
(2016) 03 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

Case No : 2669 of 2012

SHRIRAM TRANSPORT FINANCE CO. LTD. & ANR.

APPELLANT

Vs

K. LATHA

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Citation : 2016 2 CPR 384

Hon'ble Judges : K.S. Chaudhari, Lenin Singh Hijam

Advocate : Bineesh K.

Judgement

1. This revision petition has been filed by the petitioner against the order dated 11.05.2012 passed by the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram (in short, "the State Commission") in Appeal No. 652 of 2011 - Shriram Transport Finance Co. Ltd. & Anr. Vs. K. Latha by which, order of District Forum allowing complaint was modified.

2. Brief facts of the case are that complainant/respondent is running pig farm and for this purpose she purchased Bajaj Goods Auto with financial assistance from OP No. 1/Petitioner to the tune of Rs.1,06,000/- during May, 2007 and loan amount was payable in 36 monthly installments from 5.5.2007. Complainant was prompt in making payment of installments yet on 25.6.2009 OP No. 2/Petitioner No.2 with the help of others deputed by OP No. 1 forcibly took away vehicle. Alleging deficiency on the part of OP, complainant filed complaint before District forum. OP resisted complaint, admitted grant of loan, but denied that complainant was making regular payment of installments but submitted that complainant was habitual defaulter in making payment of installments. It was further submitted that vehicle was voluntarily surrendered by complainant on 14.7.2009 which was sold and complainant was asked to remit balance amount of Rs.56,126/-. It was further submitted that complaint does not fall within purview of C.P. Act and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed OP No. 1 to pay Rs.73,000/- to the complainant along with cost of Rs.3,000/-. Appeal filed by OP

was partly allowed by learned State Commission and vide impugned order OP was directed to pay Rs.18,619/- with 12% p.a. interest from the date of complaint along with compensation of Rs.2500/- failing which, OP was directed to pay Rs.73,000/- with 12% p.a. interest against which, this revision petition has been filed.

3. Heard learned Counsel for the parties finally at admission stage and perused record.

4. Learned Counsel for the petitioner submitted that as complainant got his vehicle financed for commercial purposes, complaint was not falling within purview of consumer; even then, learned District Forum committed error in allowing complainant and learned State Commission committed error in allowing appeal partly; hence, revision petition be allowed and impugned order be modified and complaint be dismissed. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

5. Perusal of complaint reveals that complainant pleaded in the complaint that she was running pig farm and for the purposes of bringing edible materials for pigs, she purchased aforesaid vehicle with financial assistance of OP No. 1. OP in its reply specifically pleaded that complaint does not fall within purview of C.P. Act. Complainant has nowhere pleaded that vehicle was purchased for earning her livelihood by means of self-employment. Learned District forum has failed to consider this objection and learned State Commission also did not consider this objection, though, it was specifically pleaded in para 3 of memo of appeal.

6. Once it is admitted that complainant availed loan facility from OP for running her business, complainant is excluded from purview of consumer unless it is pleaded and proved that complainant availed services exclusively for the purpose of earning her livelihood by means of self-employment. In the absence of aforesaid pleading in the complaint as well in absence of any proof to the effect that complainant availed loan facility exclusively for earning her livelihood by means of self-employment, complaint was not entertainable by District Forum. Complainant has not placed on record any driving licence of the complainant to ascertain that she herself was driving vehicle. Learned Counsel for the respondent submitted that complainant's husband used to drive vehicle, but in absence of any pleading to the fact that loan facility was availed for running business exclusively for earning her livelihood, complainant does not fall within purview of consumer. Learned Counsel for respondent placed reliance on judgment of Hon'ble Apex Court in AIR 1995 SC 1428 - Laxmi Engineering Works V P.S.G. Industrial Institute in which it was held that person who buys goods and uses them himself, exclusively for purpose of earning his livelihood by means of self-employment then he falls within purview of consumer. This judgment does not help to the complainant as complainant has neither pleaded nor proved that she availed services for earning her livelihood by means of self-employment.

7. Perusal of reply and statement of account reveals that complainant was defaulter in making payment of installments right from the beginning and in such circumstances, OP has not committed any deficiency in taking possession of the vehicle on surrendering it by the complainant.

8. Perusal of impugned order reveals that in first four lines of the last para of the order, OP was directed to pay Rs.18,619/- whereas, in last three lines, OP No. 1 was directed to pay Rs.73,000/-. No reason has been given for direction of making payment of Rs.73,000/- when appeal was being allowed partly and in such circumstances, impugned order is liable to set aside.

9. In the light of aforesaid discussion, it becomes clear that learned State Commission has committed error in allowing appeal partly and revision petition is to be allowed.

10. Consequently, revision petition filed by the petitioner is allowed and impugned order dated

11. 05.2012 passed by the learned State Commission in Appeal No. 652 of 2011 - Shriram Transport Finance Co. Ltd. & Anr. Vs. K. Latha and order of District Forum dated 24.8.2011 passed in CC No. 43/2010 - K. Latha Vs. Shriram Transport Finance Co. Ltd. & Anr. is set aside and complaint stands dismissed with no order as to costs.