

(2014) 01 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

M/S Mahindra And Mahindra Financial Services Ltd.

APPELLANT

Vs

Chetram Prajapati

RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Citation : 2014 0 NCDRC 23 : 2014 1 CPJ 447

Hon'ble Judges : AJIT BHARIHOKE J.

Advocate : AMIT SINGH , RAJAN SINGH , K.K.BHAT

Judgement

1. THIS revision is directed against the order of the State Commission dated 24.12.2012 whereby the State Commission accepted the appeal preferred by respondent no.1 complainant and set aside the order of the District Forum dated 02.05.2011.

2. BRIEFLY stated the facts relevant for the disposal of this revision petition are that complainant respondent no.1 purchased a tractor after obtaining finance from the petitioner (OP no.2) in the consumer complaint. The tractor was insured with respondent no.2 insurance company. During the validity of the insurance policy, the tractor was stolen. The theft was reported to the police and the information was also given to the police as also respondent no.2 insurance company. The insurance claim filed by the complainant respondent no.1 was not settled. Therefore, respondent no.1 complainant was compelled to file consumer complaint impleading respondent no.1 insurer as the appellant (financer) as OPs. Respondent no.1 insurer contested the consumer complaint by filing a written statement. There is no need to detail the pleas taken by respondent no.1 insurer in the written statement. The appellant opposite party no.2 also filed written statement in response to the complaint filed by respondent no.1 wherein the appellant no.2 prayed for rejection of consumer complaint with heavy costs.

3. LEARNED District Forum on consideration of the pleadings of the parties as also the evidence produced allowed the complaint vide order dated 28.02.2011 with following directions: ""1. The Opposite Party No.1 may settle the claim of the complainant within one month as per the terms and conditions of the policy.

2. The opposite party no.1 may pay a sum of Rs.5000/- (Rupees Five Thousand only) to the complainant on account of mental annoyance and also pay a sum of Rs.1000/- (Rupees one thousand) towards cost of the litigation within one month. 3. The opposite party no.1 shall also be liable to pay interest @ 8% per annum on the compensation amount, whichever is payable to the complainant from the date of filing of the complaint dated 02.07.2009 till its realization. 4. Complaint filed against the non-applicant no.2 has been rejected "".

4. THE aforesaid order of the District Forum has become final. Pursuant to the above said order, respondent no.2 insurance company settled the claim of respondent Chetram and submitted a cheque of Rs.3,58,731/- alongwith an application claiming that the order of the District Forum has been complied.

5. AS the matter rested thus, the petitioner claiming to have lien over the insurance claim for the reason that he is a financier filed an application with following prayer: ""In view of the above facts it is, therefore, prayed that this Hon'ble Court be pleased to order National Insurance Company to release the claim amount in favour of Mahindra and Mahindra Financial Services Ltd. and if they deposit in the office this Hon'ble Court then same may kindly be released in favour of the Mahindra and Mahindra Financial Services Ltd. and further be pleased to hold claim amount till the outcome of arbitration award and also hold the claim amount because the complainant is only entitled for the money after furnishing no dues certificate from the Mahindra and Mahindra Financial Services Ltd. in the interest of justice "".

6. THE District Forum Jabalpur (M.P.) after serving notice on the complainant opposite party no.1 allowed the application with following observations: ""In the aforesaid letter also, there is mentioning of payment of the compensation amount by the Insurance Company to Mahindra and Mahindra and in regards to the said letter, the Applicant has not contended before this Forum that he has not written to the Insurance Company. Similarly, the objection taken by the applicant that M/s Mahindra and Mahindra initiate the recovery proceedings as per rules and in the present case, the cheque of the deposited amount towards stolen of tractor trolley was deposited by the insurance company and on this tractor trolley, M/s Mahindra and Mahindra had financed to the applicant and hence, looking to this circumstances, if M/s Mahindra and Mahindra is demanding from this Forum to reimburse the amount so deposited, then we can say that the said proceedings is as per rules. In these circumstances, looking to the contentions made in the present case, we find appropriate to give the said amount to Mahindra and Mahindra to adjust in the loan obtained by the applicant from them to purchase the said tractor trolley. Looking to the objection made by the applicant, we also find appropriate and in the safety of the order that the aforesaid order may be complied with after one month. If the applicant wants to initiate any proceedings in this regard, then he can do the same, otherwise, after one month, the said amount may be given to the non applicant M/s Mahindra and Mahindra "".

Being aggrieved by the aforesaid order dated 02.05.2011 of the District Forum, the complainant Chetram Prajapati preferred an appeal before the State Commission. The State Commission on consideration of the facts of the case took the view that order of the District Forum amounted to review of its earlier order dated 28.02.2011 which was not permissible in view of the judgment of the Supreme Court in the matter of Rajeev Hitendra Pathak Vs. Achyut Kashinath Karekar 2011 (8) SCJ 308. Accordingly, the State Commission accepted the appeal preferred by the respondent no.1 and set aside the order of the District Forum dated 02.05.2011.

7. LEARNED Shri Amit Singh, Advocate, for the petitioner has taken me through the judgment of the Supreme Court in the matter of Krishna Food and Baking Industry Private Limited vs New India Assurance Company Limited and Anr. 2008) 15 SCC 631 and contended that the impugned order of the State Commission is not sustainable as it is contrary to the law laid down by the Supreme Court in the above noted case. Learned counsel has contended that the State Commission has failed to appreciate that the said tractor was financed by the petitioner and that the amount of loan is still outstanding against respondent no.1 complainant. As such, the petitioner has lien over the amount of insurance claim and the amount was rightly directed by the District Forum to be paid to him. Thus he has urged me to set aside the impugned order and restore the order of the District Forum.

8. RESPONDENT no.1 complainant is ex parte in the matter. Mr. K.K.Bhat, Advocate, learned counsel for respondent no.2 insurance company states that he has nothing to add or subtract of the submissions made on behalf of the petitioner and the respondent no.2 shall obey the orders of the National Commission. I do not find any merit in the contentions of the learned counsel for the petitioner. In order to avail benefit of the judgment in the matter of Krishna Food and Baking Industry Private Limited (supra), the petitioner is firstly required to show that some amount is due in his favour and he is also required to quantify that amount. On perusal of record, I find that in the written statement filed before the consumer fora, the petitioner did not set up the plea of having any lien over the insurance claim and instead he prayed for dismissal of the complaint preferred by respondent no.1. Admittedly the petitioner was party to the complaint before the District Forum. If the petitioner was aggrieved of the aforesaid order of the District Forum, he should have filed appeal against the said order. The petitioner, however, has not filed appeal and allowed the order of District Forum to become final. Therefore, in my considered view, the State Commission was right in concluding that the subsequent application moved by the petitioner seeking to exercise the right of lien over the amount deposited by the insurance company was in the nature of review of the order dated 28.02.2011 which was not appealed against and dismissing the application in view of law laid down by the Supreme Court in the matter of Rajeev Hitendra Pathak Vs. Achyut Kashinath Karekar (supra).

9. HOWEVER , respondent no.1 in his written submission has contended that in respect of the subject loan transaction, arbitration proceedings were initiated wherein an award has been passed in favour of the petitioner. The petitioner has even filed execution proceedings in respect of the said award which is pending in the Court of District Judge concerned. The petitioner has not even disclosed the details of the award passed in his favour. Since the award in favour of the petitioner is under execution, the right course for the petitioner was to apply for the attachment of the amount deposited by respondent no.2 pursuant to the insurance claim. The petitioner, however, instead of adopting the right course has moved this application which is in the nature of the review of the order dated 28.02.2011 passed by the District Forum in the proceedings in which the petitioner was also a party. The application, therefore, is not maintainable in view of the judgment of the Supreme Court in the matter of *Rajeev Hitendra Pathak Vs. Achyut Kashinath Karekar* (supra).

10. IN view of the discussion above, I conclude that the State Commission has rightly allowed the appeal preferred by respondent no.1 complainant and dismissed the application. There is no infirmity in the impugned order which may call for interference by this Commission in revisional jurisdiction. Revision petition is, therefore, dismissed with no order as to costs.