

(2017) 01 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

Case No : 2680 of 2016

DEWAR MOTORS @ DEWESH MOTORS REPRESENTED
THROUGH ANIL AGARWAL, S/O. OM PRAKASH AGARWAL

APPELLANT

Vs

UTTAM BHUYIA S/O. NEMAI CH. BHUIYA

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 156(3) - Police officers power to Investigate cognizable case
Indian Penal Code, 1860, Section 420,&br/>Section 4

Citation : 2017 1 CPR 86

Hon'ble Judges : Ajit Bharihoke, Anup K Thakur

Advocate : Ritesh Agarwal

Final Decision : Petition Allowed

Judgement

1. This revision is directed against the order of the West Bengal State Consumer Disputes Redressal Commission, Kolkata (hereinafter referred as "State Commission) dated 12.7.2016 in first appeal No.361/2014 whereby the State Commission concurred with the order of the District Forum and dismissed the appeal preferred by the petitioner/opposite party against the said order.

2. Briefly stated, facts relevant for the disposal of this revision petition are that the respondent/complainant filed a consumer complaint before the concerned District Forum alleging that he purchased a taxi on hire purchase basis after getting finance from the petitioner/opposite party. The loan amount was Rs.2,56,000/-. As per the hire purchase agreement it was payable in monthly instalments of Rs.10,200/- each. According to the respondent/complainant he paid 35 instalments amounting to Rs.3,57,000/-. Despite that the petitioner/opposite party illegally repossessed the taxi. The opposite party referred the matter to the arbitrator and during the arbitration proceedings the respondent/complainant came to know for the first time that against the finance of Rs.2,56,000/- he was supposed to pay a total sum of Rs.4,92,800/-. Being

aggrieved the complainant raised a consumer dispute by approaching the District Forum South 24 Pargana, Judges" Court Alipore, Kolkata.

3. Petitioner on being served with the notice of the consumer complaint filed written statement wherein it was pleaded that the consumer complaint is not maintainable because the subject matter of dispute was already under consideration of the arbitrator. It was also pleaded that the complainant had defaulted after making payment of 32 monthly instalments.

4. The District Forum on consideration of pleadings and the evidence allowed the complaint and directed as under: -

" That the petition of complainant is allowed on contest against the OP with a cost of Rs.10,000/-. The OP is directed to hand over the re-possessed car to the complainant in pliable condition within one month from this day on receipt of Rs.1,35,000/- (Rs.4,92,800/- - Rs.3,57,000/-) from the complainant.

The OP is also directed to pay a compensation of Rs.50,000/- to the complainant for his harassment and mental agony within the time specified failing which the entire sum of Rs.60,000/- will carry an interest of 9% p.a. till realization."

5. Being aggrieved of the order of the District Forum petitioner preferred an appeal before the State Commission. The State Commission did not find merit in the appeal and dismissed it accordingly. This has led to filing of the revision petition.

6. The notice of revision petition was sent to the respondent/complainant. The respondent/complainant instead of putting in appearance in person has sent written submissions requesting that the revision petition be dismissed with cost.

7. We have heard learned counsel for the petitioner and considered the written submissions filed on behalf of the respondent.

8. Learned counsel for the petitioner has contended that the orders of the Fora below are not sustainable because both the Fora below have failed to appreciate that the respondent/complainant had defaulted in making payment of instalment. Therefore, the vehicle was seized after following the due process. Expanding on the argument, learned counsel for the petitioner has contended that when the respondent defaulted in making payment of the remaining instalments of loan, the petitioner/opposite party filed a petition under Section 156 (3) Cr.P.C. seeking registration of case under Section 420 and 406 IPC against the respondent. In the said proceedings the subject vehicle was seized by the police. Thereafter, the petitioner took possession of the taxi by the orders of the CJM dated 19.3.2013 directing the release of the said taxi to the petitioner/opposite party on executing the bond of Rs.3 lakhs as also the security bond furnished by the petitioner. In support of this contention, learned counsel for the petitioner has drawn our attention to the copy of the application under Section 156 (3) Cr.P.C. filed in the Court of CJM as also release order passed by the CJM concerned and the security bond furnished by the petitioner for seeking the

release of the taxi seized by the authorities. On perusal of aforesaid documents it is clear that the subject vehicle was not illegally seized by the petitioner as alleged in the complaint but it was seized by following due procedure under the provisions of Cr. P.C. Thus, the petitioner cannot be held guilty of deficiency in service.

9. Otherwise also, petitioner has placed on record copy of the loan agreement, which is a hire purchase agreement. It is well settled that in case of hire purchase agreement the financier is the owner of the subject matter of the agreement and the purchaser is only a hirer who would acquire ownership only after clearing of the loan. Hon"ble Supreme Court in the matter of Suryapal Singh Vs. Siddha Vinayak Motors & Anr . - II (2012) CPJ 8 (SC) has observed as under:-

"Under the Hire Purchase Agreement, it is the financier who is the owner of the vehicle and the person who takes the loan retain the vehicle only as a bailee/trustee, therefore, taking possession of the vehicle on the ground of non-payment of instalment has always been upheld to be a legal right of the financier. This Court vide its judgment in Trilok Singh & Ors. V. Satya Deo Tripathi, AIR 1979 SC 850, has categorically held that under the Hire Purchase Agreement, the financier is the real owner of the vehicle, therefore, there cannot be any allegation against him for having the possession of the vehicle. This view was again reiterated in K.A. Mathai @ Babu & Anr. v. Kora Bibbikutty & Anr., 1996 (7) SCC 212; Jagdish Chandra Nijhawan v. S.K. Saraf, IX (1998) SLT 477=IV (1998) CCR 118 (SC)= 1999 (1) SCC 119; Charanjit Singh Chadha & Ors. V. Sudhir Mehra, VI (2001) SLT 883=III (2001) CCR 232 (SC)=2001 (7) SCC 417 following the earlier judgment of this Court in Sundaram Finance Ltd. V. The State of Kerala & Anr., AIR 1966 SC 1178; Smt. Lalmuni Devi v. State of Bihar & Ors., I (2001) SLT 26=2001 (2) SCC 17 and Balwinder Singh v. Asstt. Commissioner, V (2005) SLT 195=III (2005) CCR 8 (SC)=CCE 2005 (4) SCC 146".

10. In view of the above noted judgment of the Hon"ble Supreme Court and the discussion above, the petitioner cannot be held guilty of deficiency in service. Both the Foras below have ignored the above noted aspects of the case. Therefore, the impugned orders cannot be sustained.

11. Revision petition is accordingly allowed, impugned order is set aside and the complaint is dismissed.

12. The amount of Rs.50,000/- if deposited by the petitioner in the District Forum in terms of the order dated 30.9.2016 be released to the petitioner.