(2011) 05 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

Shriniwas APPELLANT

Vs

Mahindra Finance Mahindra And Finance Service Ltd. RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Citation : 2011 0 NCDRC 251 : 2011 2 CPJ 299 : 2011 2 UC 1254

Hon'ble Judges : S.K.Naik J.

Final Decision : Petition is dismissed

Judgement

1. THIS revision petition is directed against the order dated 11th of June, 2010 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (for short the State Commission) in Appeal No. 3031 of 2009. The appeal before the State Commission was filed by the respondent, who was the opposite party before the District Consumer Disputes Redressal Forum, Kolar (for short the District Forum). The District Forum in its order dated 18th of May, 2009 had allowed the complaint and directed the respondent/opposite party to pay a sum of Rs.2,36,710/- with interest @ 10% per annum w.e.f. 4th of April, 2008 till the date of payment towards the payment as compensation for illegal seizure of complainants tractor and trolley. In addition, it had awarded a compensation of Rs.10,000/- for mental agony and harassment. Accepting the appeal of the respondent/opposite party, the State Commission vide the order impugned has dismissed the complaint.

2. AGGRIEVED thereupon that the complainant has filed this revision petition seeking restoration of the award allowed to him by the District Forum. The brief facts of the case are that the petitioner/complainant had purchased tractor and trolley by obtaining a loan of Rs.3,70,000/- on 28th of September, 2005 from the respondent M/s Mahindra Finance. The loan was to be repaid in 48 EMIs @ of Rs.10,329/- commencing from 11th of October, 2005. The complainant, however, became a defaulter and had hardly paid Rs.1,32,930/- by the end of March, 2008. For the repeated defaults, the tractor had been seized but was released on the request of the complainant that he would regularly pay EMIs in future, which

he failed to honour. Admittedly, he had some constraint with regard to making the regular payment of the instalments. The respondent/opposite party gave reasonable opportunity to the complainant to discharge his loan liabilities but of no avail. Finally, they issued a notice to seize the vehicle in case he failed to pay the defaulted instalments. When there was no response, the tractor was taken possession of. The complainant made no efforts to clear the due loan amount and on the other hand filed a civil suit and obtained a temporary injunction restraining the respondent/opposite party from selling or transferring the tractor in question. Meanwhile, a complaint was filed before the District Forum alleging forcible possession of the tractor, culminating in the award by the District Forum as stated earlier. When the matter was taken up in appeal before the State Commission by the respondent/opposite party, the State Commission in its detailed order has found no deficiency on part of the respondent/opposite party and has dismissed the complaint.

Learned counsel for the petitioner has been heard on the admissibility of this revision petition. Records of the case have been perused. He has primarily relied upon an order passed by this Commission in the case of Citicorp Maruti Finance Ltd. Vs. S. Vijayalaxmi [III (2007) CPJ 161 (NC)], in which the issue before the Commission was the conduct of the financial institutions hiring recovery agents and taking forcible possession of vehicles through their muscleman in case of any default by the loanee/hire purchaser. In that case, the loanee had been offered a One Time Settlement (OTS) and was given a period of 14 days to deposit the OTS amount but the recovery agents of the petitioner had before the expiry of the said period forcibly taken possession of her vehicle. The facts of that case, therefore, are not identical to the facts of this case. This Commission in the case of Sheela Kumari Vs. Tata Engineering & Locomotive Company & Ors. [II (2007) CPJ 92 (NC) relying upon its earlier order in the case of Manager, St. Marys Hire Purchase (P) Ltd. Vs. N.A. Jose [III (1995) CPJ 58 (NC)] held that seizure of a vehicle under an agreement for default in payment of instalments cannot be considered as deficiency in service. It is not the case of the complainant that either he had not defaulted in the regular payment of the EMIs or that earlier when tractor had been seized for non-payment of the dues, the opposite party had released the tractor on the assurance of the complainant that he would henceforth make the payment of the EMIs regularly. It is also not denied that the complainant had subsequently failed to pay the EMIs which amounts to the complainant being an incorrigible/chronic defaulter and the opposite party had issued him notice with regard to seizure of the tactor in case he failed to clear the dues. Only after affording adequate opportunity that the tractor was seized by the opposite party. The conduct of the complainant is also evident from the fact that rather than clearing the dues, he approached the civil court for obtaining a temporary injunction. This Commission does not find anything illegal in the order passed by the State Commission, wherein it has been held that Complainant wants to take undue advantage of temporary injunction order, and wants OP to dance to his tunes. The State Commission goes on to say that if complainant is interested in tractor, he may repay the balance and take possession. In the case in hand, when sufficient and repeated notice and opportunities have been provided to the complainant to clear his dues, it cannot be said that there has been any deficiency on part of the respondent/opposite party. The principle of natural justice has been fully adhered to. Under the circumstances, the revision petition being devoid of any merit is dismissed. However, there shall be no order as to costs.