

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 277 OF 2021

(Against the Order dated 06/01/2020 in Appeal No. 296/2019 of the State Commission Tamil Nadu)

1. G.S. PAL PANDIAN

.....Petitioner(s)

Versus

1. EQUITAS FINANCE PVT. LTD. & ANR.

THROUGH ITS MANAGER, 27, NLCM 1st FLOOR, RAM
LAKSHMAN THEATRE BACK SIDE, UNIVERSAL
THEATRE ROAD, TIRUPUR, DISTRICT TIRUPUR, TAMIL
NADU - 641606.

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MS. ANUBHA AGGARWAL, AMUICUS CURIAE

FOR THE RESPONDENT : NEMO (EX PARTE)

Dated : 05 June 2024

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above against the order dated 06.01.2020 of the State Consumer Disputes Redressal Commission, Tamil Nadu (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 296/2019 in which order dated 25.01.2019 of District Consumer Disputes Redressal Forum, Tirrupur (hereinafter referred to as District Forum) in Consumer Complaint (CC) No. 58/2018 was challenged.

2. While the Revision Petitioner (hereinafter also referred to as Complainant) was Respondent before the State Commission and Complainant before the District Forum and the Respondent(s) (hereinafter also referred to as Opposite Parties) were Appellants before the State Commission in FA/296/2019 and OPs before the District Forum in Complaint No. 58/2018.

3. Notice was issued to the Respondents on 28.09.2022. Petitioner filed Written Arguments on 28.02.2024. On account of absence despite service, Respondents were proceeded ex-parte. No Reply/Written arguments were filed on behalf of the Respondents-1 & 2. Delay in filing the Revision Petition being covered under Covid exempted period, is deemed condoned as per judgment of Hon'ble Supreme Court.

4. 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 Forum and other case records are that: -

The complainant had availed a four wheeler loan from the OP to purchase a Tempo Traveller Vehicle for his self-employment. The amount financed by the OP is Rs.2,70,000/- and total tenure has been fixed as 36 months i.e. 11.11.2011 to 07.11.2014 and EMI was fixed as Rs.10910/- for 35 months and last month EMI was fixed as Rs.9217/-. The complainant was insisted to sign in the unfilled agreement and opposite party did not provide the copy of the agreement. At the time of availing the loan, the OP took the Original R.C. Book of the above said vehicle from the complainant. The complainant used to make cash payment to the opposite party and also issued cheques for some EMIs. The complainant was very prompt in making payment to the opposite party, due to the sudden financial crisis the complainant could not pay the EMI regularly for few months, but the opposite party was not ready to hear the words of the complainant and started threatening that if the complainant will not make the payment they will seize the complainant's vehicle. On 18.08.2014 the complainant issued a letter to the OP-1 regarding the attitude of their collection agent and also requested to issue the "Account Statement" of the complainant and the same was received by the OP-1 and issued reply notice on 02.09.2014 with false averment but failed to issue account statement to the complainant. The reply notice was in English, since the complainant does not know English he could not understand the reply notice. Though the complainant has suffered from very much financial crisis, the complainant paid the installment along with the late fee charges. The complainant again issued a letter to both the opposite parties on 01.12.2014 to issue the statement of account of the complainant's Vehicle. Though the opposite parties received the letter, they not even bothered to issue reply to the complainant. In the meantime the complainant paid remaining installment and hence the complainant requested the opposite party to issue the No Objection Certificate but the opposite party informed that there was Rs. 22,000/- pending towards late fee. OP-1 refused to furnish the account statement. The above said act adopted by the opposite party is an attitude of Unfair Trade Practice. The complainant explained that he is not liable to pay any amount as demanded by the them. The complainant on 05.06.2015 again sent a request letter to the OP-1 and the same was received by the OP-1 and issued a reply dated 08.06.2015 stating that there was Rs.24,804/- pending in the complainant's loan account hence they could not issue NOC to the complainant, in fact in this reply also the opposite party failed to furnish the Account Statement to the complainant. The welcome letter issued by the opposite party, they clearly stated that every year they will send the Account statement to their customer but in this case the OP not even sent single statement to the complainant. Hence, the complainant filed complaint before the District Forum.

5. Vide Order dated 25.01.2019, in the CC 58/2018, the District Forum has allowed the complaint and ordered that the OPs should give to the complainant the original R.C. of the vehicle and NOC. The District Forum also ordered that the OPs should pay to the

complainant Rs.20,000/- as compensation for mental agony and loss and hardship caused to the complainant and Rs.10,000/- being cost of case. It was ordered to comply the order within two months from 25.01.2019, failing which, OPs to pay the interest @12% for the amount amounts from the date of order till the recovery of entire amount.

6. Aggrieved by the said Order dated 25.01.2019 of District Forum, OPs (Respondents herein) appealed in State Commission and the State Commission vide order dated 06.01.2020 in FA No. 296/2019 allowed the appeal and remanded back the case to the District Forum and passed the following order:-

“In the result, the appeal is allowed by setting aside the order of the learned District Consumer Disputes Redressal Forum, Thiruppur, made in C.C.No.58/2018 dated 25.01.2019, and the matter is remanded back to the District Forum, Thiruppur, for fresh disposal according to law on merit. Parties are directed to appear before the District Forum on 10.02.2020, for taking further instructions, on which date itself, the opposite parties shall file not only the vakalat, but also the written version and also proof affidavit, and documents if any, failing which the order of the District Forum dt.25.01.2019 shall hold good. The District Forum shall dispose of the complaint, within 3 months, from the date of receipt of records, according to law on merits.”

7. Petitioner has challenged the said Order dated 06.01.2020 of the State Commission mainly on following grounds:

- i. The State Commission erred in remanding the matter back to the District Forum, without passing a well-reasoned order, despite the admitted fact that Respondent/OP voluntarily choose not to appear before the District Forum.
- ii. The District Forum rightly allowed the complaint and directed Respondent/OP to return the original registration certificate of the vehicle and issue NOC in view of the fact that the petitioner had paid the entire loan instalments. The order passed by the District Forum, is based on the documents and evidence led before the District Forum, was liable to be upheld and State Commission has erred in setting aside a well-reasoned order without any justifiable reasons.
- iii.

The State Commission erred in allowing the Appeal and setting aside the well-reasoned order of the District Forum, which was passed on the pleadings and evidence place on record. The

State Commission completely failed to appreciate that remanding the matter back without any justification was in gross violation of the rights which had crystallized in favour of petitioner-complainant, by virtue of a legally valid and subsisting order.

iv. The State Commission erred in allowing respondent/OP to file Written Version, which is clearly beyond the provisions of the statute as well as the law laid down by Constitution Bench of the Hon'ble Apex Court wherein it has been categorically held that limitation period for filing reply/response to the complaint mandatorily cannot be extended beyond the prescribed period of 45 days, as given in the statute. Hence, the impugned order, being against the provisions of law and binding law laid down by the Hon'ble Supreme Court is laible to be set aside.

8. Heard Amicus Curiae for the Petitioner. On account of absence despite service of notice, Respondents were proceeded ex-parte.

8.1 In addition to the averments made under grounds (7), Petitioner contends that the issue arising in the present case is of great importance and has vast bearing on the cases pending before the Consumer Fora in as much as it gives impetus to the defaulting party not to appear and then to get the valid order set aside, without any reasons. If such an impugned order is allowed to sustain, it would never bring finality to litigation and would set bad precedent for parties not to appear and thereafter, delay the litigation, which is completely beyond the basic mandate of proceedings under the Consumer Protection Act, which are supposed to be summary and expeditious proceedings. Consumers would be left in lurch and it would result in multiplicity of the proceedings at the behest by the defaulting Opposite Party. Therefore, in the interest of justice and equity, it is most respectfully prayed that the order passed by State Commission be set aside and the order passed by the District Forum be upheld with the direction to OP to handover the registration certificate and issue No Objection Certificate within a time bound manner along with cost and interest.

8.2 The Respondents did not appear before this Commission despite service, hence, proceeded ex parte. The OPs-1 & 2/Respondents herein did not appear before the District Forum and were proceeded ex parte before the District Forum. The Respondents filed Appeal before the State Commission praying to set aside the order of the District Forum dated 25.01.2019 in CC No. 58/2018 and contended that in order to give an opportunity to defend their case on merit, the matter may be remanded back to the District Forum. After hearing the parties, the State Commission remanded back the case for fresh disposal according to law on merit.

9. We have carefully gone through the orders of State Commission, District Forum and other relevant records. Extract of relevant portions of order of State Commission is

reproduced below:

“3. The opposite parties, though served, remained absent before the District Forum, hence an ex-parte order was passed in favour of the complainant. Against the said order, the opposite parties have preferred this appeal.

4. We have heard the learned counsel appearing on both sides, perused the materials on record and passed the following order in the open court.

5. The learned counsel for the appellants/opposite parties submitted that in order to give an opportunity to defend their case on merit, the matter may be remanded back to the District Forum. On a careful consideration of the materials on record and on hearing the appellants, in order to give a chance to the appellants/opposite parties to prove their case on merit, this commission is of the considered opinion that the appeal shall be allowed for the purpose of remanding back the matter for fresh consideration. Even though on considering the lethargic attitude of the appellant/opposite party, for allowing the appeal, during the previous hearing on 12.12.2019 a conditional order has been passed, directing the appellants/opposite parties to pay a sum of Rs.10,000/- as awarded by the District Forum towards litigation expenses, as cost to the Respondent/complainant on or before 06.01.2020. Since the conditional order is complied with, and a proof for compliance is also filed, this appeal is allowed.

In the result, the appeal is allowed by setting aside the order of the learned District Consumer Disputes Redressal Forum, Thiruppur, made in C.C.No.58/2018 dated 25.01.2019, and the matter is remanded back to the District Forum, Thiruppur, for fresh disposal according to law on merit. Parties are directed to appear before the District Forum on 10.02.2020, for taking further instructions, on which date itself, the opposite parties shall file not only the vakalat, but also the written version and also proof affidavit, and documents if any, failing which the order of the District Forum dt.25.01.2019 shall hold good. The District Forum shall dispose of the complaint, within 3 months, from the date of receipt of records, according to law on merits.

The amount deposited, as mandatory deposit, by the appellant, shall abide the result of the final order of the District Forum.”

10. A bare perusal of the order of State Commission shows that State Commission has not considered the Appeal filed by OPs on merits. If OPs were absent before the District Forum despite service of notice and proceeded ex-parte, they cannot be permitted to file written version beyond the statutory limit of 45 days (30+15). As per judgment of Hon'ble Supreme Court in **New India Assurance Co Ltd Vs Hilli Multipurpose Storage Pvt. Ltd. (2020) 5 SCC 757** (Constitutional Bench Judgement), Consumer Fora at any level have no discretion to extend the period for filing written version beyond 45 days. Hence, State Commission went wrong in setting aside a well-reasoned order of District Forum. Order of State Commission suffers from illegality and material irregularity and cannot be sustained. Hence, the order of State Commission is set aside, and orders of District Forum dated 25.01.2019 is restored. OPs/Respondents herein should implement the order of District Forum within 30 days of the order. All payments as per order of District Forum shall be made along with interest @9% p.a. within 30 days of this order, failing which, amount payable at the expiry of 30 days shall carry interest @12% p.a. from the expiry of 30 days till the date of actual payment. Revision Petition is disposed of accordingly.

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

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DR. INDER JIT SINGH
PRESIDING MEMBER