP No. 895

of 2019 for seeking enhancement of the compensation awarded by the State Commission and OP has filed RP No. 1461 of 2019 for setting aside the order of the State Commission.

RP No. 895 of 2019

5. Petitioner (Complainant) has challenged the Order dated 18.01.2019 of the State Commission mainly on following grounds:

(i) State Commission failed to appreciate that Petitioner had to bear the loss of about Rs.5,40,000/- @ Rs.60,000/- per month for restraining him from the use of said vehicle from December 2012 till September 2013 which is still going on.

(ii) State Commission failed to appreciate that after receiving the said vehicle, the complainant had to further invest Rs.4,00,000/- in getting prepared the truck for commercial use and for the same he got prepared the body, cabin etc and got the fitting, accessories, wiring, kamaani work etc alongwith permit and insurance fees and till the completion of the said work, the vehicle could not be commercially used for about a month time and complainant could not earn anything from the said vehicle for the said period.

(iii) State Commission failed to appreciate that vehicle of the Petitioner was illegally repossessed and said repossession is against the law. Reliance has been placed on the order of the Apex Court in ICICI Bank Ltd. Vs. Prakash Kaur 2007 (1) SCC 711.

RP No. 1461 of 2019

6. Petitioner (Bank) has challenged the Order dated 18.01.2019 of the State Commission mainly on following grounds:

- i. State Commission failed to take into consideration that as per the order of the District Forum, the Forum has considered the matter summarily in the light of the admitted position of facts that the truck has been sold after sending notice of sale to the respondent on 25.11.2012 by completely ignoring the material evidence produced and also the judgment of the Hon'ble Supreme Court relied upon and referred to in the written statement of the Petitioner itself.

- ii. State Commission failed to take into consideration that District Forum has completely failed to take into consideration the ratio of decision of Hon'ble Supreme Court in City Corp Maruti Finance Ltd. Vs. S. Vijayalakshmi (2012) 1 JCC (SC) 613, ICICI Bank Ltd. Vs. Shanti Devi Sharma and Ors. (2008) 3 JCC (SC) 1572 and City Corp, Maruti Finance Ltd. Vs. S.Vijaylakshmi III (2007) CPJ 161.
 - iii. Fora below have completely ignored admitted fact where the respondent has neither pleaded nor proved on record that after repossession of the vehicle by the Petitioner, the respondent visited the office of the Petitioner and tendered entire dues for settlement of disputes. Fora below further failed to take into consideration that the respondent did not lodge any police complaint after repossession of his vehicle by the Bank to the Police or any of the concerned authorities and also did not even serve any notice in writing to this effect to the Petitioner and also in respect of making any offer for payment of entire arrears of loan amount for amicable settlement of dispute.
 - iv. It was after a delay of more than 9 months that the respondent made a written complaint to the Superintendent of Police without giving therein of any such complaint to the concerned police station by his driver.
 - v. State Commission failed to consider that District Forum has not given its findings on facts / merits of the complaint and has passed the order after giving reference to various decisions of Hon'ble Supreme Court.
 - vi. State Commission ignored that District Forum has awarded compensation in absence of any evidence produced on record by the respondent in respect to the alleged loss of earning.
7. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.
- 7.1 Learned counsel for the Complainant apart from repeating the points which have been stated in para 5 relied upon the following judgment of the Hon'ble Supreme Court / National Commission:
- a. Citicorp Maruti Finance Ltd. Vs. S. Vijayalaxmi 2012 (1) JCC (SC) 613.

b. ICICI Bank Vs. Shanti Devi Sharma and Ors. 2008(3) JCC (SC) 1572.

b. Meena Devi Vs. Nunu Chand Mahto @ Nemchand Mahto and Ors. – 2022 Live Law (SC0 841).

c. Manager, Indusland Bank Ltd. and Anr. Vs. Abani Kanta Das and Anr. 2021 SCC Online NCDRC 14.

7.2. Learned counsel for the OP-Bank apart from repeating the points which have been stated in 6 argued that OP filed its written submissions to the Complaint pleading that present Complaint under Consumer Protection Act is not maintainable and that Complainant has suppressed the material facts.. The Complainant earlier also filed Suit for mandatory injunction and consequential relief of permanent injunction thereby seeking decree against the OP restraining them from alienating / selling / transferring the said vehicle. The OP filed their written statement in the said suit for rejection of plaint as suit had become completely infructuous as the Bank had already sold the vehicle and adjusted the loan proceedings in the loan account of the Complainant and the Civil Court after hearing the arguments on the maintainability of the Suit dismissed the Suit. The Civil Judge in the said Civil suit had given a finding that prima facie it appears that repossession and selling of vehicle by the Bank was not arbitrary since it was in terms of the loan agreement and due notice had been sent. The Complainant himself has pleaded that they used the said vehicle for commercial purpose and as such the Complainant is not a consumer under Consumer Protection Act and Complaint is not maintainable.

8. We have carefully gone through the orders of the State Commission, District Forum, other relevant records and rival contentions of the parties. While, it is the case of the Complainant that vehicle was forcibly possessed by the OP on 25.11.2012 with the help of musclemen of the OP while the truck was in U.P. (Haidergarh), the OP contended before the State Commission that as the complainant was unable to pay the loan and it was on his instructions that driver of the vehicle peacefully and voluntarily surrendered the said vehicle to the police. The District Forum, after considering the facts of the case and evidence before it and the case laws cited in its judgment, have held the OP guilty of deficiency in service. The extract of the relevant paras of the order of the District Forum is reproduced below :

“The relevant question for consideration is whether the OP bank, despite having a right as owner of truck as financier has acted according to due process in repossessing the vehicle. Admittedly, the complainant was in default by not tending full installments, and bank had the right to repossess the same. The complainant borrower lives in Faridabad, but the vehicle is chased in UP and possessed while in transit, and thereafter informing local SHO. It is nothing

*placed on record that any notice to complainant was ever given before re-possessing the vehicle, from him in Faridabad, or opportunity to him to arrange money to avoid that. The fact of seizing of vehicle in UP, itself speaks and OP has failed to explain it. The law is well settled by Supreme Court that even in case of loan default the owner of loan or bank has to resort to civil process and not to use force to possess the vehicle. The Hon'ble Supreme Court in case titled **Manager, ICICI Bank Ltd. Vs. Prakash kaur 2007 (1) JCC (Supreme Court) 681** mentioned that:*

“Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the installments instead of taking resort to strong arm tactics.”

*Also see citations **Citicorp. Maruti Finance Ltd. Vs. S.Vijayalaxmi 2012 (1) JCC (Supreme Court) 613, ICICI Bank Vs. Shanti Devi Sharma & Ors. 2008(3) JCC (SC) 1572, and CitiCorp. Maruti Finance Ltd. Vs. S.Vijayalaxmi III (2007) CPJ 161**. To this extent, we find OP guilty of deficiency. The complainant has gone to the extent of filing civil suit for restoring sale, which shows that bank was not ready to give time to settle the loan, on as he filed suit in 12/12.*

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In this case bank has sold the vehicle in 3/13. There is nothing placed on record from side of bank to show it any efforts were made or opportunity was given to complainant to call upon him to abide by financial discipline and get the truck released. The bank has further hit the complainant by selling a fully furnished truck of the complainant for just Rs.12 lakhs and created liability of Rs.5 lakhs on complainant by putting to death his source of business and repaying capacity.

In the light of above discussion, we hold OP guilty of violating Supreme Court guidelines on the subject, and violating rule of law and thereby also taking away his source of business to make repayment of loan, and creating unemployment and make country's economy suffer. In order to awake bank for its social responsibility we award compensation of Rs.10 lakhs on the bank for breach of law laid down by Hon'ble Supreme Court.

We also award Rs. 50,000/- towards litigation expenses.”

9. In the appeal filed by the OP, the State Commission reduced the compensation amount to Rs.5.00 lacs and litigation cost as Rs.50,000/-. Extract of relevant paras of the order of the

State Commission is reproduced bellow:

3. *The District Forum proceeded to answer the question whether bank despite having a right as owner of truck as financier has acted according to due process in re-possessing the vehicle. It answered the same in negative by holding that complainant was living in Faridabad, vehicle was in UP and possessed while in transit. No document was placed on record to show that any notice was given to the complainant before repossessing the vehicle or opportunity to arrange money to avoid repossession. In doing so it placed reliance on decision of Hon'ble Supreme Court in Manager, ICICI Bank Ltd. vs. Prakash Kaur 2007 (1) JCC 681 in which practice of hiring recovery agents who are musclemen was deprecated. Similar view was taken by Hon'ble Supreme Court in City Corp. Maruti Finance Ltd. vs. S. Vijaylaxmi 2012 (1) JCC 613 and ICICI Bank vs. Shanti Devi Sharma 2008 (3) JCC 1572. Reliance was also placed on City Corp. Maruti Finance Ltd. vs. S. Vijaylaxmi III (2007) CPJ 161.*

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5. *The District Forum found that the appellant has not placed on record any documents to show that any efforts were made or opportunity was given to the complainant to call upon him to abide by financial discipline and get the truck released. The bank sold fully furnished truck for just Rs.12 lakhs and created liability of Rs.5 lakhs on the complainant. Hence the bank was guilty of violating guidelines of the Hon'ble Supreme Court. It awarded Rs.10 lakhs as compensation and Rs.50,000/- towards litigation.*

6. *In appeal the grievance of the appellant is that loan was to be repaid in 47 monthly equal instalments of Rs.45,600/- each. The complainant failed to adhere to financial discipline. The complainant was unable to pay the loan and on his instructions, the driver of the vehicle peacefully and voluntarily surrendered the said vehicle to the appellant. The appellant informed concerned police station vide intimation which is Annexure R-6 to written statement. Still notice dated 26.11.12 was sent after obtaining verification report that vehicle was sold on 05.03.13 to Shri Pravin Kumar Singh for Rs.12 lakhs which was adjusted from loan amount. The complainant gave report to Supdt. of Police, District Barabanki, U.P. after more than 9 months.*

7. *I have gone through the material on record and heard the arguments. The act of the appellant bank in selling the new vehicle for just Rs.12 lakhs speaks of haste on the part of the appellant and sale at a under valued price. The bank had given a loan of Rs.16,55,000/- in July, 2012 itself i.e. hardly 7-8 months before the sale. No notice before repossession was given.*

8. *Besides the judgements referred to by District Forum in impugned order, in M/s. Capital Traders Ltd. vs. Sanjay Dutt (2009) 3 CPR 2005 National Commission held that high handed mess for repossessing vehicle amounts to deficiency in service.*

9. *In City Corp. Maruti Finance Ltd. referred to by the District Forum, it has come that counsel for Finance Industries Development Council gave a statement before the Hon'ble Supreme Court that Reserve Bank of India have formulated operational guidelines for adopting by all banks in July, 2009. The said guidelines were detailed and extensive and intended to cover all the shortcomings in the earlier guidelines in order to ensure that no force was used in the process of effecting recovery of dues. The Hon'ble Supreme Court observed that we live in a civilised society and are governed by rule of law. Despite that the appellant acted according to its whim*

10. *From the material on record I do not find any ground to interfere with the conclusion of the District Forum that there was deficiency on the part of appellant. However, as regards quantum of compensation it may be observed that complainant himself sought compensation of Rs.5,40,000/- towards loss of earning and Rs.3 lakhs towards harassment, mental pain and agony with litigation. But the District Forum granted Rs.10 lakhs as compensation and Rs.50,000/- towards cost of litigation. This is more than what was prayed by the complainant. The same can not be sustained.*

11. *I deem it proper to award Rs.5 lakhs only as compensation and Rs.50,000/- as cost of litigation. Accordingly the order is modified to the extent that appellant is directed to pay Rs.5 lakhs as compensation and Rs.50,000/- as cost of litigation.*

10. Both the Fora below have given concurrent findings against the OP-Bank as regards deficiency in service on the part of OP is concerned. The contention of the OP that driver of the complainant peacefully and voluntarily surrendered the said vehicle to the OP-Bank does not appeal in the absence of cogent evidence in this case. Both the Fora below have given a finding that vehicle was forcibly possessed by the OP-Bank, which is in violation of the law laid down by the Hon'ble Supreme Court. Both the Fora below have given well reasoned order(s). We are also in agreement with the observations of the State Commission in para 10 of the order which has been reproduced above with respect to the reducing the quantum of compensation. We find no reason to interfere with the same. It has been held by Hon'ble Supreme Court in catena of judgments^[1] that revisional jurisdiction of the National Commission is extremely limited, it should be exercised only in case as contemplated within the parameters specified in the provision i.e. when State Commission had exercised a jurisdiction not vested in it by law or had failed to exercise jurisdiction so vested or had acted in the exercise of its jurisdiction illegally or with material irregularity. It is only when such findings are found to be against any provisions of law or against the pleadings or evidence or are found to be wholly perverse, a case for interference may call for at the second appellate (revisional) jurisdiction. In exercising of revisional jurisdiction, the National Commission has no jurisdiction to interfere with concurrent findings recorded by the District Forum and the State Commission, which are on appreciation of evidence on record. We find no illegality or material irregularity or jurisdictional error in the order of the State Commission, hence the same is upheld. Accordingly, both the Revision Petitions are dismissed.

11. The pending IAs in the cases, if any, also stand disposed off.

[1] Ruby (Chandra) Dutta vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269, Sunil Kumar Maity vs. State Bank of India and Ors. (2022) SCC OnLine SC 77, Lourdes Society Snehanjali Girls Hostel and Another Vs. H & R Johnson (India) Limited and Ors, (2016) 8 SCC 286, T. Ramalingeswara Rao (Dead) Through Legal Representatives and Anr. Vs. N. Madhava Rao and Ors. (2019) 4 SCC 608, Rajiv Shukla Vs. Gold Rush Sales and Services Limited and Anr. (2022) 9 SCC 31

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DR. INDER JIT SINGH
PRESIDING MEMBER