

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1523 OF 2019

(Against the Order dated 24/05/2019 in Appeal No. 3055/2017 of the State Commission Uttar Pradesh)

1. CENTRAL BANK OF INDIA

THROUGH SENIOR BRANCH MANAGER, BRANCH
FAIZABAD ROAD,
LUCKNOW
UTTAR PRADESH

.....Petitioner(s)

Versus

1. SOMIR KUMAR BAGCHI

S/O. LATE PUWAS CHANDRA BAGCHI, R/O. HOUSE NO.
18, AMALTASH ENVLAVE, SECTOR 8, INDIARA NAGAR,
LUCKNOW
UTTAR PRADESH

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. RAJESH KUMAR GUPTA, ADVOCATE

FOR THE RESPONDENT : MR. ABHISHEK YADAV, ADVOCATE
MR. SAHIL KIRORIWAL, ADVOCATE
MR. PRAKHAR SHRIVASTAVA, ADVOCATE

Dated : 02 April 2024

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner(s) against Respondent as detailed above, under section 21(b) of Consumer Protection Act 1986, against the order dated 24.05.2019 of the State Consumer Disputes Redressal Commission, U.P., Lucknow (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 3055/2017 in which order dated 19.12.2017, District Consumer Disputes Redressal Forum-I, Lucknow (hereinafter referred to as District Forum) in Consumer Complaint (CC) no 274/2015 was challenged, inter alia praying to set aside the order passed by the State Commission.

2. While the Revision Petitioner (hereinafter also referred to as OP) was Appellant and the Respondent (hereinafter also referred to as complainant) was Respondent in the said FA/3055/2017 before the State Commission, the Revision Petitioner was OP and Respondent was complainant before the District Forum in the CC no. 274/2015.

3. Notice was issued to the Respondent. Parties filed Written Arguments/Synopsis on 27.07.2023 (Petitioner/OP) and 27.07.2023 (Respondent/Complainant) respectively.
4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:-

The complainant was an employee of Hindustan Aeronautics Lucknow, had all loan installments deducted from his salary account without any default occurring. The loan installments were supposed to end on 30.06.2015. However, the OP bank informed the complainant via a letter dated 13.08.2014 that the monthly installments had been increased from Rs. 7,566/- to Rs. 8,766/- without providing any reason for the change or the Rs. 1,200/- increase in the monthly installments. The complainant alleges that this action by the bank is illegal, constitutes unfair trade practice, and amounts to deficiency of service. Despite this, the complainant chose to avoid dispute and started depositing the increased installments of Rs. 1,200/- per month, ultimately paying off the entire loan and closing the loan account. However, when the complainant attempted to retrieve his documents from the bank, they were not returned, causing harassment. Subsequently, the complainant served a legal notice on 11.5.2015 to the OP bank, but no response was received. Consequently, the complainant filed the complaint Consumer Forum.

5. Vide Order dated 19.12.2017, in the CC no. 274/2015 the District Forum has allowed the complaint and directed OP to provide No Dues Certificate and return the deposited documents; to pay the sum of Rs. Rs. 50,000/- as compensation and Rs. 5,000/- for litigation cost; to pay sum of Rs. 20,000/- for unfair trade practice to the complainant.

6. Aggrieved by the said Order dated 19.12.2017 of District Forum, Petitioner appealed in State Commission and the State Commission vide order dated 24.05.2019 in FA No. 3055/2017 has partly allowed the complaint and reduced the compensation amount to Rs. 30,000/- and quashed the amount awarded towards unfair trade practice.

7. Petitioner has challenged the said Order dated 24.05.2019 of the State Commission mainly on following grounds:

- i. There was a miscalculation in determining the monthly installment (EMI) amount for a loan of Rs. 5,52,250/- with an interest rate of 10.75% and monthly rests. The correct EMI should have been Rs. 8,776/-, not Rs. 7,566/-, as stated in the District Forum's

decision. This miscalculation was an error, and the terms and conditions of the loan agreement clearly stipulated the correct EMI amount. The District Forum erroneously concluded that the OP bank had increased the interest rate, which was not the case. The Statement of Account presented to the District Forum showed that the agreed-upon interest rate had not been altered. The mistaken calculation led to the incorrect EMI amount but did not constitute an increase in the interest rate.

- ii. Furthermore, the State Commission upheld the District Forum's finding without considering this crucial discrepancy, thereby committing an error themselves. The interest rate had not been modified, and the OP bank had not acted unfairly or engaged in deficient service by changing the interest rate. The loan agreement explicitly grants the bank the authority to adjust and increase the Equated Monthly Installment (EMI) to ensure the timely repayment of the outstanding loan amount. Article 2.6 (c) of the Loan Agreement empowers the bank to review and modify the repayment terms at its sole discretion, with the borrower obligated to adhere to the revised schedule communicated by the bank.
- iii. The complainant indirectly acknowledged the correct EMI amount of Rs. 8,776/- by consistently making payments from September 2014 to August 2015. Both the State Commission and the District Forum overlooked the regulatory framework within which the OP bank operates. As a financial institution, the bank operates under the strict oversight of the Reserve Bank of India and the Government of India, adhering to established norms, guidelines, and circulars. Transactions between the bank and its customers are meticulously recorded in electronic format, in accordance with the Bankers Book Evidence Act, 1891, and the Evidence Act, 1872. Therefore, challenging and contradicting these electronic records in consumer forums, especially without expert opinion, is unwarranted. Additionally, the awarded compensation of Rs. 30,000/- for mental and physical distress, along with litigation expenses of Rs. 5,000/-, is excessive and disproportionate given the circumstances of the case.

8. 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.

- i. The counsel for petitioner/OP asserts that there was a simple calculation mistake in determining the EMI amount, which led to the discrepancy between the actual EMI and the amount stated in the District Forum's decision. The correct EMI amount, as per the terms and conditions of the Loan Agreement, is Rs. 8,566/-, not Rs. 7,566/-. Contrary to the District Forum's conclusion, the counsel argues that there was no increase in the agreed-upon interest rate. The Statement of Account submitted before the District

Forum supports this claim, indicating that the interest rate remained consistent throughout the loan tenure. The OP highlights Article 2.6(c) of the Loan Agreement, which grants the bank the authority to adjust the EMI amount to ensure timely repayment of the loan. This provision emphasizes the bank's discretion in managing loan repayments to protect public funds and mitigate financial risks.

- ii. The counsel emphasizes that the complainant himself acknowledged the correct EMI amount of Rs. 8,566/- and made payments accordingly from September 2014 to August 2015. This admission corroborates the bank's position regarding the accurate calculation of the EMI. The OP asserts that both the State Commission and the District Forum failed to recognize the regulatory framework within which the OP bank operates. As a financial institution, the bank is subject to strict supervision, norms, guidelines, instructions, and circulars issued by the Reserve Bank of India and the Government of India.
- iii. The financial transactions between the bank and its customers are meticulously recorded in electronic account statements, which are admissible as evidence under the Bankers Book Evidence Act, 1891, read with the Evidence Act, 1872. Therefore, the entries in the bank's electronic records should not be challenged or contradicted in summary proceedings before the District Consumer Forum, especially without the support of expert opinion. The counsel argues that the amount of Rs. 30,000/- awarded for mental and physical harassment, along with the litigation expenses of Rs. 5,000/-, is excessive and disproportionate in light of the facts and circumstances of the case. The counsel urges the reconsideration of the compensation amount, emphasizing the need for proportionality and fairness in determining damages.
- iv. The counsel for Respondent/complainant argued that the complainant availed a Home Loan from the OP amounting to Rs. 5,52,250/- at a fixed interest rate of 10.75% per annum, repayable over 93 months with monthly installments of Rs. 7,566/-. Subsequently, the EMI was increased to Rs. 8,766/- without prior notice, which was accepted by the complainant. However, it is emphasized that the loan was sanctioned based on a fixed interest rate, not a floating rate, where any increase in interest rate would proportionally increase the interest amount. The OP, with malafide intentions, claimed that an additional amount of Rs. 1,37,472/- was due from the complainant, yet failed to provide any documentary evidence to support this claim.
- v. These actions by the OP amount to unfair trade practices, including unauthorized EMI increases and charging higher interest rates contrary to the agreed terms. The complainant suffered financial loss, mental pressure, harassment, and agony as a result and should be entitled to compensation. Despite the complainant fulfilling all terms and

conditions of the Loan Agreement and paying all EMIs on time, the OP failed to fulfill its obligation of returning the original documents upon loan repayment. The OP's continuous harassment and disregard for the complainant's requests indicate an intention to cheat and evade rightful payments. The OP's failure to fulfill its duties constitutes severe deficiency in service, leading to irreparable financial losses and mental stress for the complainant. The OP's increase in interest rates against the terms of the agreement demonstrates illegal intent to take advantage of customers. Therefore, the compensation awarded by the State Commission for mental anguish is justified and appropriate.

- vi. The OP's claim that the increase in the EMI was due to a calculation mistake is baseless and unsubstantiated. This fact was never mentioned by the OP before filing the present Revision Petition. Moreover, as per the schedule outlined in the Loan Agreement, the EMI amount was fixed at Rs. 7,566/-. Therefore, the contention of a mere calculation error is misleading. The litigation costs awarded to the complainant should be reassessed considering the irreparable losses, mental stress, and agony suffered by the complainant. Additionally, the OP's pursuit of appeals and revision petitions has led to further financial burden on the complainant, who had to travel from Lucknow to Delhi for numerous meetings with legal counsel, incurring travel expenses and legal fees. Hence, the awarded litigation costs should be reviewed, and the complainant should be entitled to higher compensation.

- vii. The counsel further asserted that the complainant, a senior citizen has faced significant distress and hardship due to the OP's illegal actions. Despite efforts to obtain a No Due Certificate and the original documents from the OP, the complainant faced obstacles. Subsequently, the OP's filing of the present Revision Petition is seen as an attempt to evade legal responsibilities and exploit the complainant. Given the undue burden placed on the complainant, including travel expenses and legal fees, it is urged that heavy costs be imposed on the OP for harassing a senior citizen and a respected consumer of the country. Furthermore, it is emphasized that the OP is bound by the terms and conditions of the Loan Agreement, which they have failed to fulfil. This failure reflects poorly on the OP's integrity and highlights their unlawful actions aimed at deceiving innocent customers like the complainant. Therefore, appropriate actions should be taken against the OP for their unjust treatment of consumers, thereby safeguarding the interests of innocent customers nationwide.

9. We have carefully gone through the orders of the State Commission, District Forum, other relevant records and rival contentions of the parties. In this case, there are concurrent findings of both the fora below against the petitioner herein.

10. As per the terms outlined in the loan agreement, the complainant was obligated to repay a loan amount of Rs. 5,52,250/- over a period of 93 months, with an EMI of Rs. 7,566/- and an interest rate of 10.75%. The commencement of EMI payments commenced on 22.09.2007, with a total repayment amount of Rs. 7,03,638/-. However, upon reviewing the bank statement, it is evident that the complainant made 82 EMIs at the agreed upon rate of Rs. 7,566/-, totaling Rs. 6,20,412/-, and 12 EMIs at a higher rate of Rs. 8,766/-, totaling Rs. 1,05,192/-. The cumulative amount paid by the complainant thus amounts to Rs. 7,25,604/-. The contention put forth by the opposing party, that the correct EMI amount was Rs. 8,776/-, is unsubstantiated, as the loan agreement explicitly specifies the EMI amount as Rs. 7,566/-. Furthermore, the bank's acknowledgment and acceptance of the lower EMI amount for a significant duration of 82 months establishes their error in calculation, constituting a deficiency in service on the part of the OP. The OP did not raise the plea of mistake before District Forum or State Commission and it is firmly established in legal precedent that if a plea is not raised in the pleadings by the involved parties, and consequently, no issue regarding such plea is framed, nor is any finding recorded by the Trial Court or the First Appellate Court, then such a plea cannot be raised for the first time in a subsequent court. As was held by the Hon'ble Supreme Court in **Deepak Tandon & Anr. vs. Rajesh Kumar Gupta** [(2019) 5 SCC 537] held that *"it is a settled law that if the plea is not taken in the pleadings by the parties and no issue on such plea was, therefore, framed and no finding was recorded either way by the Trial Court or the First Appellate Court, such plea cannot be allowed to be raised by the party for the first time in third Court whether in appeal, revision or writ, as the case may be, for want of any factual foundation and finding."*

11. As was held by the Hon'ble Supreme Court in **Rubi Chandra Dutta Vs. United India Insurance Co. Ltd.** [(2011) 11 SCC 269], the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In **Sunil Kumar Maity Vs. State Bank of India & Ors.** [AIR (2022) SC 577] held that *"the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the 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."*

12. In view of the foregoing, we are in agreement with the findings of the State Commission and District Forum, and find no reason to interfere with the same. There is no illegality or material irregularity or jurisdictional error in the order of State Commission and District Forum and the same are hereby upheld. Accordingly the RP is dismissed.

13. The pending IAs in the case, if any, also stand disposed off.

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**DR. INDER JIT SINGH
PRESIDING MEMBER**