(2016) 12 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

Case No : 508 of 2016

SAMADHAN & ANR. — APPELLANT

Vs

DATTU S/O KISAN BAKHALE THROUGH G.P.A. SANJAY S/O DATTU BAKHALE — RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

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

Citation : (2016) 12 NCDRC CK 0004

Hon'ble Judges : M. Shreesha

Advocate : Pradeep R. Adkine

Final Decision : Petition dismissed

Judgement

1. Challenge in this Revision Petition under Section 21(b) of the Consumer Protection Act, 1986 (in short, ''the Act'') is to the order dated 23.11.2015 passed by the State Consumer Disputes Redressal Commission, Maharashtra, Circuit Bench, Aurangabad (in short, ''the State Commission''), in First Appeal No. FA/14/100, preferred by the First Opposite Party. By the impugned order, the State Commission set aside the order of the District Consumer Disputes Redressal Forum, Aurangabad (in short, ''the District Forum) and allowed the Appeal, preferred by the Complainant, directing the Opposite Parties to handover the possession of the tractor in question, to the complainant, within one month from the date of receipt of copy of the order, together with compensation of 2,20,000/- with interest @ 9% p.a., w.e.f. 18.04.2010, with default interest @ 12% p.a.

2. The brief facts material to the case are that the Complainant, on 26.02.2009, purchased a Tractor from Opposite Party No.1, i.e., Samadhan Tayade, Proprietor of Kishan Tractor, by obtaining a loan of 6,18,500/- from Opposite Party No.2, i.e., Maharashtra Urban Co-operative Bank Credit Society Ltd. According to the Complainant, he purchased the Tractor for 7,31,710/- by depositing 2,16,000/-,

with the Opposite Parties, (2,00,000/- as margin money and 16,000/- towards insurance amount). It was averred that the Opposite Parties did not issue any receipt to the Complainant after receipt of the said amount, i.e., 2,16,000/-.

3. It was averred that the statement of the loan account was not given to the Complainant; that he paid the first installment on 18.03.2010 and without giving any opportunity to the Complainant for paying the balance installments, the Second Opposite Party seized the Tractor in the month of May, 2010; even, the Complainant had paid an amount of 1,00,000/- on 26.05.2010, yet, the Tractor was not returned. Hence, the Complainant filed Complaint before the District Forum seeking directions to the Opposite Parties to pay an amount of 12,32,000/- towards total compensation, with interest @ 12% p.a.

4. Opposite Party No.1 filed its Written Version before the District Forum denying that the Complainant had paid an amount of 2,16,000/- and submitted that only an amount of 2,08,000/- was deposited. It was averred that the Complainant paid 7,390/- towards insurance and not 16,000/- as alleged by the Complainant. It was stated that the tractor was delivered on 14.01.2009 and a legal notice dated 18.03.2010 was issued to the Complainant to pay the installments, but the Complainant did not pay the balance installment of 2,03,419/- which was due, but instead, paid only 1,00,000/-. It was further stated that an amount of 6,18,000/- was taken as loan by the Complainant and the Second Opposite Party paid 5,31,710/- to the first Opposite Party. It is denied that a receipt for 2,16,000/- was not given to the Complainant. According to Rule 7 of the Agreement, interest should be paid every three months and as the Complainant has not paid these installments, he was declared as a defaulter.

5. Opposite Party No.2 had also addressed a letter to the Complainant on 18.08.2010 stating that the amounts are due from the Complainant, and, if they are not paid, legal action would be taken against him.

6. The District Forum dismissed the Complaint on the ground that even after receipt of notice dated 18.03.2010, the Complainant did not pay the entire installments and, therefore, the Opposite Parties were right in seizing the tractor and there was no deficiency of service on their part.

7. Aggrieved by the said order, the Complainant preferred an Appeal No. FA/14/100 which the State Commission has allowed, observing as follows :- " Moreover, considering the undisputed fact that, the opponent society was entitled to get the amount of interest credited in the loan account, in the event of non-payment of quarterly amount of interest by the complainant, it is obvious that the complainant has not committed default in repayment of the loan amount. But the opponent No.1 himself committed deficiency in service by delivering the tractor to the complainant without registration and opponent society illegally seized the tractor though the complainant was not defaulter. But on perusal of the copy of the impugned judgment and order, it appears that the District Consumer Forum without considering all these undisputed facts committed error

in holding that the opponent society has rightly and legally repossessed the tractor, etc. such erroneous finding cannot be sustained".

8. Learned counsel for the Revision Petitioners submitted that it was agreed between the parties that the loan amount would be paid by the Complainant in ''five-yearly'' installments with interest @ 18% p.a., and that in case of default of installment, the Credit Society was entitled to credit the amount of interest in the loan account of the Complainant; that on 27.07.2009, the Tractor was delivered to the Complainant; that the first installment of the loan amount, i.e., 2,03,419/- was due on 18.02.2010. It was submitted that on 18.03.2010, they issued a legal notice to the Complainant for default of the EMI. On 15.04.2010 registration of the tractor at the RTO was done and on 18.04.2010, the tractor was repossessed by the Credit Society. It was urged that despite receipt of notice, the Complainant did not pay the installment which was due and hence the tractor was repossesed and that the State Commission has erroneously granted compensation when there was no act of deficiency of service on their behalf.

9. The facts not in dispute are that the Complainant had purchased the tractor on 27.06.2009 from the first Opposite Party by availing loan amount of 6,18,500/- from the Second Opposite Party-Credit Society. It was agreed by the Complainant that the loan would be repaid in five-yearly installments with interest @ 18% p.a. Accordingly, an Agreement for Hypothecation was executed by the Complainant in favour of the Second Opposite Party - Society. It is pertinent to note that as per the agreed terms, the Complainant was to pay the amount of interest yearly and in the event of failure on his part, the Credit Society was entitled to credit the amount of interest in the loan account of the Complainant. It is also an admitted fact that the Complainant had purchased the tractor for 7,31,710/- by depositing margin money of 2,00,000/-. It is the Complainant''s case that he has received the delivery of the tractor on 27.07.2009, but the registration was not done, till 15.04.2010, despite repeated requests from the Complainant to the First Opposite Party.

10. Learned Counsel for the Revision Petitioners vehemently argued that the possession by the seizure of the tractor was justified as the Complainant, despite receipt of legal notice, did not pay the balance installments.

11. The main point for consideration herein is, whether, the Complainant was right in not paying the installment due, when the tractor itself was registered only on 15.04.2010. It is submitted that though, the tractor was registered on 15.04.2010, yet, it was re-possessed within three days, i.e., on 18.04.2010, which act, is illegal as the Complainant cannot be termed to be a defaulter, specially in the light of the undisputed fact that the Petitioner Society was entitled to get the amount of interest credited in the loan account in the event of non-payment of quarterly amount of interest by the Complainant. It is apparent on the face of the record that, firstly, the tractor was registered on 15.04.2010; seizure was done on 18.04.2010 and Second Opposite Party did not adhere to the terms of the Agreement with respect to crediting the amount of interest to

the loan account and, therefore, the repossession of the tractor viewed from any angle is unjustified.

12. The State Commission has gone into the details of loss and has awarded a reasonable amount of 20,000/- per year, as compensation, apart from release of the Tractor. There is no illegality or infirmity in the order of the State Commission warranting our interference in the limited revisional jurisdiction, as envisaged by the Hon''ble Apex Court in Mrs. Rubi (Chandra) Dutta Vs. United India Insurance Co. Ltd., (2011) 11 SCC 269. Hence, this Revision Petition fails and is dismissed, in limine . No order as to costs.