(2015) 08 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

Cholamandalam Investment And Finance Ltd. APPELLANT

Vs

AMRIK SINGH RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Citation : (2015) 08 NCDRC CK 0003

Hon'ble Judges : J.

Final Decision : Petition Dismissed

Judgement

1. CHALLENGE in this Revision Petition, by a Finance Company, is to an order dated 27.08.2013, passed by the State Consumer Disputes Redressal Commission, Punjab at Chandigarh (for short "the State Commission") in First Appeal No. 759 of 2009. By the impugned order, the State Commission, while overturning the order, dated 09.04.2009, passed by the District Consumer Disputes Redressal Forum, Jalandhar (for short "the District Forum") in Complaint No. 557/2007, has directed the Petitioner to pay to the Complainant, the Respondent herein, a lump sum amount of 2,00,000/ - as compensation for taking possession of the Hypothecated vehicle by use of force and selling the same without notice to him.

2. BRIEF facts, necessary for disposal of the Revision Petition are: that sometime in year 2005, the Complainant purchased a Commercial Vehicle, make Tata 207 DI, for a total consideration of 3,74,966/ -. He raised a loan of 2.90 lacs from the Finance Company, for which he executed a Loan -Cum -Hypothecation Agreement. Rest of the amount was spent by him from his own pocket. It appears that there was delay in payment of some instalments, but in all he paid in instalments a total sum of 2.45 lacs. As per notice of demand, issued to him on 31.05.2006, a sum of 45,029/ - was due from him as on 29.05.2006. Interestingly, as per the notice of demand, issued to him on 03.01.2006, the total amount due from him as on 25.01.2006 was shown as 2,54,856/ -. It appears from the documents on record, that the Complainant had made some payments in cash. According to the Complainant, on 21.06.2007 when his driver

along -with two other persons was returning to his village, some persons stopped the vehicle and forcibly took the keys from the driver and drove away the vehicle. The Complainant lodged Complaint regarding forcible dispossession of the vehicle in the police station. On 22.06.2007, i.e. after the re -possession, the Finance Company claims to have sent a notice to the Complainant to pay to them a sum of 1,54,318/ - within seven days, failing which the Company would sell the vehicle. Significantly, as per the details, only a sum of 49,523/ - was due as overdue instalments and the balance amount comprised of additional financial charges, interest @ 4%, seizure expenses, etc.

3. ALL efforts to get the vehicle released having failed, and left with no other option, the Complainant filed Complaint before the District Forum. On contest, accepting the stand of the Finance Company that since the Complainant had been persistently defaulting in payment of the instalments, as per the terms of the Loan Agreement, it had the power to recover the outstanding loan by seizing and selling the vehicle, the District Forum dismissed the complaint.

4. BEING aggrieved, the Complainant took the matter in Appeal before the State Commission. On re -appraisal of the material on record, which included the statement of account of the Complainant and the receipts for the payments made by him, the State Commission observed as follows: - "From the above discussion and the figures, it is clear that it was not the appellant, who was not making the payments regularly, but the respondents as per their own whims and wishes were showing different amounts due on different dates, which do not tally. Even in the written reply filed by the respondents on 04.03.2008, as per zimni order of the District Forum as no date is put under the reply, the amount due from the appellant was shown as 48,000/ - in Para -2 of the reply, out of 2.90 lacs. The appellant has been paying the instalments regularly. There is nothing shown that the appellant was irregular. The version of the appellant has been supported by Sh. Dhiraj Singh through affidavit Ex. C -2 and Satinder Singh through affidavit Ex. C -3 that the vehicle in question was forcibly taken into possession by the officials of the respondents on 16.06.2007. There was no occasion for the musclemen of the respondents to seize the vehicle, as the payments of instalments were being regularly made and out of 2.90 lacs, the appellant has already paid 2.45 lacs and only a small amount of 45,000/ - was left to be paid and that itself falsifies the version of the respondents that the appellant was making defaults in the payment of instalments."

Observing further that the Finance Company had failed to rebut the plea of the Complainant that the instalments till December 2007 had been cleared and that he was paying instalments regularly, the Finance Company was not justified in forcibly taking possession of the vehicle in question by using force and in the process depriving the Complainant of his livelihood, the State Commission allowed the Complaint and directed the payment of afore -stated amount as compensation, which included the litigation expenses. The State Commission has also directed that if the said amount is not paid within 45 days of the receipt of the copy of its order, the said amount shall carry interest @ 9% p.a. from the date of seizure of the vehicle till realization. Hence the present Revision Petition.

The short question arising for consideration is whether on the facts found by the State Commission, extracted above, the Finance Company was justified in repossessing the vehicle by use of force, without due notice for seizure and the subsequent sale?.

5. THE practice of repossessing the Hypothecated goods or vehicle forcibly through recovery agents has been deprecated in a catena of decisions by the Hon''ble Supreme Court and by this Commission. Time and again, it has been emphasized that in a democratic country, like ours, which is governed by rule of law if repossession of a hypothecated vehicle by the muscle men of the Bank or financial institutions or its agents is encouraged, it will create lawlessness. Resumption of possession by use of force is against the public policy and the Bankers/Financial institutions cannot be allowed to take law in their own hands and repossess the vehicle by use of muscle power on the ground that the loanee had defaulted in payment of a few instalments on time.

6. IN ICICI Bank Ltd. Vs. Prakash Kaur and Ors. - : (2007) 2 SCC 711, deprecating the practice of hiring of recovery agents for taking possession of the vehicle by use of force, the Hon''ble Supreme Court had observed as follows: - "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 instalments instead of taking resort to strong -arm tactics."

In the concurring judgment, Dr. A.R. Lakshmanan, J, while providing additional inputs, which could be used for formulating robust guidelines for collection of dues and repossession of the Hypothecated properties, went on to observe that "we are governed by the rule of law in the country. The recovery of loans or seizure of vehicles could be done only through legal means. The Banks cannot employ goondas to take possession by force."

Again, in Citicorp Maruti Finance Ltd. Vs. S. Vijayalaxmi - : (2012) 1 SCC 1, a three Judge Bench of the Hon''ble Supreme Court has reiterated that even in case of mortgaged goods, subject to hire -purchase agreements, the recovery process has to be in accordance with law and the recovery process referred to in the agreements also contemplates such recovery to be effected by due process of law and not by use of force.

7. IT is, therefore, trite that even though the hire -purchase agreement or Loan -Cum -Hypothecation agreement may give a right to the banker/money lender/ financial institution to take possession of the vehicle in the event of default(s) in payment of instalments for the debt due to the Insurance Company, but they

have no power to resume the vehicle by use of force. They are obliged to follow the statutory remedy as may be available under the law.

8. TESTED on the touchstone of the afore -noted legal principles, we are of the opinion that on facts in hand the Finance Company had repossessed the vehicle from the Complainant wrongfully and illegally by use of force. We do not find any substance in the submission of Ld. Counsel for the Finance Company that before taking possession of the vehicle on 21.06.2007, a pre -seizure intimation had been given to the police on 20.06.2007. In our view, such kind of intimation to the police is no substitute for due process of law to be followed for taking possession. In this behalf, it is pertinent to note that the documents available on record show that as per the pre -possession notice dated 12.04.2006, the Complainant was called upon to pay a sum of 64,909/ -, stated to be due as on 12.04.2007; in a similar notice dated 26.10.2006, the total amount stated to be due from him as on 26.10.2006 was 45,428/ -, which comprised of only 27,923/ - as overdue instalments and 18,508/ - as additional financial charges. It is, thus, obvious that between the period April, 2006 to October, 2006, the Complainant had made some payments, but in the final notice dated 22.06.2007, calling upon him to pay a sum of 1,54,318/ -, the overdue instalments were still being shown as 49,523/ -. In light of these facts, emerging from the documents filed by the Finance Company, we are in complete agreement with the afore -extracted findings by the State Commission that the Finance Company was showing different amounts due from the Complainant on different dates, as per its own whims and wishes. For all these reasons, we are convinced that the hypothecated vehicle had been re -possessed by the Finance Company by use of force, without any notice to the Complainant. It was without authority of law and was, therefore, illegal. Viewed from this perspective, the inevitable conclusion is that the impugned order, awarding a reasonable amount of compensation in favour of the Complainant, does not suffer from any infirmity, legal or factual. In the result, the Revision Petition, being bereft of any merit, must fail. It is dismissed accordingly with costs, quantified at 20,000/ -. The decretal amount, stated to have been deposited in this Commission by the Finance Company, shall be released to the Complainant forthwith, with accrued interest, if any. Costs shall be paid directly to the Complainant within four weeks of the date of receipt of a copy of this order.