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Court : Kerala State Consumer Disputes Redressal Commission SCDRC
Thiruvananthapuram

Decided On : Jan-28-2012

Judge : The Honourable Shri. Justice K.R. Udayabhanu President & the
Honourable Mr. S. Chandramohan Nair Member

Appeal No. : First Appeal No.1136/2000 (Arisen out of Order Dated 31/07/2000 in
Case No. 295/1999 of District Thiruvananthapuram)

Appellant : Hiralal and Another

Respondent : M/S. India Cements Ltd. Represented by Its Senior Manager and
Another

Judgement :

SHRI. S. CHANDRA MOHAN NAIR : MEMBER

The complainants in OP 295/99 before the CDRF, Thiruvananthapuram are the appellants herein who are aggrieved by the dismissal of their complaint by the Forum below vide order dated: 31.7.2000.

2. The complainants had approached the Forum stating that they had purchased a Mitsbushi Eicher vehicle from one Mr. Raghuvaran on 18.6.98, which was registered in the name of Smt. Kanakambika and that the vehicle was purchased

by Kanakambika by availing a loan of Rs.6,40,000/- on 30.12.97 from the 1st opposite party. It was further stated that as the loanee could not repay the amount, there was a fresh agreement executed by the loanee and the complainants with the consent and knowledge of the 1st opposite party and the 1st opposite party had directed the complainants to pay a sum of Rs.1,00,000/- as initial payment on or before 31.7.98 and the balance of Rs.7,49,280/- was scheduled to be paid in 40 monthly installments, at the rate of Rs.18,732/-. The complainants had submitted that as the vehicle met with an accident, 3 installment payments were delayed and the payment for Rs.1,00,000/- was extended by the 1st opposite party till 15.12.98 and the said payment was made before 15.12.98. It was alleged that on 14.6.99 the vehicle was seized by the 1st opposite party even though the complainants had paid Rs.25,450/- and though the 1st opposite party had allowed further time for payments in the dues. It was further submitted that on seizure of the vehicle, the complainants had approached the 1st opposite party and as directed, the complainants paid a sum of Rs.60,000/- for releasing the vehicle and even after the said payment on 18.6.99, the 1st opposite party did not release the vehicle which amounted to deficiency in service and unfair trade practice. The complainants prayed for directions to the opposite parties to pay a sum of Rs.3,92,450/- with interest at the rate of 18% per annum till realization with cost.

3. In the version filed by the 1st opposite party, it was contended that the complaint was not maintainable and that the loan was availed by Smt. Kanakambika and that it was due to default in payment that the vehicle was seized once and it was released on payment subsequently. It was also submitted that though the complainants agreed to pay Rs.1,00,000/- it was not made in time and the seizure of the vehicle was for default in payments and the only remedy available to the complainants was in Civil Court, according to them.

4. The 1st complainant was examined as PW1 and the previous owners Mr. Raghuvaran and Kanakambika were examined as PW2 and PW3 respectively. On the side of the complainant Exts. P1 to P18 were marked. On the side of the opposite parties DW1 was examined and Exts. D1 to D11 were marked. The Forum below dismissed the complaint justifying the actions of the opposite parties.

5. The learned counsel for the appellants/complainants vehemently argued before us that the Forum below had gone wrong in dismissing the complaint finding that the complainants had defaulted the payments. It is argued before us that on repossession of the vehicle on 14.6.99 the complainant immediately contacted the 1st opposite party and it was on their assurance that the vehicle would be released that the complainants paid a sum of Rs.60,000/- on 18.6.99. It is also argued by the learned counsel for the appellants that the Lower Forum ought to have found that the 1st opposite party had accepted the amount and it was unfair, unjust and against the principles of natural justice that the opposite party did not release the vehicle even after accepting the amount. It is also his case that the seizure was illegal and even if the complainants had defaulted payments, the opposite parties could realize the amount under due process of law. It is also his case that there was no notice served on the complainants by the 1st opposite party regarding the default in payment and it was without any notice that the vehicle was taken into custody even though the complainant had paid Rs.1,25,450/- by that time. The learned counsel has also a case that the vehicle might have been sold by the opposite party and no information regarding the same or auction proceedings were intimated to the complainant so far. Thus, he argued before us that the order of the Forum below is to be set aside and the appeal allowed with costs.

6. On the other hand, the learned counsel for the respondents/opposite parties submitted before us that the Forum below had appreciated every aspect of the case in its correct perspective and had passed the order which is only to be upheld. It is argued that the finding of the Forum below that the complainant was at fault in remitting the amount at the appropriate time, is to be appreciated and it was due to failure in remittance of the amounts that the vehicle was seized by the opposite party/financier. It is also his case that such seizure was part of the hire purchase transaction at that time and the fault was purely on the part of the complainants. Arguing for the position that the order of the Forum is only to be upheld, the learned counsel argued for the dismissal of the appeal also.

7. On hearing both sides and also on perusing the records produced by the counsels it is found that the complainants had purchased the vehicle from Smt. Kanakambika the wife of one Mr. Raghuvaran and that there was an agreement

executed between the said parties with the knowledge and consent of the 1st opposite party as it can be seen that the 1st opposite party has accepted Rs.1,00,00/- from the complainants as initial payment and also another sum of Rs.25,450/- towards installment payments. It is also submitted that the vehicle was seized on 14.6.99 and the complainants had remitted Rs.60,000/- immediately on 18.6.99. The acceptance of the said amount is not denied by the 1st opposite party. They would only say that there was no assurance to release the vehicle on the payment of Rs.60,000/-. We are not inclined to accept the same as it can be seen that the vehicle was seized on 14.6.99 and the amount of Rs.60,000/- was paid on 18.6.99 itself. Even after the said payment the vehicle was not released and it is also found that the opposite parties had not resorted to intimate the complainants about the sale or further actions of the opposite parties with regard to return of the vehicle. It is to be found that the opposite parties have no case that they have not sold the vehicle. No documents are seen furnished by the opposite parties with regard to the sale of the vehicle. They would only say that no further amounts were demanded from the complainants towards the loan payment. We find that after accepting the amount of Rs.60,000/- as is evident from Exts. P12 and P13, it was unfair and unjust on the part of the 1st opposite party to retain the vehicle in their custody. It is undoubtedly clear that the 1st opposite party had committed deficiency in service and unfair trade practice for which the complainants have to be compensated. In the said circumstances it is just and proper that the 1st opposite party be directed to return the sum of Rs.60,000/- with interest at the rate of 12% p.a from 18.6.99 till date of payment. The 1st opposite party is also directed to pay cost of Rs.5,000/- to the complainant for the proceedings through out.

In the result, the appeal is allowed in part .There by the 1st opposite party is directed to pay to the complainant the sum of Rs.60,000/- with interest at the rate of 12% p.a from 18.6.99 till date of payment with cost of Rs.5,000/-.

It is also made clear that the opposite parties are not entitled to collect any further amount from the complainants since the vehicle was taken in to custody by the 1st opposite party on 14.6.99.

The appeal is disposed of as above.

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