
(2014) 03 NCDRC CK 0082

In the National Consumer Disputes Redressal Commission

Jasobanta Narayan Ram

APPELLANT

Vs

Branch Manager, L And T Finance Limited

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Citation : 2014 0 NCDRC 128

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : SHAKTI K.PATTANAIK

Judgement

1. THIS appeal has been filed under section 19 of the Consumer Protection Act, 1986 against the impugned order dated 26.11.2012 passed by the Odisha State Consumer Disputes Redressal Commission (for short "the State Commission ") in Consumer Complaint No. 45/2010, ""Sri Jasobanta Narayan Ram versus The Branch Manager, L&T Finance Limited "" vide which the said complaint was ordered to be dismissed. As stated, the appellant/complainant is the registered owner of Tata LPT - 2515 truck, bearing registration no. OR -09J -2645 which was purchased after availing a loan of Rs.11.36 lakh from the respondent/OP L&T Finance Limited. He entered into a loan -cum -hypothecation agreement on 10.08.2007, according to which, the total amount of loan including the interest amounting to Rs.15,91,499/ - was to be repaid in 47 instalments of Rs.32,117/ - during the period from 20.08.2007 to 20.07.2011.

2. INTERESTINGLY , it has been mentioned in para 13 of this very complaint that the complainant had availed loan for two trucks in a single agreement. However, the details about the second truck have not been given. As per the complainant, he engaged truck no. OR -09J 2645 for transportation of iron ore from Joda - Barbil Mines to Paradeep Port. He used to pay the instalments of loan in time as per the agreement. However, due to heavy rains during rainy season, the mining work stopped, due to which the vehicle remained idle and he could not pay some of the instalments. He was required to pay a sum of Rs.9,31,393/ - in 29 instalments till 20.01.2010 but he paid Rs.8,31,208/ - during the said period. The said vehicle was seized by certain persons from the OP on 17.02.2010, when

it was returning from Paradeep after unloading the iron ore. According to the complainant, he was never served with any notice before the seizure of the vehicle. The complainant then filed consumer complaint in question, requesting for a direction to the OP to return the vehicle with compensation for alleged illegal seizure and for loss with interest. The complainant demanded a sum of Rs.25,36,000/- from the OP.

3. IN their version filed as written statement in reply to the complaint, the respondent / OP stated that the complainant did not fall under the definition of "consumer " and his relationship with the OP was that of borrower and lender. The loan had been taken for commercial purpose and not for earning his livelihood and hence, he was not a "consumer " as per section 2(d)(ii) of the Consumer Protection Act, 1986. The OP had not shown any deficiency in service in the case as the complainant was a habitual defaulter. Further, as per the loan - cum -hypothecation agreement, the disputes and differences between the parties are to be referred for arbitration and the OP had already taken action in this regard.

4. IT has also been stated by the OP that at the time of repossession, a sum of Rs.3,30,794/- was due against the complainant and he did not pay any heed to the request of the OP to clear the said dues. The OP were, therefore, within their right to repossess the vehicle on 03.03.2010. The OP had issued a termination - cum -presale notice to the complainant, but he did not respond to it, and as such, the vehicle was sold on 29.03.2010. The OP stated that the said complaint should be dismissed. The State Commission vide impugned order dated 26.11.2013, after considering the plea of the parties, concluded that the repossession of the vehicle by the OP was not illegal as a sum of about Rs.1 lakh was pending against him by 20.01.2010. The State Commission stated in the concluding paragraph of their order as follows: - ""But as it appears, the vehicle has not yet been sold to any third party. Had it been sold, the opposite party would not have forgotten to mention the name of the person to whom it was sold and the sale price thereof. The opposite party has also not filed the sale deed in proof of the fact that the vehicle has been sold. So, if it would be sold, pre -sale notice shall be issued to the complainant and it would be sold in his presence unless he refused to receive the notice or to attend the auction sale. If at all it has been sold, the sale price of the vehicle in question would be intimated to the complainant. The sale proceeds shall be adjusted to the pending dues and if it exceeds the dues the balance amount shall be returned to the complainant. The entire exercise shall be completed within one and half months of receipt of a copy of this order. With the aforesaid observation, the consumer complaint stands dismissed. ""

5. THE present appeal has been filed against the above order of the State Commission, saying that the recovery should be affected by following the due process of law and not by use of force. The respondent had failed to produce any documents to prove their case and no pre -sale notice was issued, before the

alleged sale of the vehicle.

6. AT the time of hearing before us, learned counsel for the appellant has drawn our attention to the rejoinder to the written statement filed by the appellant/complainant before the State Commission in which he has stated that the complainant had availed the loan for earning his livelihood. He, however, admitted that the complainant had purchased two trucks after taking loan from the OP, but the other truck was lying idle and not being used. The learned counsel stated that to meet the ends of justice, a first appeal should be taken as a continuation of the proceedings and hence should be heard and decided on merits. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us. Admittedly, the appellant/complainant had purchased two trucks with the loan raised from the respondent/OP. The version given at the time of arguments that the other vehicle was just lying idle, cannot be believed to be true. The appellant has not been able to show as to how the purchase of two trucks does not fall within the meaning of commercial transaction. The Hon "ble Supreme Court have observed in their order passed in ""Laxmi Engineering Works versus PSG Industrial Institute "" [as reported in 1995 AIR SC 1428] that a person who purchases an autoriksaw, a car or a lathe machine or other machine to be plied or operated exclusively by any person could not be a consumer. In the present case, the appellant/complainant has not been able to show, how he can qualify to come under the definition of consumer under the Act when he has not given any clarification about the use of operation of the other truck. The complaint, therefore, deserves to be dismissed on this ground alone that the complainant does not fall within the definition of "consumer " as per the Consumer Protection Act, 1986.

7. ON merits also, it has been clearly admitted by the complainant that he was a defaulter on the date of repossession of the vehicle by the OP. He also admits that it has been provided in the loan -cum -hypothecation agreement that OP shall have the right of repossess the vehicle in the case of defaulter. The deficiency in service on the part of the OP has not been proved anywhere.

8. IN the light of above discussion, we do not find any infirmity, material illegality, irregularity or jurisdictional error in the impugned order passed by the State Commission. The State Commission have rightly observed that if the vehicle has not been sold, a pre -sale notice shall be issued to the complainant and the vehicle would be sold in his presence, unless he refused to receive the notice or to attend the auction sale. The State Commission have also observed that if the vehicle has been sold, the sale -price would be intimated to the complainant and the sale proceeds shall be adjusted to the pending dues and if it exceeds the said dues, the balance amount shall be returned to the complainant. We do not find anything wrong in this order. Hence, the present appeal is ordered to be dismissed at admission stage and the order passed by the State Commission is upheld with no order as to costs.