(2012) 07 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

Pannalal Mohanlal Mundada APPELLANT

Vs

MAHINDRA AND MAHINDRA FINANCIAL SERVICES LTD RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 849

Hon'ble Judges : J.M.MALIK , VINAY KUMAR J.

Final Decision : Revision Petition dismissed

Judgement

1. THE complainant/petitioner Pannala Mohanlal Mundada purchased a Tractor. He took a loan of Rs.3,99,000/- with six monthly EMIs in the sum of Rs.47,880/- and interest was payable @ 4% p.a. under the Special Farmers '' Package and Scheme. The said loan was to be repaid in 10 equal monthly installments. The complainant placed reliance upon the respondents and the Dealer obtained his son ''s and his own signatures on a blank paper and on a blank copy of the Agreement, written in English. The complainant wanted to have Tractor of Massive Ferguson Surja Tractor 52 HP. Respondent, Finance Company agreed to avail loan for the said tractor and he was asked to deposit Rs.65,000/- with the Dealer of the respondent Company, i.e. Yash Tractor, Hingoli. When he approached for loan, the Appellant â? " Finance Company insisted him to purchase the Tractor of their own Company. They were forced to have the said Tractor because they had already given the blank cheques and blank copies of the Agreement. The respondent Company asked them to deposit a sum of Rs.73,000/- with the Dealer Mansa Motors. The Complainant deposited Rs.33,000/- as down payment with the Dealer. Despite his own unsound financial position, he was forced to purchase two Tractors. The delivery of the Tractor of Mahindra & Mahindra Company of brand Sarpanch 571 D1 was given to the complainant on 05.02.2006. He got the said tractor registered with the RTO and he was given registration No. MH 38 B 997.

2. THEREAFTER , after the lapse of one month, the Tractor required repairs, as its Hydraulic Pump was not working. The said Tractor was deposited with the

Dealer along with Rs.2,500/- on 01.06.2006. He was assured that the said amount would be refunded to him, subsequently. However, the Dealer could not repair the same for about two months, which resulted into his loss of daily income of Rs.1,000/- i.e. total loss of Rs.60,000/- for the period of two months. Against the loan of Rs.3,99,000/- sanctioned to him by the respondent, Finance Company on 20.01.2006, he had deposited Rs.31,000/- as repayment of the said loan. On 16.11.2006, without any notice to him, the said Tractor was re-possessed by the respondent, Finance Company. When his son went to the Company for having copy of the Agreement, he was manhandled and the Police report was lodged. On 26.11.2006, the complainant gave a legal notice to all the respondents on the ground that their signatures were forcibly obtained on the Agreement. It did not invoke any response from the respondents. Consequently, a complaint with the District Forum was filed. The District Forum adjudicated the complaint and directed the respondent No.2 to pay the complainant an amount of Rs.2,500/-, within a period of 30 days. Respondent No.1 was directed to return the above said Tractor, which was re-possessed on 16.11.2006, within a period of 30 days and not to recover the amount of Rs.27,221/- as re-possession charges and penal interest of Rs.10,269/-. The respondents were directed to pay to the complainant Rs.8,000/- and Rs.5,000/- as compensation for mental agony. Aggrieved by that order, the respondent preferred an appeal before the State Commission. The State Commission accepted the appeal and dismissed the complaint.

3. WE have heard the learned counsel for the petitioner. First of all, he wanted to withdraw this revision petition and desired that this Commission should allow him to file a civil suit against the respondent. We informed him that he can withdraw the case, but permission to file the case before the Civil court cannot be granted. He was, however, informed that this Commission can permit the withdrawal of this case and he can approach the appropriate Forum to seek redressal of his grievance, "as per law ". However, the learned counsel did not agree. The learned counsel for the petitioner supported the order rendered by the District Forum and argued that the re-possession of the vehicle was wrongly taken.

4. ALL these arguments lack conviction. First of all, the petitioner has made the following prayers in his complaint. (a) To allow the complaint of the complainant against Non-applicants with cost. (b) To declare illegal and cancel the agreement dated 20.01.2006 between the complainant and Non-applicant No.1 regarding the purchasing of the tractor No. MH 38 B 997 and as well as the transaction with the Non-applicant No.2 due to illegal transaction. (c) To make order for the repayment of the amount of Rs.73,000/- paid against the down payment and Rs.2,500/- paid against the cost of repairing of the hydraulic pump from non-applicant Nos. 1 and 2. (d) To make order to get compensation from non-applicant Nos.1&2 from 16.11.2006 to 29.12.2006 as Rs.1000/- per day to from dated 29.12.2006 to till the realisation of the said above said payment as the amount of Rs.60,000/- and Rs.30,000/- from the non-applicant Nos.1&2, to the complainant. (e) To declare and cancel the blank cheques which were received by

non-applicant Nos. 1 and 2 from the complainant ".

It is thus clear that the State Commission rightly held that the allegations and prayers made by the complainant are mostly of civil and criminal nature, for which, hardly any relief can be granted under the Consumer Protection Act, 1986.

5. THE learned State Commission also found no force in the statement that, as a matter of fact, the Tractor was given to the complainant on 08.05.2006. It was noted that the Tractor was insured on 10.12.2005 with the United India Insurance Co. Ltd. The complainant obtained the possession of the Tractor before 10.12.2005. This is an indisputable fact that the complainant had been sanctioned loan of Rs.3,99,000/- towards the purchase of the Tractor on 20.01.2006. It, therefore, means that the possession of the Tractor was given prior to the signing of the Agreement. The complainant has not approached the Commission with clean hands. He has suppressed the material facts. The position does not begin to jell in absence of true facts. It, therefore, means that the complainant has used the vehicle for a considerable time.

6. MOREOVER , the petitioner was to pay the loan of Rs.3,99,000/- in 10 equated monthly statements, each being Rs.59,751/-. As per the agreement, the first installment of Rs.59,751/- fell due on 20.07.2011. The first installment was not paid and notice dated 07.11.2006 was given to the respondent to make the first installment, otherwise, the tractor would be repossessed. The notice was received by the son of the complainant in the capacity of General Power of Attorney of the complainant. Vide endorsement, made by him, he promised to pay Rs.10,000/- out of the outstanding amount, within a period of seven days. The needful was not done. The disputed tractor was surrendered on 16.11.2006. The surrender letter is available on the record. However, these facts and circumstances of the case show that the complainant had used the tractor for about one year, but he did not clear even the first installment of the loan. There is not even an iota of evidence that the truck was forcibly re-possessed. There is no such allegation or evidence. There is no inkling that the truck was re-possessed in contravention of the terms and conditions enumerated in the agreement. The case of the respondents stands fortified by authorities reported in Surendra Kumar Agarwal v. Telco Finance Ltd. and Anr., II (2010) CPJ 163 (NC), and in Dineshbhai Chandarana v. LIC of India and Anr., III (2010) CPJ 358 (NC)= First Appeal No. 242 of 2006, dated 27.07. 2010 (NC). It is, therefore, apparent that the State Commission rightly dismissed the complaint and accepted the appeal. The revision petition is sans merits and deserves dismissal, which we hereby direct. Revision Petition dismissed.