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Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC Chennai

Decided On : Oct-04-2011

Judge : Thiru a.K. Annamalai, M.a., M.L., M.Phil., Presiding Judicial Member & Thiru S. Sambandam, B.SC., Member

Appeal No. : F.A.384 of 2008 [Against order in OP.430/2004 on the file of the DCDRF, Chennai (South)]

Appellant : Saradha Gopalakrishnan and Another

Respondent : icici Bank Limited, Rep. by Its Manager (Vehicle Loan)

Judgement :

(The appeal coming before us for hearing finally on 13.09.2011, upon hearing the arguments of Appellants side and perused the documents, written submissions as well as the order of the District Forum, this Commission made the following order.)

A.K. ANNAMALAI, PRESIDING JUDICIAL MEMBER

1. The unsuccessful complainants are the appellants.
2. Complainants filed a complaint against the opposite party claiming for direction to repay the cost of vehicle for Rs.40,344/- including accessories or to replace the

new vehicle for the same model without collecting any extra cost and Rs.1,50,000/- for mental agony, hardship and Rs.1,000/- as costs.

3. The 1st complainant purchased Honda Activa two wheeler for his son-2nd complainant for Rs.38,254/- through the opposite party and by way of finance agreement loan which is repayable in 20 monthly instalments at the rate of Rs.1,930/-EMI. In the month of August 2003 they have shifted their residence from Velachery to Alwarpet. After communicating the same to the opposite party by letter dated 9.9.03. Due to illness and medical treatment, the first complainant failed to pay the instalments for November 2003 and December 2003 and for the dues on receipt of the notice which was sent to the old address she has paid 3 months instalments for November, December 2003 and January 2004 with penal interest in all Rs.6.639/- by way of two cheques and settled the entire due by regularising the account. But in spite of that the opposite party without her knowledge taken possession of the vehicle and as the vehicle was found missing she intimated to the police station and to the opposite party through letter dated 24.2.04 and the opposite party in the guise of helping for claim of insurance to collect R.C. book sent one Mr.John which was handed over. The dues for the month of March 2004 were also collected through the cheque. When she has approached for NOC she came to know the vehicle was sold to the 3rd party and thereby opposite party indulged in unfair trade practice causing mental agony undue hardship to the complainant. Hence the complainant after issuing legal notice on 31.5.04 filed this consumer complaint.

4. Opposite party in their written version denied the allegations of the complainant and stated that the complainant was not regular in her hire purchase dues and as per the default clause of the agreement, the opposite party has repossessed the vehicle and a presale notice dated 23.2.04 was dispatched to the complainant even though no notice is necessary as per the agreement. Hence there is no deficiency of service or negligence on the part of the opposite party. Hence the complaint to be dismissed.

5. The District forum after an enquiry dismissed the complaint by giving a finding that the complainant is not entitled to claim cost of vehicle and compensation and

also relied upon the ruling reported in 2003, 2006 CPJ 247 National Commission that under hire purchase transaction financier not renders service within the meaning of Consumer Protection Act, complainant is not a consumer.

6. Aggrieved by the order of the District Forum, the complainant come forward with this appeal by stating that the District Forum erroneously dismissing the complaint.

7. The appellants counsel relied upon the ruling reported in 2007 III CPR 191 (NC) at page 204 in which the method of repossession of the vehicle to be made are mentioned as code of conduct prescribed by the bank in the case of City Bank whcih was relied upon. According to the same order of repossession pre possession, and post repossession, information to the police station, free sale notice to the customer, 7 days time for pre-payment funds made vehicle to be released to the customer if not made sale process commenced by sealed quotation and other procedures to be followed are pointed out as per the ruling. As far as our case is concerned the complainant contended that she has paid dues after intimation and in spite of that vehicle was taken possession and sold in auction. But the opposite party contended that a pre sale notice dated 23.2.04 was given as per Exhibit B4. But this letter was sent to the 2nd complainant to the previous address at Velachery. Whereas the 1st complainant already intimated the change of address to a new address as per Exhibit B2, Raj Parrys Pearl, No.9, Bava Road, Alwarpet, Chennai-18 and the letter was intimated on 9.9.03 which was accepted and intimated through the letter Exhibit B1 in which it is stated that they are confirming the changed mailing address as above and future correspondence would be mailed with this address. But not contrary to the same, the communication regarding repossession was intimated/ sent to the old address that too to the 2nd complainants name. Exhibit B1 was addressed to 1st complainant and in the written version it is stated by the opposite party that all the communications would be sent to the address given at the time of availing loan since the same is automated. But they have taken note of the change of address and uploaded in the system as per Exhibit B1. But communicated the pre-sale notice to the old address even after recording the change of address.

8. In those circumstances, it is clear that the opposite party was lacking service in properly communicating the pre sale notice and even as per the complainant before the pre-sale all the instalments were paid and adjusted and all the cheques were encashed up to February 2004. So it is clear as on the date of pre-sale notice there was no due payable by the complainant. Further as per the terms and conditions of agreement Exhibit B3 rights and remedy of ICICI Bank concerned in Sl.No.1. It is stated without prejudice to ICICI bank other rights if the borrowers fails to pay any amount payable by the borrowers, the ICICI Bank under this agreement within 15 days of demand or of such amount becoming due and payable if any and the failure to perform the obligation of the borrower the bank is entitled forthwith take physical possession of the vehicle. But in our case the complainant has paid the dues for the month of November, December 2003 and January 2004 with penal interest of Rs.990/-. As per the complaint and subsequently for the month of February also the post dated cheque was encashed on 7.3.04 and in those circumstances it is clear that the opposite parties violated the terms and conditions regarding repossession of vehicle and thereby the complainant was put in mental agony and deserves for compensation for the deficiency of service by the opposite party. The District Forum without looking in to these aspects erroneously dismissed the complaint by relying upon the ruling reported in 2006. As per the ruling relied upon by the complainant reported in 2007 III CPR 191 relating to the same facts of case the complaint is entertainable and in view of the facts and circumstances of the case we are of the view that the appeal to be allowed by setting aside the order of the District Forum. The complainant claimed Rs.1,50,000/- as compensation and refund of entire payment of the vehicle amount or to replacing the new vehicle. We are of the view that the refund of amount with interest could be awarded without any punitive compensation.

9. In the result, the appeal is allowed by setting aside the order of the District Forum, Chennai (South) in C.C.No.430/2004 dated 22.04.2008. The opposite party is directed to refund Rs.38,254/- as cost of the vehicle with 9% interest from the date of complaint till date of realization, and to pay Rs.1,000/- as costs before the District Forum and Rs.2,000/- as costs in this appeal.