A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.40630 of 2021

Ashok Kumar Tripathy	....	***Petitioner***
		Ms. P.P. Mohanty, Advocate

-versus-

Toyota Financial Service India Ltd.	....	***Opposite Parties***
		Mr. R.C. Panigrahy, Advocate

CORAM:
JUSTICE BISWANATH RATH

ORDER
27.01.2022

Order No.

01. **1.** This writ petition involves a challenge to the order passed by the State Consumer Disputes Redressal Commission, Orissa in Revision Petition No.79 of 2021.

2. Taking this Court to some documents relating to this case Ms. Mohanty, learned counsel for the Petitioner while not disputing that the Petitioner is a loanee and the Opposite Party is a Banker / private financer, but however, contended that for the pandemic situation due to COVID-19, there has been a lot of suffering to the owner of the vehicle in question resulting the Petitioner was not in a position to clear the agreed installments. As a consequence, the Opposite Party-Financer attempted to take the possession of the vehicle of the Petitioner. Finding the Financer undertaking forcible measures the Petitioner was constrained to approach the District Consumer Disputes Redressal Commission, Khurda, Bhubaneswar for appropriate relief. In entertaining the C.C. Case No.147 of 2021 along with I.A. No.58 of 2021, the District Consumer Dispute Redressal Commission, Khurda while issuing notice by order dated 2.09.2021 granted interim protection thereby directing the Private Financer not to take any coercive action against the complainant more particularly in respect of the vehicle bearing registration No.OD-02-BG-9507 until further orders. Upon finding such *ex parte* order, the Financer approached the revisional forum i.e. the State Consumer Disputes Redressal Commission, Orissa by filing Revision Petition No.79 of 2021. It is alleged that while taking up the matter for admission for considering the *ex parte* nature of order being passed by the District Forum, the revisional authority finally disposed of the revision by setting aside the interim protection granted by the District Forum and also remitting the matter to the District Forum for passing an order with reason. It is here alleged that the revisional authority while considering validity involving an interim order passed *ex parte* decided the Revision finally and without affording opportunity to the Petitioner and the Revisional order remains *ex parte*. Ms. Mohanty, learned counsel for the Petitioner submitted that for the suffering of the loanee-Petitioner due to the pandemic situation, the loanee was not in a position to clear the installments and the District forum being prima facie satisfied with the difficulties faced by the Petitioner-the loanee, was pleased to pass the interim direction. It is, in the circumstance, contended that there was no illegality committed by the District Forum in granting the interim order and since the order involved is an interim order, there was no necessity of assigning any reason as there was no finality of the proceeding. Ms. Mohanty, learned counsel for the Petitioner also contended that in the event the Opposite Party-Financer was aggrieved by such order, nothing prevented the Private Financer to move the very same Court for variation of the order instead of approaching the revisional authority. It is on the face of *ex parte* disposal of the revision Ms. Mohanty, learned counsel for the Petitioner claimed that the revisional order becomes bad and needs to be interfered with.

3. Mr. Panigrahy, learned counsel for the Opposite Party-Financer, however, taking this Court to the nature of disposal of the I.A. No.58 of 2021 contended that for the Opposite Party-Financer likely to be affected by such interim order, an opportunity of hearing ought to have been provided to the Financer before passing such *ex parte* order. Mr. Panigrahy, learned counsel, however, did not dispute to the allegation of the Petitioner that since the revision was filed involving an *ex parte* order, the revisional authority ought not to have disposed of the matter *ex parte*. It is at this stage of the matter Mr. Panigrahy, learned counsel for the Opposite Party-Financer contended that once the loanee is a defaulter in making payment, he has to discharge his liability. Further no consumer proceeding ought to have been entertained in the already initiation of an Arbitration Proceeding involving both parties. Opposite Party thus while defending the impugned order prayed this Court for passing appropriate order.

4. Undisputedly both the parties are bound by the terms and conditions in the finance involved in the sale of the vehicle involved. Maintainability of the consumer proceeding as raised by the learned counsel for the Opposite Party is yet to be raised and adjudicated.

Considering the rival contentions of the parties and on the question of *ex parte* nature of interim order passed by the District Forum resulting filing of revision, this Court finds, the District Consumer Dispute Redressal Commission, Khurda has passed the following order in I.A. No.58 of 2021 :-

"<u>Extract of the order No.01 : dated : 02/09/2021</u>

> The Interim Application supported by affidavit, filed by the complainant praying for interim order U/s. 38 (8) of C.P. Act, 2019, is put up for consideration. In the facts & circumstances of the case, however, as an interim measure, the OPs are directed not to take any coercive action against the complainant in respect of the vehicle bearing registration number OD-02-BG-9507 until further orders.
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> Communicate the Ops accordingly and put up on the date fixed i.e. 30/09/2021 for hearing on the above petition filed U/s.38(8) of the C.P. Act, 2019 on merits in presence of both sides if objection is filed by the OPs or else the above order shall be made absolute and the petition shall stand disposed of accordingly."

5. Looking to the language used in the interim order this Court finds, the interim order was granted for a particular time and also keeping the I.A. No.58 of 2021 for final adjudication to 30.09.2021. For the opinion of this Court the I.A. No.58 of 2021 was still pending for final adjudication after appearance of the all the parties therein. Looking to the nature of order, this Court observes, nothing prevented the Opposite Party-Financer to appear before the trial court and file appropriate application and/or objection objecting continuance of the interim order, if any. No revision should have been entertained at this stage for the clear opportunity available to the Private Financer in the lower court proceeding itself. Now coming to the challenge of the Petitioner to the order of the revisional authority being decided *ex parte*, this Court from the above background is of the opinion that once the revision is filed involving *ex parte* disposal of the I.A. No.58 of 2021, the revisional authority should have been careful enough at least in not disposing the revision *ex parte*. It is, only on this ground, this Court finds, the revisional order is not sustainable in the eye of law, which is, hereby, set aside.

Since the trial court proceeding still survives, it will be open to the Opposite Party to appear at there and raise all its' objection. At this stage considering the submission of Mr. Panigrahy, learned counsel for the Opposite Party-Private Financer that since the loanee is in heavy outstanding on account of lapse in not clearing the installments in time and is bound to pay the dues, this Court records the submission of Ms. Mohanty, learned counsel for the Petitioner that the Petitioner is in outstanding of nearly Rs.3,88,000/-. In the process, this Court while leaving it open for the parties to get their dispute adjudicated before the District Consumer Dispute Redressal Commission, Khurda, however, recording the statement of learned counsel for the Petitioner that the Petitioner is ready to pay some amount and request for re-scheduling of the loan outstanding, this Court observes, pendency of consumer dispute shall not stand as a bar in the Petitioner's above attempt and directs, in the event the Petitioner deposits at least a sum of Rs.75,000/- (rupees seventy-five thousand) only along with an application for rephasement of the loan outstanding, the Opposite Party-Private Financer shall not take any coercive action against the Petitioner at least till a decision is taken on the application for rephasement of the loan outstanding offered by the Petitioner. It is also directed that the Petitioner will, however, go on continuing with the payment of installments falling presently.

6. With the aforesaid direction the writ petition stands disposed of.

7. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide memo Nos.514 & 515 dated 7th January, 2022.

(Biswanath Rath)
Judge

Ayas Kanta Jena