(1993) 11 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

INDRANIL CHAKRABORTY — APPELLANT

Vs

MANAGER, CITY BANK — RESPONDENT

Date of Decision : 23-11-1993

Acts Referred:

Citation : 1994 2 CPJ 520 : 1994 3 CPR 221

Hon'ble Judges : Jyotirmoyee Nag , Sunil Kanti Kar , S.Dutta J.

Final Decision : Appeal allowed

Judgement

1. THE appellant took loan on Refinance Scheme for purchasing a Maruti Omnivan and in turn he hypothecated the said van to the Opposite Party respondent. It was agreed by the complainant/ appellant that he would make repayment of the loans by 36 instalments at the rate of Rs. 285 per instalment effective from November, 1990. But the complainant/appellant made defaults in payment of three consecutive monthly instalments and therefore the respondent/ Bank seized the van as per terms of the agreement for repayment of loans. THE Ld. District Forum decided the case on merit and dismissed the petition of complaint observing not being maintainable in law hence this appeal. DECISION

2. IT appears to us that the petition of complaint is well maintainable in law specially under the provision of Consumer Protection Act, 1986, where deficiency has been defined to mean any fault to imperfection, the becomings or inadequacy in quality, nature and manner of performance is required to be maintained by under any law for the time being in force or has been taken to perform in pursuance of a contract or otherwise relation to service. In the instant case it is seen from the appellant complaint, his bank account, relating to the loan and instalment paid, and also from the affidavit sworn in by him in this regard that even after seizing of the car in question the respondent bank again started realising loan instalments from the appellant and thereby the bank has waived his right, whatsoever, it acquired on and from the time of seizing the car. As soon as the respondent again started to realise the loan instalments, then it has got no right to stop the same without assigning any reason and as the

respondent has done so it must be stated to be a deficiency in service which warrants a redress. Besides the above, considering the facts and circumstances of the case we observe that the van was purchased on Refinance Scheme by taking loan of Rs.75,000/- and hypothecated the van to the respondent/bank. Although the van was hypothecated to the Opposite Party-Bank the ownership remains in the hands of the complainant/appellant. Therefore on equitable ground the omnivan ought to get back by the appellant upon payment of the arrear instalments up-to-date, by applying the principle of redemption of mortgage.

In the premises aforesaid we award that the complainant/appellant shall pay the arrear instalments up-to-date and also go to paying the remaining instalments as per stipulations of the agreement entered into by and between them until all the 36 monthly instalments are liquidated and the respondent/bank upon receipt the arrear instalments up-to-date shall hand over the van to the petitioner/ complainant within 3 days from the payment of the arrear instalments so far have fallen due to the respondent/bank.

3. THE order of the Ld. C.D.F. dt. 21.1.93 in C.D.F. Case No. 634/92 is set aside. THE appeal is disposed of in above terms. THE parties will bear their respective costs. Appeal allowed.

