INDUSIND BANK V. JAGTAR SINGH

Industrial Bank Vs. Jagtar Singh

1. INDUSIND BANK
THROUGH ITS CHAIRMAN/MANAGING
DIRECTOR/PRINCIPAL OFFICER SERVICE, THROUGH
ITS BRANCH OFFICE AT 39, PLATINA PLAZA,MALL
ROAD, THROUGH ITS BRANCH MANAGER,
AMRITSAR
PUNJAB

……..Petitioner(s)

Versus

1. JAGTAR SINGH
S/O.SH SULAKHAN SINGH, R/O VILLAGE BHAIL DHAI
WALA ,TEHSIL KHADOOR SHAHIN
TARN TARAN
PUNJAB

……..Respondent(s)

Case No. : REVISION PETITION NO. 2802-2803 OF 2017

Date of Judgement : 04 December 2023

Judges : MR. SUBHASH CHANDRA

For Petitioner : MR. M. YOGESH KANNA, ADVOCATE
MR. VASU KALRA, ADVOCATE

For Respondent : MR. UPDIP SINGH, ADVOCATE

Facts :

- *Respondent purchased a truck for Rs. 19,87,000 in 2011, financed by the petitioner bank for Rs. 17,70,000 to be repaid in 48 monthly installments. According to the petitioner, the respondent defaulted on payments, so the bank repossessed the vehicle on 23.11.2012*
- *Respondent alleged the vehicle was repossessed without notice and he was declared a defaulter without notice*
- *Vehicle was sold to a 3rd party for Rs. 7,80,000 without notice to the respondent*
- *Respondent approached the District Forum alleging deficiency in service by the bank*

Court's Opinions:

Findings of the District Forum:

- *Vehicle repossessed without declaring respondent as defaulter or giving notice*
- *No evidence filed by the bank regarding demand notice before repossessing vehicle*
- *Manner of sale of vehicle not transparent*
- *Directed bank to return vehicle to respondent and pay compensation for deficiency in service*

State Commission:

- *Appeal dismissed stating no evidence filed by bank of notice before repossessing vehicle*
- *Manner of vehicle sale not transparent*
- *Bank indulged in illegal procedure to repossess vehicle*

National Commission:

- *Lower fora arrived at concurrent findings of facts*
- *No proof by bank based on documents that findings had jurisdictional error or material irregularities*
- *No evidence respondent declared defaulter after due notice before vehicle repossession*
- *Argument of limitation by bank does not sustain*

- ***Revision petition liable to be dismissed under limited revisional jurisdiction***

Referred Laws and Sections:

- ***Section 21 of Consumer Protection Act – Revisional jurisdiction of National Commission***
- ***Section 24A of Consumer Protection Act – Limitation period***

Supreme Court Judgments referred:

- ***State Bank of India Vs. B.S. Agriculture Industries on issue of determining limitation period***
- ***Deena (Dead) Through LRs Vs. Bharat Singh on exclusion of time period in computing limitation period***
- ***Mrs. Rubi (Chandra) Dutta Vs. United India Insurance Co. Ltd. on concurrent findings of fact by lower fora***

Previous Orders of National Commission referred:

- ***Citicorp Maruti Finance Ltd vs S. Vijayalakshmi on repossession of vehicle without notice***
- ***Someshwer Lal Choudhary Vs Shagun Finance Investment P Ltd on repossession of vehicle without notice amounting to deficiency in service***

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Full text of Judgement :

1. This revision petition assails the order dated 21.03.2017 of the State Consumer Disputes Redressal Commission, Punjab, Chandigarh (in short, 'the State Commission') in First Appeal No.658 of 2016 dismissing the appeal of the petitioner against the order dated 12.02.2016 of the District Consumer Disputes Redressal Forum (in short, 'the District Commission') in CC No.102 of 2015. This order will also dispose of Revision Petition No.2803 of 2017 against order of the State Commission Punjab in FA/651/2016 dated 21.03.2017 which arises from the same order and is a cross appeal filed by the present respondent.

2. The facts of the case, in brief, are that the respondent/complainant purchased a truck of Ashok Leyland, Model No.04/2011 which was registered as PB-46-K-1976 for a sum of Rs.19,87,000/-with finance from the petitioner bank for Rs.17,70,000/- which was to be repaid in 48 monthly instalments starting from 21.06.2011 to 21.04.2015. According to the petitioner, the respondent defaulted in payments and, therefore, the petitioner bank repossessed his vehicle on 23.11.2012. The respondent approached the District Forum in CC No.102 of 2015 alleging that the vehicle had been repossessed without notice to him and that he had been declared to be a defaulter also without notice. It was alleged that the vehicle was sold for Rs.7,80,000/- to a 3rd party without notice. The District Forum, vide its order dated 12.07.2016 in favour of the respondent, upheld that the vehicle had been repossessed without notice and the opposite party had not been declared a defaulter. Placing reliance on this Commission's order in L&T Finance Limited & Anr. Vs. Rampada, 2016(2) CLT page 343(NC) it was held by the District Forum that when the bank statement itself showed that an amount of Rs.1,45,545/- was due as on

18.05.2005, the outstanding of Rs.5,82,400/- shown as due in June, 2005 was inexplicable. The order of the District Forum reads as under:-

"As such opposite party is directed to re-deliver the vehicle bearing registration No.PB-46-K-1976 to the complainant. Opposite party is also directed to pay compensation to the tune of Rs.10000/- to the complainant and cost of litigation are assessed at Rs.2000/-. Compliance of this order can be made within a period of 30 days from the date of receipt of copy of this order; failing which, complainant shall be at liberty to get the order executed through the indulgence of this Forum".

3. The appeal filed before the State Commission by the present petitioner was also dismissed on the grounds that no evidence had been filed by opposite party regarding any demand notice before repossessing the vehicle and the manner in which the vehicle was sold

was not transparent. It was concluded that the petitioner indulge in an illegal procedure to repossess the vehicle and, therefore, the appeal was dismissed with costs of Rs.50,000/- of which Rs.25,000/- was to be paid to the Respondent and Rs.25,000/- to be deposited in the Legal-Aid account of the State Commission. This revision impugns the order of the State Commission.

4. I have heard learned Counsel for both the parties and perused the material available on record carefully.

5. The Petitioner has contended that the complaint was filed beyond the limitation period in section 24 A of the Act and relied upon the judgments of the Hon'ble Supreme Court in Civil Appeal No. 2067 of 2002 in State Bank of India Vs. B.S. Agriculture Industries (I) (2009) 5 SCC 122 that the Consumer forum was duty-bound to determine whether the complaint was within limitation period and in Civil Appeal No. 2965 of 1992 in Deena (Dead) Through LRs. Vs. Bharat Singh (Dead) Through LRs. and Others in (2002) 6 SCC 336 that held that the time taken for proceeding with the suit without impleading the necessary party cannot be excluded since the party pursuing

such a suit cannot be said to be acting in “good faith” to argue that the respondent had not impleaded the buyer of the vehicle in auction. It also relied upon this Commission’s order in Revision Petition No.4509 of 2010 in Haryana Urban Development Authority Vs. Dr. Rajkumar Gupta dated 02.01.2014 on the issue of limitation.

6. The argument of the Petitioner is essentially that the vehicle had to be repossessed for the reason that the Opposite Party had defaulted on the payment of instalments. It is also argued that the respondent was not a ‘consumer’ since the vehicle had been bought for commercial purpose by the opposite party who was a resident overseas and the vehicle had not been used for his livelihood, but for a commercial purpose.

7. Per contra, the learned counsel for the Respondent argued that both lower fora had arrived at concurrent findings of facts and that this Commission had limited revisional jurisdiction under section 21 of the Act since no jurisdictional error or material irregularity had been brought out by the Petitioner. It was also argued that on the basis of this Commission’s order dated 27.07.2007 in RP No.737 of 2005 in Citicorp Maruti Finance Ltd. Vs. S. Vijayalakshmi, 2007 SCC Online NCDRC 52 and order dated 23.03.2017 in Revision Petition No.49 of 2011 in Someshwer Lal Choudhary Vs. Shagun Finance Investment (P) Limited 2017 (2) CLT 256 the repossession and sale of vehicle without notice amounted to deficiency in service and unfair trade practice on the part of the finance company and that repossession of a vehicle by force or without notice was an unlawful procedure. A written notice was required to be sent by the finance company under the hire- purchase agreement before the possession could be taken and that repossession could be taken only after following due procedure.

8. The order of the District Forum has noted that the vehicle was repossessed without the respondent being declared a defaulter and without any notice for repossession being brought on record. It is also noted that the vehicle was sold for Rs.7,80,000/- after one and a half

years of purchase and that even after applying depreciation of 10 % per annum i.e. total of 15% for 1 1□2 years, would amount to a depreciation of Rs.2.98 lakhs which would make the value of the vehicle approximately Rs.16.80 lakhs based on the purchase value. In view of the fact that no documentary proof with regard to a transparent process of sale of the vehicle had also been brought on record, the sale of the vehicle was also held illegal.

9. The findings of the lower fora are concurrent with regard to the facts of the case. The Petitioner has not brought on record any proof based on any documentary evidence that the findings of the lower fora were either in jurisdictional error or due to material irregularities.

It is not the case of the petitioner that the respondent had been declared a defaulter after due notice and that the vehicle had been repossessed following due process of law. As regards the issue of limitation urged by the petitioner, on the ground that the earlier complaint No.57 of 2013 on the same issue had been dismissed as withdrawn, it is seen that the petitioner made a bald mention in his written submission before the District Forum that the complaint was time barred without any documentary evidence to substantiate 'to ascertain'. The order of the District Forum clearly notes that the earlier complaint was allowed to be withdrawn on technical grounds with liberty to file a fresh complaint. The District Forum was, therefore, correct in allowing the complaint and adjudicating upon it. The argument of limitation raised by the petitioner, therefore, does not sustain.

10. In view of the foregoing facts that the revisional jurisdiction of this Commission under section 21 of the Act is limited when the lower fora has returned concurrent findings of facts, as held by the Hon'ble Supreme Court in Civil Appeal No. 2588 of 2011 in Mrs. Rubi (Chandra) Dutta Vs. M/s. United India Insurance Co. Ltd., this Revision Petition is liable to be dismissed.

11. In view of the foregoing discussions, in the light of facts and circumstances of this case, the Revision Petition is

dismissed as without merits. The order of the State Commission is affirmed.

12. Revision Petition No.2803 of 2017 is also disposed off in the above terms. All pending I.As, if any, also stand disposed off with this order.

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