April 29, 2024
Sl. No.22
Court No.19
s.biswas

CO 4123 of 2023

Arindam Bose
vs.
Subrata Chatterjee

Mr. Siddhartha Banerjee
Mr. Sayak Ranjan Ganguly
Ms. Srijani Ghosh
Mr. Soumyajit Majumder
Ms. Indrani Majumdar
... for the petitioner
Mr. Anirban Paul
Mr. Subhankar Das
... for the opposite party

1. The revisional application arises out of order dated July 14, 2023 passed by the learned National Consumer Disputes Redressal Commission, New Delhi, in Revision Petition No.383 of 2020. By the order impugned, the learned commission upheld the order of the State Consumer Disputes Redressal Commission, West Bengal passed in Appeal No.673 of 2018 as also the order of the learned District Consumer Disputes Redressal Commission, South 24 Parganas at Baruipur passed in Complaint Case No.90 of 2016.
2. The learned National Commission was of the opinion that the revisional application before the commission was liable to be dismissed as concurrent findings on the basis of evidence by both the fora, could not be interfered with. The scope of revision was restricted to the adjudication as to whether the orders impugned

before the learned National Commission had been passed either without jurisdiction or beyond the evidence and on extraneous materials. Relying on the various decisions of the Hon'ble Apex Court, it was held that without serious jurisdictional error which resulted in miscarriage of justice, the concurrent findings of facts by two subordinate fora should not be interfered with in revision, by the National Commission in exercise of power under Section 21(b) of the Consumer Protection Act, 2019.

3. While appreciating the concurrent findings of the Commissions, the National Commission dealt with the facts of the case. Such facts have been correctly narrated. Thereafter, the commission held that District Commission had found deficiency in service on several scores and had directed that the instalments already paid, be refunded to the opposite party along with Rs.50,000/- as compensation and Rs.5,000/- as costs. The State Commission, in an appeal, came to the specific finding that the appellant bank had sought for setting aside the order of the District Commission on the ground that the vehicle had been returned to the complainant. Whereas, the BNA submitted by the bank reflected that the said vehicle had been sold in order to realise the sum due and payable. The

State Commission also concluded that the vehicle was sold beyond the knowledge of the complainant and without making the receiver a party. This flaw was definitely a deficiency of service. Under such circumstances, the learned National Commission refused to interfere in the revision filed before it.

4. This is a second revision before this Court seeking interference under Article 227 of the Constitution of India, by invoking the general power of superintendence. It has been judicially settled that the general power of superintendence can be exercised to keep the tribunals or courts within the bounds of their authority under the statute and to ensure that the subordinate courts and tribunals do not exceed their jurisdiction while deciding the issues before them.

5. Further, unless the order impugned before the High Court was either perverse or suffered from error apparent on the face of record, the question of invoking the power under Article 227 of the Constitution of India would not arise.

6. On such parameters, this Court now proceeds with the facts and law applicable to the case in hand. The brief facts are that the petitioner entered into a hypothecation-cum-loan

agreement on May 31, 2012 with the plaintiff/opposite party.

7. The opposite party wanted to purchase a Maruti WaganR LXI CNG car. Under the agreement, a sum of Rs.3,90,000/- inclusive of interest was to be paid in 48 equal monthly instalments. After payment of some instalments, the opposite party defaulted. A final payment of Rs.41,479/- was due. The Bank sent a reminder for payment of the said amount within five days. As the amount was not paid, Misc. Case No.2950 of 2016 under Section 9 of the Arbitration and Conciliation Act, 1996 was filed before the learned City Civil Court at Calcutta. The learned Judge, Second Bench, appointed a receiver by order dated August 10, 2016, thereby permitting possession of the vehicle to be taken. On August 20, 2016, the petitioner took possession of the vehicle and also filed a claim before the sole arbitrator at Chennai for recovery of a sum of Rs.63,018/-. By order dated December 16, 2022, the claim was allowed. The plaintiff/opposite party filed CC No.90 of 2016 before the District Commission. The District Commission decided the matter on contest on May 08, 2018. By the order, the District Commission, upon consideration of the facts and terms and conditions of the loan agreement, arrived at the following conclusions:-

A. The borrower was not provided with the statement of accounts by the opposite party bank, although he was entitled to the same in terms of the agreement.

B. In the written statement filed by the bank, there was no mention with regard to the compliance of such provision in the loan agreement.

C. The bank had failed to comply with the provisions of clause 2.7 of the agreement.

D. Violation of such term was a deficiency.

E. The re-possession of the vehicle, was another deficiency. The vehicle had been re-possessed on August 20, 2016. It was found from the record that the complainant had repaid all the instalments and was liable to pay only Rs.41,479/-. The complaint was also willing to pay the amount. The bank left no stone unturned and deprived the complaint from the scope of repayment of such a paltry sum.

F. Only a time limit of 5 days was allowed by the bank, which was inadequate. The bank did not deal with the matter reasonably.

G. The possession of the vehicle was taken from the garage of the complaint by resorting to abuse of the process of law. The re-possession of the vehicle was permissible at the instance of the financer only when the procedure established by law was fulfilled. Clause 13.3 of the agreement provided such procedure to be followed. A copy of the inventory list which was produced to substantiate that the receiver had taken possession, did not indicate any case number. No copy of the writ was filed to show that the receiver had taken possession of the vehicle.

8. Under such circumstances, the order was passed with the finding that the vehicle was repossessed in 2016 and was lying idle for many years. Directing return of such vehicle would cause injustice and prejudice to the complainant. The vehicle was not in an operational condition.
9. Thus, an order was passed for refund of instalments and payment of Rs.50,000/- for the mental agony and harassment as also Rs.5000/- as cost.
10. Such order was challenged by the bank in an appeal before the State Commission. The State Commission, inter alia, found that although there was an order of the City Civil Court for re-possession of the vehicle, the re-possession was contrary to law.
11. There are other anomalies which the State Commission found to be questionable. What was found to be peculiar by the State Commission, was the contrary stand taken by the bank. The complainant submitted that the vehicle was

taken by the bank illegally. The bank submitted that the vehicle had been returned to the complainant. Whereas, in the BNA submitted by the bank the fact that the vehicle had been sold in order to realise the sum due and payable, was available. The BNA also revealed a communication to the complainant intimating the complainant about the sale of the repossessed vehicle. As the bank confessed the factum of sale of such vehicle in its BNA, the State Commission was of the view that the sale of the vehicle was not in conformity with the legal process.

12. Challenging these findings, the bank approached the National Commission by filing the revisional application. The National Commission, upon appreciating the facts narrated by both the fora, arrived at the conclusion that further interference with the orders passed was beyond the scope of revision. No contradictory evidence had been produced either before the National Commission or before this Court to indicate that in either case, the bank had proceeded in accordance with law. The District Commission found that the repossession of the vehicle and withholding of the vehicle which was in an unoperational state for more than two years, had rendered the vehicle completely useless for the

complainant/borrower. The District Commission also found that non-supply of the statement of accounts, repossession from the garage and thereafter creation of an inventory list without specifications, were deficiencies in service.

13. The State Commission, although found that the repossession may have been on the basis of the order of the learned City Civil Court, but the BNA submitted by the bank categorically indicated that the vehicle had been sold. This sale was found to be illegal. Another angle to the deficiency of service was thus pointed out by the appellate authority i.e. the State Commission. Although the bank sought to review the order of the State Commission, the same was rejected.

14. Under such circumstances, the National Commission did not act perversely by holding that the facts narrated and the findings of each of the Commissions clearly indicated that the evidence could not be reappreciated. The details of the evidence had been gone into by both the fora and they had arrived at a conclusion that the bank had violated the terms of the agreement. There was deficiency of service and the repossession or sale was completely illegal.

15. Under such circumstances, there is no scope for interference under Article 227 of the Constitution of India.

16. The revisional application stands dismissed.

17. There shall be no order as to costs.

(Shampa Sarkar, J.)