(2014) 01 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Bhim Maharaj APPELLANT

Vs

Shivam Motors Pvt. Ltd. and Ors. RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Citation : 2014 0 NCDRC 393 : 2014 2 CPJ 225

Hon'ble Judges : V.B.GUPTA J.

Final Decision : Petition dismissed

Judgement

1. BEING aggrieved by order dated 20.8.2009, passed by Chhattisgarh State Consumer Disputes Redressal Commission, Raipur (for short, ''State Commission'') in First Appeal No. 287 of 2007, petitioner has filed the present revision petition. Brief facts of the case are that vehicle bearing Registration No.CG -13 -A -4610 has been registered in the name of Petitioner/Complainant, who purchased it with the assistance of finance provided by Respondent No. 2/ opposite party No. 2. An agreement of hire purchase has been executed between the parties. As per terms of the agreement, finance amount was to be repaid along with interest in equal monthly instalments. As per Petitioner''s case there was some default in payment of EMIs. However, on 18.11.2005 respondent No. 2 repossessed the vehicle forcefully from the premises of Navdurga Fuels Factory, Taraimal and no copy of seizure memo was provided.

2. HENCE , a consumer complaint was filed demanding Rs. 4,61,290 by way of compensation on account of the act of respondent No. 2 for repossessing the vehicle without any notice. On the other hand, the case of respondent No. 2 is that the vehicle was surrendered by the petitioner himself as he was not in a position to repay the amount of finance. A written document was also executed in this regard by him. The vehicle was ultimately auctioned.

3. DISTRICT Consumer Disputes Redressal Forum, Raigarh (for short, ''District Forum'') allowed the complaint of the petitioner, vide order dated 9.5.2007. It directed respondent No. 2 to pay a sum of Rs. 3,91,290 along with interest @ 6% p.a. to the petitioner, besides Rs. 1,000 as Advocate fee.

4. AGGRIEVED by the order of District Forum, respondent No. 2 filed an appeal before the State Commission. The State Commission vide impugned order accepted the appeal and dismissed the complaint. Hence, the present revision.

5. WE have heard the learned Counsel for the parties and gone through the record.

6. IT is contended by learned Counsel for the petitioner that State Commission has not gone into the merits of the case and has passed the impugned order simply on the basis that petitioner itself has surrendered the vehicle. In fact, the vehicle in question was forcefully seized by the respondents without any notice. The seizure of the vehicle by the respondents without following the due process is illegal. Hence, impugned order is liable to be set aside. On the other hand, it has been contended by learned Counsel for the respondents that petitioner itself has surrendered the vehicle and letter to this effect has been placed on record by the petitioner himself. Under these circumstances, there is no illegality or infirmity in the impugned order.

7. IT is an admitted fact that finance for the purchase of the vehicle was provided by respondent No. 2. It is also an admitted case of the petitioner that after availing the loan from respondent No. 2, he has failed to pay the instalments within the specified time. Petitioner in its complaint has admitted, "Due to financial crises he could not pay the balance instalments". Thus, petitioner himself was defaulter in this case.

8. NOW , the short question which arises for consideration is as to whether the vehicle in question was surrendered by the petitioner voluntarily or the same was seized forcibly by respondent No. 2. As per letter signed by petitioner addressed to respondent No. 2 (placed at page 51 of the paper book) petitioner itself has admitted "that he has to pay balance amount of Rs. 1,08,050 only and he will deposit the same within a period of one month and accordingly he is handing over his vehicle to respondent No. 2 and after making the necessary payment, he will take back his vehicle." Learned Counsel for the petitioner has disputed the execution of this document.

9. THERE is no averment on the part of the petitioner that respondent No. 2 has forged petitioner''s signatures on this letter. Furthermore, we have compared the admitted signatures of the petitioner on the affidavit filed along with this revision as well as this letter. With a naked eye it is manifestly clear that both these signatures tally with each other. Thus, it stand established that petitioner himself was a defaulter and has surrendered the vehicle on his own undertaking to pay the balance instalments. There is nothing on record to show that petitioner ever paid the balance amount of loan to the respondent No. 2, thereafter.

10. STATE Commission in this regard has observed: 6. We have gone through the above document Annexure -9 and are satisfied that this document was executed at the time of surrender of the vehicle. The vehicle was voluntarily surrendered by the complainant. This document has not been explained by the complainant in

any way, either by filing his affidavit or by making necessary amendments in the complaint. Thus there is no explanation in respect of this document and this document being an admission of the complainant himself demolished contentions of the complainant that the vehicle was repossessed by the appellant herein.

7. As the complainant was defaulter and vehicle was surrendered by the complainant himself on account of such default, so there appears no occasion for holding the appellant herein guilty for deficiency in service. We find that learned District Forum has committed a mistake in arriving such conclusion.

8. Therefore, we allow this appeal and set aside the impugned award. The complaint of the respondent No. 1 is hereby dismissed. No order as to costs.

It is well settled that under Section 21(b) of the Consumer Protection Act 1986 (for short, ''Act''), this Commission can interfere with the order of the State Commission where such State Commission has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

11. IN view of the fact that petitioner itself was a defaulter and had voluntarily surrendered his vehicle undertaking to pay the balance amount, no illegality or infirmity can be found in the impugned order passed by the State Commission.

12. THUS , there is no merit in this revision petition and same is hereby dismissed with cost of Rs. 5,000 (Rupees five thousand only) Cost be deposited by way of demand draft in the name of ''Consumer Legal Aid Account'' of this Commission within four weeks, failing which petitioner shall be liable to pay interest @ 9% p.a. till realization. List on 21.2.2014 for compliance.