(2016) 09 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

Case No : 1 of 2016

RAJU BAHELIA S/O LATE SHYAM LAL — APPELLANT

Vs

H.D.F.C. BANK LTD. THROUGH ITS BRANCH MANAGER/ MANAGING DIRECTOR — RESPONDENT

Date of Decision : 02-09-2016

Acts Referred:
Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : 2016 3 CPR 743

Hon'ble Judges : Rekha Gupta, Anup K Thakur

Advocate : PAWAN KUMAR RAY

Judgement

1. Petitioner/ complainant applied for loan of Rs.7.16 lakh to finance his newly purchased Truck (Jamboo Eicher). Loan agreement was executed between the parties, as per the agreement, the loan was to be repaid in 45 equally monthly instalments of Rs.19,301/-. The petitioner has paid Rs.4 lakh. On 20.04.2005, when the truck of the petitioner was carrying goods from Kolkata to Lucknow, the said truck was seized by the respondent Bank at Varanasi. On 25.04.2005, the respondent sent notice to the petitioner informing him to pay the outstanding loan amount of Rs.6,47,464/-. Aggrieved by the forcible seizure of the truck the petitioner filed an FIR and then a complaint before the District Forum seeking release of the vehicle and Rs.4,33,324/- as compensation.

2. The District Consumer Disputes Redressal Forum No. 1, Lucknow (''the District Forum) vide its order dated 27.07.2007 passed the following order: "Complaint is partly allowed against the respondent no.1 and 2. Respondent no. 1 and 2 are directed that within one month from the date of this order they should return the truck Jamboo Eicher 2016, Registration no. UP 32 / AN 7175 in running condition to the complainant. It has also clarified that from the date of seizing the truck 20.04.2005 till the date of return of the truck, complainant should not be bound to pay the interest on the payable amount during this period. Besides, respondent no. 1 and 2 are also directed to pay Rs.30,000/- to the complainant

for mental agony and harassment and Rs.3,000/- as cost of litigation.

Complainant is also directed that within one month from the receipt of truck, deposit the outstanding instalment due till 20.04.2005 with the respondent no. 1 along with interest. After returning the truck and after the payment of the payable instalment till 20.04.2005 agreement shall be enforced as earlier.

This complaint is dismissed against respondent no.3".

3. It appears from the record that the Bank filed a First Appeal before the State Commission, in which the proceedings were stayed, but later on vide order dated 11.04.2008, appeal no. 1886 of 2007 was dismissed. The petitioner thereafter filed an execution case no. 42 of 2007 before the District Forum in which after receiving the notice, the bank had complied with the District Forum''s order dated 27.07.2007 and returned the vehicle and had also paid him Rs.33,000/- by way of Cheque which was encashed. The petitioner/ complainant, however, failed to deposit the instalments with interest due till 20.04.2005 with the respondent. The District Forum observed that in the execution petition no. 36 of 2012 dated 10.10.2013 and gave the following order: "The complainant/ OP have stated so many things but he has not said as to why he did not make compliance of the order once the order was duly complied by the respondent Bank. There does not appear to be any plausible reasons for not making compliance of the order passed have filed another case for compensation against the respondent Bank which was rejected on 15.11.2010 and has taken some very unreasonable grounds such as the value of the truck going down when he got it back and hence, some money is to be paid back to him. All these unsubstantiated grounds were taken by the complainant just to show that there was some amount due to him instead of him paying some amount to the complainant. In fact he is making mockery of the order passed by the District Consumer Forum on 27.07.2007 by not complying with it. He has not paid any instalments due to him till 20.04.2005 and subsequently becoming due after the return of the truck as per the loan agreement. He is taking flimsy stands for not making compliance of the order of District Forum, therefore, the respondent applicant Bank is entitled to receive the entire amount due from the complainant. Therefore, for recovering the dues from the complainant is necessary to issue recovery certificate for the amount due. A statement of account filed by the respondent Bank shows the amount due as Rs.18,91,813/-. Hence, RC for amount Rs.18,91,813/- be issued against the OP Shri Raju Bahelia step be taken within seven days".

4. Aggrieved by the order of the District Forum, the petitioner filed revision petition no. 176 of 2013 before the State Commission. The State Commission vide order dated 02.12.2015 while dismissing the revision observed as under: "The District Forum concluded in their order dated 10.10.2013 that the Bank is entitled to get the total amount from the complainant, which is payable to them and has further mentioned that the complainant is not complying with the order, which was passed by the District Forum on 27.07.2007 and the District Forum has further found that when the Bank has complied with the order dated

27.07.2007 of the District Forum, the complainant should also comply with the order at his level and he has not paid any amount despite the orders of the District Forum.

In the facts and circumstances of the case, we find that the clear directions were given in the original judgment, which was passed in the complaint no. 336 of 2005 dated 27.07.2007 that within one month of receiving the Truck, get all the instalments due upto 20.04.2005 deposited with the defendant no. 1 with interest and these directions were also given that after return of the truck and payment of the instalments due upto 20.04.2005, the loan agreement shall remain continued as before.

In the facts and circumstances of the case, we find that there is no need of any interference in the order dated 10.10.2013, which has been passed by the District Forum, that is lawful. Revision of the revisionists is liable to be dismissed.

Accordingly, revision of the revisionists is dismissed.

Both the parties shall bear their respective costs of Appeal."

5. Hence, the present execution revision petition.

6. We have heard the learned counsel for the petitioner. Learned counsel for the petitioner has contended that the impugned order passed by the State Commission is erroneous, arbitrary, excessive and non-sustainable in the eye of law, hence, liable to be dismissed. The revision petition had been filed by the revisionists in challenge of the execution case filed by the financer/ the respondent for recovery of loan amount as per agreement. The execution of the terms and conditions of agreement should not be permissible under the provision of Consumer Protection Act. The remedy was available only before the civil court only. The District Forum and the State Commission both committed a legal mistake not to consider the legal issue raised by the revisionists. The present execution case no. 36 of 2012 filed by the respondent for recovery of financed dues is not maintainable under provision of CP Act. As per order dated 27.07.2007 passed by the District Forum if the revisionists is a defaulter and there are any dues, the respondent bank can recover dues amount legally, under terms and conditions of the agreement. For that the respondent has a remedy before a civil court for recovery of dues. The District Forum as well as State Commission hence, both committed a mistake and wrongly exercised their jurisdiction.

7. We do not find any merit in the contention of the petitioner. The order of the District Forum in complaint no. 336 of 2005 dated 27.07.20076 was in favour of the petitioner / complainant and respondent nos. 1 and 2 were directed to return the truck in a running condition to the complainant and had also clarified that from the date of seizing of the truck, i.e., from 20.04.2005, till the date of return of the truck, the Petitioner/ complainant should not be bound to pay interest on the payable amount during this period. Respondent no. 1 and 2 were also

directed to pay Rs.30,000/- as compensation and Rs.3,000/- as cost of litigation. They have carried out their part order. In the same order, the petitioner/ complainant was also directed, that within one month from the receipt of the truck, he had to deposit the outstanding installments due till 20.04.2005 with the respondent no. 1 along with interest after returning the truck and after paying of the installment till 20.04.2005 and thereafter the agreement was to be enforced as earlier.

8. Petitioner/ complainant chose to avail the benefit of the part of the order in his favour. He took the truck, Rs.33,000/- as also availed of waiver of interest and thereafter refused to carry out the remainder of the order, i.e., to pay the installment due upto 20.04.2005 with interest within one month of the receipt of the truck. He unfairly stated that to recover the amount, the respondent should go to the Civil Court.

9. In view of the discussion above, we find that there is no jurisdictional error or material irregularity in the impugned order which may call for interference in exercise of powers under section 21 (b) of the Consumer Protection Act, 1986. We agree with the State Commission that there is no need to interfere in the order dated 10.10.2013 which has been passed by the District Forum. Hence, the Execution Revision Petition is hereby dismissed.