

indranil Modak Vs. Kotak Mahindra Private Ltd. and Others

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Court : West Bengal State Consumer Disputes Redressal Commission SCDRC
Kolkata

Decided On : Mar-13-2012

Judge : Kalidas Mukherjee President, the Honourable Mrs. S. Majumder, Member
& the Honourable Mr. S. Coari, Member

Appeal No. : S.C.Case No. FA 700 of 2010

Appellant : indranil Modak

Respondent : Kotak Mahindra Private Ltd. and Others

Judgement :

S. Coari, Ld. Member

The present Appeal has been directed against the judgment and order dt. 3.12.10 passed by the Paschim Medinipur District Consumer Disputes Redressal Forum in Complaint Case No. 134/10 wherein the Ld. District Forum refused to admit the petition of complaint being barred by limitation.

The case of the Complainant/Appellant before the Ld. District Forum, in brief, was that the complainant purchased a dumper under hire purchase agreement with the OP No. 2, Tata Finance Ltd. According to the complainant, on 19.7.07 the OP No. 1, i.e. Kotak Mahindra Pvt. Ltd., forcibly took possession of the vehicle in question for non-payment of installments, which the complainant was to pay as per the hire purchase agreement entered into with the OP No. 2, without prior

intimation to the complainant. According to the complainant, the complainant has already paid a substantial amount towards the value of the vehicle in question and the Ops having refused to accommodate the complainant in the matter of repaying the balance amount and that the OP No. 2 having adopted a high-handed action in the matter of forcible re-possession of the vehicle in question committed deficiency in service and hence, the petition of complaint.

The Ld. District Forum while refusing to admit the petition of complaint has observed that when admittedly the OP No. 1 re-possessioned the vehicle on 19.7.07 and the petition of complaint having been filed in 2010, the petition of complaint was hopelessly barred by limitation and accordingly, refused to admit the petition of complaint being barred by limitation.

The only moot question that revolves round the present Appeal is as to whether the Ld. District Forum was justified enough in disposing of the petition of complaint in the manner as mentioned above.

DECISION WITH REASONS

At the time of hearing it has been submitted on behalf of the Respondents that in this case there is no scope to elongate the limitation period. When admittedly the vehicle was re-possessioned by the OP No. 1 on 19.7.07, there was no scope to get the petition of complaint admitted in 2010, which was admittedly far beyond the prescribed time-limit. According to the Ld. Advocate for the Respondent, the Ld. District Forum having adjudged the facts and circumstances of the case on legal proposition the impugned judgment is quite just and proper and the same should be confirmed.

We have duly considered the submissions so put forward on behalf of the Respondents and have also gone through the materials on record including the impugned judgment and find that in this case the complainant/Appellant has put forward a case to the effect that in pursuance to a hire purchase agreement entered into with the OP No. 2, the complainant purchased a dumper for valuable consideration and that while the complainant was repaying the installments and the hire purchase agreement was in subsistence, the OP No. 1, M/s. Kotak

Mahindra Pvt. Ltd., forcibly took possession of the vehicle on the plea that some installments were outstanding. According to the complainant, the forcible re-possession of the vehicle was without prior notice and the complainant having no other alternative had to take recourse to law by filing the consumer complaint for proper redressal. The Ld. District Forum while refusing to admit the petition of complaint has observed that the cause of action having been arisen on 19.7.07, when admittedly the OP No. 1 took re-possession of the vehicle, the petition of complaint was barred by limitation and accordingly refused to admit the same.

We have carefully gone through the impugned judgment and have also gone through the materials on record and find that on 16.9.10 the OP No. 2 asked for the remaining portion of the outstanding balance amount along with interest from the complainant in respect of the hire purchase agreement entered into between the parties. If that be the position, from the documents of the Ops it has become crystal clear that the cause of action continued at least till 16.9.10. The petition of complaint having been filed in the year 2010 it can very well be said that the consumer complaint was filed well within the prescribed time-limit. Having considered the present Appeal in the light of above discussion we find much merit in the present Appeal and we are of the considered opinion that ends of justice will be met if the Appeal be allowed and the case be sent back on remand to the Ld. District Forum with a request to admit the complaint and proceed with the case as per law. In the result, the Appeal succeeds and the impugned judgment is liable to be set aside.

Hence, it is ORDERED that the Appeal stands allowed on contest without any order as to cost. The impugned judgment stands set aside. The case be sent back on remand to the Ld. District Forum with a request to admit the complaint and proceed with the case as per law.

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