(2006) 04 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

MAHINDRA And MAHINDRA FINANCIAL SERVICES LTD. APPELLANT

Vs

MOHANLAL MARKANDEY RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:

Citation : 2006 2 CPR 132 : 2006 3 CPJ 261

Hon'ble Judges : V.K.Agrawal , Veena Misra , R.S.Awasthis J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal under Section 15 of the Consumer Protection Act, 1986 (''the Act'') directed against the order passed by the District Consumer Disputes Redressal Forum, Rajnandgaon (hereinafter referred to as the ''District Forum'') in Complaint Case No. 54/2005, The District Forum has held the Appellant/OPs deficient in service and directed that the confiscated tractor from the complainant be returned to the complainant within 15 days on payment of overdue loan instalments. It has also been directed that interest @ 1% per annum shall be payable instead of interest @ 36% as mentioned in the contract.

2. GIST of the Complaint is that the complainant purchased a tractor by obtaining a loan of Rs. 1,00,000 from the OP-1 and purchased a tractor subsequently registered under No. CG.-04 A-8823. It is also alleged that his signatures were obtained on blank papers and that the agreement was prepared in his absence. It is stated that he had repaid Rs. 1,13,400 in all to the OP-1 and the defaults have occurred on account of famine. It is stated that the said tractor was taken away in his absence on 19.2.2005. Direction to the OPs to release the tractor and to pay compensation at Rs. 3,000 per month has been prayed for. Ops in reply have stated that the complainant had defaulted in payment of loan instalments and owes Rs. 86,163 to them towards interest and other charges. The tractor has been repossessed as per terms of the agreement. Ops have also stated that the District Forum has no jurisdiction to revise the terms of agreement.

From the complainant and the complainant''s own notice sent, it is obvious that the loan instalments were not paid as per schedule.

3. LEARNED Counsel for the appellants assailed the impugned order mainly on the ground that the jurisdiction to revise or interfere with the terms of agreement relating to interest rate etc. is beyond the purview of the District Forum. LEARNED counsel for the complainant defended the impugned order. We have carefully gone through the record of the complaint. Only question for consideration before us is whether the impugned order suffers from jurisdictional error. Reference was made to the judgment of the Apex Court in the matter of Managing Director, Orix Auto Finance (India) Ltd. v. Shri Jagmandar Singh and Anr., II (2006) SLT 166=2006 (1) Supreme 708. Relevant extract of the judgment reads: "If agreements permit the financier to take possession of the financed vehicles there is no legal impediment on such possession being taken. Of course, the hirer can avail such statutory remedy as may be available. But mere fact that possession has been taken cannot be a ground to contend that the hirer is prejudiced."

In the present complaint undisputedly the hirer complainant was in arrears of loan instalments and the hire-purchase agreement contains the condition regarding repossession of the vehicle in case of non-payment of loan instalments. Therefore, the aforesaid judgment of the Apex Court applies on all the fours and comes to the rescue of the appellant.

4. IN view of the above discussion and material on record, appeal deserves to be allowed. The impugned order is set aside. Parties shall bear their own cost. Appeal allowed.

