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(2014) 09 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

HDFC BANK LTD. APPELLANT

Vs

R. Govardhan Reddy RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Citation : 2014 4 CPJ 452

Hon'ble Judges : V.K.JAIN J.

Final Decision : Petition dismissed

Judgement

1. THE complainant/respondent purchased a tractor for a consideration of Rs.6,01,100/ -, to earn his livelihood. He made down payment of Rs.1,38,100/ - and the balance amount of Rs.4,63,000/ - was paid by raising a loan of Rs.4,63,000/ - from the petitioner -bank. The loan amount was agreed to be paid in half yearly installments of Rs.55,800/ - during the period from January 2009 to December, 2011.

2. THE case of the complainant is that in February 2012, the petitioner forcibly seized the vehicle in question in his absence and without giving any notice to him. When he approached the petitioner -bank for release of the vehicle they required him to pay the entire loan amount. Alleging deficiency in service on the part of the petitioner, he approached the concerned District Forum by way of a complaint, seeking the following reliefs: (i) to stop auction of the LMV tractor bearing No.AP 22 Q 5331 and release vehicle after receiving due amount or to pay costs of the vehicle an amount of Rs.6,01,100/ -,

(ii) to pay Rs.1,00,000/ - towards loss of financial for seizing of the vehicle,

(iii) to pay Rs.30,000/ - towards compensation for adopting unfair trade practice and deficiency in service,

(iv) to pay Rs.20,000/ - towards costs of the complaint and grant such other and further reliefs as the Hon''ble Forum deems fit and proper, in the interest of justice.

The complaint was resisted by the petitioner -bank primarily on the ground that since the complainant was irregular in making payment of the loan taken by him he surrendered the tractor on 15 -02 -2012 by executing a surrender letter. It was further stated by the petitioner that after surrender of the vehicle, they issued loan termination notice dated 16 -02 -2012 to the complainant, requiring him to take back the vehicle by paying Rs.3,43,447/ -. This was also the case of the petitioner that after serving the aforesaid notice and obtaining valuation of the tractor which was valued at Rs.2,40,000/ - the vehicle was sold in an open auction for a consideration of Rs.2,50,000/ - and the aforesaid amount was adjusted in the loan account of the complainant.

3. THE District Forum vide its order dated 22 -01 -2013 directed the petitioner -bank to refund a sum of Rs.2,79,000/ - to the complainant along with compensation amounting to Rs.1,000/ - and cost of legal proceedings amounting to Rs.500/ -. The amount of Rs.2,79,000/ - represents the payment which the complainant had made to the petitioner -bank towards the payment of the loan amount.

4. BEING aggrieved from the order passed by the District Forum the petitioner -bank approached the State Commission at Hyderabad, by way of an appeal. The said appeal was partly allowed and the amount payable by the petitioner to the complainant was reduced from Rs.2,79,000/ - to Rs.1,50,000/ -. However, the petitioner -bank is still not satisfied and is before us by way of this revision petition. The first question which arises for our consideration is as to whether the tractor in question was surrendered by the complainant on 15 -02 -2012 by executing the surrender letter of the same date. The learned counsel for the petitioner has pointed out to us, the surrender letter available on page 126 of the paper -book. A translation of the said letter is available on page 127. The aforesaid letter purports to be signed and thumb marked by the complainant. However, a perusal of the impugned order would show that the complainant denied having executed the aforesaid letter dated 15 -02 -2012. Despite the complainant having denied execution of the aforesaid letter, no credible evidence was produced by the petitioner -bank to prove that the said letter was in fact signed and thumb marked by the complainant. No handwriting expert was produced before the petitioner -bank to compare the signatures on the letter dated 15 -02 -2012 with the admitted signatures of the complainant. No person acquainted with the handwriting and signature of the complainant was produced to prove that the aforesaid letter dated 15 -02 -2012 had been signed by him. In our view, since the complainant had denied execution of the aforesaid letter, it was incumbent upon the bank to prove the alleged signature and thumb mark of the complainant on it, by producing either a handwriting and finger print expert or by examining a person who could be acquainted with the signatures of the complainant. Therefore, we are in agreement with the State Commission that execution of the aforesaid letter dated 15 -02 -2012 by the complainant does not stand proved.

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5. WE also find that the petitioner -bank did not produce any documentary evidence of having served the termination notice dated 16 -02 -2012 upon the complainant. Since the complainant had denied receipt of the said notice the petitioner -bank was required to produce documentary evidence of its service upon him.

6. THOUGH the petitioner -bank claims to have sold the tractor in question in an open public auction, there is no material or even an averment that before conducting auction of the tractor, a public notice was given by the petitioner -bank in a newspaper circulating in the area where the auction was allegedly held. In the absence of a public notice, the proposed auction did not get adequate publicity and, therefore, it cannot be said with a fair amount of certainty, that the tractor fetched the prevailing market price in the auction, which the petitioner -bank claims to have held. This was yet another act of deficiency on the part of the petitioner -bank in rendering services to its consumer. For the reasons stated hereinabove, we find no merit in the revision petition and the same is hereby dismissed.

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