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(2015) 05 NCDRC CK 0136

In the National Consumer Disputes Redressal Commission

Case No : 3638 of 2009

LOKMAN AHMED BUX — APPELLANT

Vs

CITICORP FINANCE (INDIA) LTD. & ORS — RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Consumer Protection Act, 1986, Section 21(b), Section 2(1)(d) - Jurisdiction of the National Commission - Definitions

Citation : (2015) 05 NCDRC CK 0136

Hon'ble Judges : D.K. Jain, Vinay Kumar, M. Shreesha

Advocate : S.D. Singh, Prasenjit Mohapatra, Rajeeve Mehra, Nikhil Jain, Aditya Malhotra

Judgement

1. The Complainant, a proprietorship concern, carrying on business under the name and style of Utkal Nirman, has preferred this Revision Petition, under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act"), against the order, dated 27.08.2009, passed by the State Consumer Disputes Redressal Commission, Orissa at Cuttack (for short, "the State Commission") in Consumer Complaint No. 100 of 2007. By the impugned order, the State Commission has dismissed the Complaint in limini , on the ground that the Petitioner having availed of services of the Respondent Finance Company for "commercial purpose", he is not a "Consumer" as defined by the Act and, therefore, the Complaint is not maintainable.

2. The case of the Petitioner, in brief, is that on 12.09.2005, he had availed of a loan facility of 10,50,000/- from the Respondent Finance Company for purchasing a Ashok Leyland truck chassis. As per the loan agreement, the Petitioner was required to pay to the Finance Company, equated monthly instalments (EMI) of 27,075/- each, on or before 12 th of every calendar month, in 46 installments, commencing from 12.09.2005 and ending on 12.07.2009. However, due to unforeseen business losses and expenditure on urgent family needs, he could not pay three installments. On the night of 18.05.2007, the

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Petitioner claims to have received a telephonic message from the driver of the vehicle that a group of persons, numbering about 30, assaulted him and took possession of the vehicle from the factory premises. It is the case of the Petitioner that he did not receive any notice from the Finance Company regarding repossession of the vehicle. It seems that vide letter dated 10.05.2007, which had been posted on 17.05.2007, the Finance Company, while recalling the loan facility, had called upon the Petitioner to repay the entire loan amounting to 7,93,904.54. In the event of the Petitioner failing to pay the said amount, repossession of the vehicle was threatened. Petitioner''s efforts to convince the Finance Company to accept the unpaid EMIs having failed, he was constrained to file the Complaint in the State Commission, inter-alia , praying for a direction to the Finance Company to pay to him a sum of 29,10,275/- along with interest @ 9% p.a towards the financial loss and mental agony suffered by him on account of re-possession of the vehicle without any prior notice.

3. The Complaint was contested by the Finance Company. In its written version, while denying the allegation of any deficiency in service on its part, the question of maintainability of the Complaint was raised. It was pleaded that the loan having been raised for purchase of vehicle, which was used for "Commercial Purpose" in the running of the business of the said concern, the Petitioner was not a "Consumer" and hence the Complaint under the Act was not maintainable.

4. Accepting the preliminary objection, raised by the Finance Company, the State Commission has dismissed the Complaint on the aforestated ground, observing thus: "On a very reading of the complaint, it is found that the complainant has described himself to be an entrepreneur and proprietor of a business concern, namely, M/s Utkal Nirman situated at Chandrasekharpur Industrial Estate, Bhubaneswar. The vehicle, which was purchased with the finance availed from opposite parties 1 to 3, was solely purchased for expansion of his business concern and not for maintaining his livelihood out of the earnings of the vehicle. Taking us to the complaint petition, learned counsel for opposite parties 1 to 3 further submitted that on going through the entire complaint petition, which runs into 8 pages, there is nowhere any averment that the vehicle was purchased for maintaining the livelihood of the complainant. Rather, there is mention in para-4 that the instalments could not be paid regularly due to unforeseen business loss and expenditure on urgent family needs." (Emphasis supplied).

Hence, the present Revision Petition.

5. Having heard Mr. S.D. Singh, Learned Counsel for the Petitioner and Mr. Rajeeve Mehra, Learned Senior Counsel, on behalf of the Finance Company and perused the documents placed on record, we are of the opinion that the impugned order cannot be sustained.

6. As noted above, the Petitioner has been non-suited on the short ground that the truck having been purchased, with the loan amount, for use by the Petitioner for his business, he is excluded from the category of "Consumer" within the

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meaning of Section 2(1) (d) of the Act. Sub Clause (ii) of the clause (d) of the said Section, relevant for our purpose, reads as follow:- "...........

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose.

Explanation - For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment."

7. It is plain from a bare reading of the provision that the expression "Consumer" means a person who hires or avails of any services for a consideration but does not include a person, who avails of such services for any "Commercial Purpose". However, Explanation to the said provision, excludes from the ambit of "Commercial Purpose" in sub-clause (ii) of Section 2 (1) (d) any services availed of exclusively for the purpose of earning livelihood by means of self-employment. In other words, if a person hires or avails of any services for use by way of self-employment for earning his livelihood, such services would not be for "Commercial Purpose" and the person will continue to be a "Consumer" within the meaning of the said provision.

8. It is trite to say that the question whether the purpose for which a person has bought the goods or availed of services, as the case may be, for ''''Commercial Purpose'''' within the meaning of definition of expression "Consumer" in Section 2 (1)(d) of the Act, is a matter of evidence, to be decided in the facts and circumstances of each case. (See: Laxmi Engineering Works Vs. PSG Industrial Institute - (1995) 3 SCC 583.)

9. In the present case, it is manifest from the afore-extracted order that for arriving at the conclusion that the Petitioner is not a "Consumer'''' within the meaning of Section 2 (1) (d) of the Act, the State Commission has taken into consideration two factors, viz; (i) the Petitioner has himself admitted in the Complaint that he is an entrepreneur and proprietor of a business concern, Utkal Nirman and (ii) there is no averment in the complaint that the vehicle was purchased for earning his livelihood.

10. We are of the opinion that both the said factors were not sufficient to conclude that the truck was not used by the Petitioner exclusively for the purpose of earning his livelihood by means of self-employment. It needs little emphasis that a bare name and style of Petitioner''s concern was not determinative of the nature and scale of the activity undertaken by him. Unless there was some evidence on record to show the nature of the business activity, in which the truck

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was used, it could not be concluded that it was not used for self-employment to earn his livelihood, as held by the State Commission. It is clear from the impugned order that the State Commission has failed to examine this aspect of the matter in its correct perspective, inasmuch as, it got influenced by the name and style of the concern under which the Petitioner was carrying on his business as its proprietor. We are also of the view that mere absence of an averment in the Complaint to the effect that the Petitioner had availed of the services of the Finance Company to purchase the truck for use by him "exclusively for the purposes of earning his livelihood" by "means of self-employment" was not sufficient to draw an inference that it was not being used for the purpose of his business by employing himself for earning his livelihood. We feel that mere reproduction of the words of the said Explanation would not have made any material difference on the question of its applicability on the facts of the case. At the cost of repetition, we reiterate that the question had to be answered on the basis of the evidence to be brought on record by the parties in support of their respective pleas. Undoubtedly, in the first instance, onus would be on the Complainant to prove both the ingredients of the said Explanation, viz. the user of the truck "exclusively for the purposes of his livelihood" and "by means of self-employment".

11. At this juncture, it would not be out of place to mention that reference to the decisions of this Commission by the State Commission in para 5 of the impugned order, may not also be in order, because those cases related to transactions under a hire-purchase agreement, which is not the case here.

12. For the aforegoing reasons, the Revision Petition is allowed, the impugned order is set aside and the Complaint is restored to the board of the State Commission for fresh adjudication on the question of its maintainability as also on merits, after due opportunity to the parties to adduce evidence in support of their rival stands.

13. Since the Complaint was filed in the year 2007 and the present Revision Petition is the second round of litigation before this Commission, we request the State Commission to try to dispose it of as expeditiously as practicable.

14. Parties/their Counsel are directed to appear before the State Commission on 01.07.2015 for further pleadings.

15. The Revision Petition stands disposed of with no order as to costs. I.A. NOS. 2352 OF 2015 (FOR PLACING ON RECORD ADDITIONAL DOCUMENTS) AND 2353 OF 2015 (FOR ENHANCEMENT OF COMPENSATION)

In light of the order passed in the main Revision Petition, remanding the Complaint to the State Commission for fresh adjudication, in so far as this case is concerned, both the Applications are rendered infructuous and are disposed of accordingly.

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