

(2014) 03 NCDRC CK 0073

In the National Consumer Disputes Redressal Commission

ABHEY SINGH

APPELLANT

Vs

MAGMA LEASING LTD.

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Citation : 2014 0 NCDRC 138

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : Pawan Kumar Ray , SATISH KUMAR

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 01.07.2013 passed by the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, "the State Commission ") in Revision Petition No.30/2013 - Magma Leasing Ltd. & Anr. Vs. Abhey Singh & Anr. by which, while allowing revision, order of District Forum allowing amendment in the complaint was set aside.

2. BRIEF facts of the case are that complainant/Respondent No.1 purchased Truck No. HR -47A -5171 from Libra Auto Mobile Ltd. for a sum of Rs. 11,17,136/- out of which, Rs.10,00,000/- was financed by OP/petitioner and amount was to be repaid in 45 installments of Rs.30,536/- each. It was further alleged that vehicle was purchased on 15.2.2007, but OP wrongly started interest on installments from 29.1.2007 instead of 15.3.2007. Complainant paid insurance amount of Rs.38,050/-, but OP wrongly debited this amount in the account of the complainant. OP also debited Rs.16,797/- in the account of complainant on the basis of other charges, though, no such charges were payable. Alleging deficiency on the part of OPs, complainant filed complaint before District Forum. OP resisted complaint and submitted that complainant purchased truck for commercial purposes and complaint has been filed just to delay the recovery proceedings against the complainant and took some other objections also and prayed for dismissal of complaint. During the pendency of complaint, complainant moved application for amendment in the complaint, which was allowed by learned District Forum against which, revision filed by the OP was

allowed against which, this revision petition has been filed. Heard learned Counsel for the parties and perused record.

3. LEARNED Counsel for the petitioner submitted that learned District forum rightly allowed amendment, but learned State Commission committed error in setting aside amendment; hence, revision petition be allowed and impugned order be set aside, whereas learned Counsel for the respondents submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

4. PERUSAL of record reveals that complaint was filed on 21.2.2011 and written statement along with objection regarding purchase of truck for commercial purposes was filed on 9.6.2011. Complainant filed his evidence on 24.1.2012 and later on OPs filed evidence and case was fixed for arguments on 9.10.2012 which was adjourned to 25.10.2012 and on that day, complainant moved application for amendment of the complaint, which runs as under: ""2. That at the time of filing of above noted complaint of said complaint Abhey Singh (Applicant) complainant had disclosed the material fact to his counsel that said vehicle (truck) bearing No.HR47A -5171 is used by the complainant for the purpose of earning his for his family livelihood. The whole family is depend upon the income generated by the said truck not for the purpose of any other commercial activities. The said fact was inadvertently not mentioned the said complaint or affidavit filed by the advocate of applicant/complainant.

3. That the above said fact came to the knowledge of applicant on dated 9.10.2011. On that day applicant inspected the file and thereafter now applicant filed this present application before the Hon "ble Forum. Material prejudice will be caused if this amendment will not allowed because the whole claim of the claimant is based on the said fact that the impugned vehicle bearing No.HR47A -5171 is used for the purpose of earning livelihood of complainant not for the commercial purpose "".

Learned District Forum allowed this amendment on the ground that strict principles of Civil Procedure Code are not applicable in these summary proceedings and matter should be decided on merits to determine whether the complainant purchased vehicle for self -employment or for commercial purposes. Learned State Commission while setting aside amendment, observed as under: ""The facts of the instant case are attracted to the above cited case. In this case, there is nothing on the record to show that the complainant in spite of due diligence, could not have raised the matter before the commencement of the trial of the complaint. Therefore, the application moved by the complainant at the fag end of the trial of the compliant i.e. at the time of arguments, was not entertainable. District Consumer Forum has failed to appreciate the above stated facts of the case and committed grave error in allowed the application. Hence, the impugned order cannot be allowed to sustain "".

5. LEARNED Counsel for the petitioner placed reliance on III (2012) CPJ 706 (NC)

MadanLal Arora Vs. DharampalJi, M.D.H. and Ors. in which it was held that delay is no ground for refusal of prayer for amendment in written statement and Court cannot go into the question of merit of amendment and order of impleading a party was passed. On the contrary, learned counsel for the respondent placed reliance on (2005) 6 SCC 344 - Salem Advocate Bar Association, T.N. Vs. Union of India in which it was held that amendment after commencement of trial can be allowed only if amendment could not have been sought in spite of due diligence.

6. PERUSAL of record reveals that OP took objection regarding purchase of truck for commercial purposes on 9.6.2011 and according to application for amendment of pleadings, complainant came to know this fact on 2011, but the application for amendment was moved on 25.10.2012, after more than a year and that too after closing of evidence by both the parties and after adjournment for final arguments. Thus, it becomes clear that complainant did not move for amendment at the earliest and learned State Commission rightly came to the conclusion that application for amendment of complaint at the time of arguments was not entertainable. 9. We do not find any illegality, irregularity or jurisdictional error in the impugned order and revision petition is liable to be dismissed.

7. CONSEQUENTLY revision petition filed by the petitioner is dismissed with no order as to cost.