

(2024) 11 NCDRC CK 0005**National Consumer Disputes Redressal Commission****Case No:** Revision Petition No. 2375 Of 2016

M/s Ashok Leyland Finance Ltd

APPELLANT

Vs

Deepak Kushwaha

RESPONDENT

Date of Decision: Nov. 18, 2024**Hon'ble Judges:** A. P. Sahi, President Member; Bharatkumar Pandya, Member**Bench:** Division Bench**Advocate:** Jyoti Nayak**Final Decision:** Dismissed

Judgement

Justice A.P. Sahi, President

1. This is a petition by a Finance Company, assailing the order of the District Consumer Disputes Redressal Commission, Aligarh, Uttar Pradesh, whereby CC/151/2004 filed by the complainant was allowed and the Tata Indica vehicle that had been repossessed by the petitioner would be compensated by payment of Rs.2,00,000/- together with the margin money of Rs.14,500/- along with 6% interest from 10.06.2003 till the date of actual payment. The appeal filed by the petitioner before the State Consumer Disputes Redressal Commission Uttar Pradesh, Lucknow has been dismissed and the finding of fact recorded by the District Commission is confirmed.

2. The present revision was filed and was entertained whereafter the Covid pandemic intervened and the case was adjourned, whereafter notices were sent and the matter was fixed on several dates. The records indicate that the respondent had passed away and an amended memo had been filed through IA/8248/2023, which was allowed on 17.08.2023. It was also noted that the learned counsel for the respondent had died and therefore notices were sent to the substituted respondents to either be present or instruct anybody.

3. Learned counsel for the petitioner has urged that the respondent/ complainant had defaulted by not making payment of three instalments which fell due on 10.07.2003, 10.08.2003 and 10.09.2003, as a result whereof his account was declared NPA and intimation was sent to the police prior to repossession of the vehicle. It is the case of the petitioner that the vehicle had met with an accident and when it was made known that the vehicle had been damaged, the petitioner informed the Insurance Company on 19.09.2013 for taking necessary action.

4. According to the petitioner, the complainant sent an information in writing to the police station Sasani, District, Mahamaya Nagar, Uttar Pradesh on 25.09.2013. The petitioner, who is the financier, admits having taken possession of the damaged vehicle which is stated to have been for security and safety purposes. The petitioner alleged that the vehicle was being driven by one Mr. Rajkumar, driver when it met with an accident.

5. This was countered by the respondent/ complainant by contending that the vehicle was forcibly taken possession without following the legal provisions and in violation of the law without any notice to either the police or to the complainant and it is absolutely wrong to allege that the vehicle was being driven by a driver by the name of Rajkumar when it met with an accident. The complainant alleged that the vehicle was owner driven and not by a driver. It was also denied by the complainant that any information had been sent it to the police and to the contrary it was the petitioner company that had forged a letter and had sent to the police station which does not even bear the signature of the complainant. To the contrary, the case pleaded by the complainant was that the vehicle was damaged when it was in the custody of the petitioner.

6. The complainant filed a complaint being CC/151/2004 before the District Commission alleging that the repossession was illegal and the District Commission vide order dated 12.07.2006 accepted the version of the complainant and allowed the complaint. Aggrieved, the petitioner filed FA/1985/2006 that has also been dismissed on 04.05.2016. Aggrieved the present revision petition has been filed by the financier contending that the impugned orders suffer from illegalities and irregularities, in as much as once the complainant was in default of payment, the repossession was justified and even otherwise the vehicle had met with an accident when it was driven by the driver of the respondent/ complainant.

7. From a perusal of the order of the District Commission, it is apparent that the vehicle had been impounded by an agent of the petitioner, Mr. Rajkumar on 16.09.2003. After going through the evidence and the aforesaid allegations, the finding recorded by the District Commission is as follows:

“ We have gone through the written arguments and evidence. In the present case complainant has to prove that on 16.09.2003 due to non-payment of installment,

opposite party took the forcible possession of the vehicle and to prove said fact complainant has filed one document along with affidavit. This document dated 09.09.2003 is the letter written to Incharge Police Station Eta, wherein opposite party finance company has intimated to the police that due to non-payment of the installments as per the terms of the agreement, they have taking the repossession of the vehicle. And as per complainant on the said document Raj Kumar has appended signatures on 16.09.2003 for repossession of the vehicle. Opposite party has admitted said letter. However, they have stated that the said letter was merely an intimation, Opposite party has failed to state how and under what circumstances said letter was issued is not explained. Opposite party has stated that Raj Kumar is driver of complainant. Complainant has denied said fact in the affidavit. Thus the entire onus to prove the said fact was on opposite party which could have been proved by bringing cogent evidence, however opposite party has miserably failed to prove said fact. That the opposite party has also claimed that the complainant on 25.09.2003 has given the written complaint dated 16.09.2003 at Sansi Police Station. That the complainant has also denied the said fact on affidavit. Thus the entire onus to prove the said fact was on opposite party which could have been proved by bringing cogent evidence, however opposite party has miserably failed to prove that the complaint was given in the concerned police station or the investigation carried in respect of the said complaint. That the opposite party by proving the said fact could have shown that the first information was given by the complainant and he admitted Raj Kumar as his driver, however opposite failed to prove said fact. Opposite party has himself filed claim form before the insurance company.

It is settled provisions of law that the complainant and the opposite party for their benefit makes lies, however circumstances do not say lie. If we presume that both of them have said lies then also case lies against the opposite party. It is admitted position that the vehicle met with an accident on 16.09.2003, it is further admitted position that on the said day, opposite party has given the intimation at PS-Kotwali Eta to take possession of the disputed vehicle. It is also admitted by the opposite party that after accident damaged vehicle is under the possession of opposite party. If the vehicle was damaged by complainant then the police would not have released the vehicle in favour of opposite party. It is also relevant to state that the first installment and second installment was due in the month of September, 2003, however both the installments were not paid but no notice was issued by opposite party and no legal action was taken by the opposite party for the recovery of outstanding amount. That the entire circumstances supports the contentions of complainant that the vehicle was taken into possession by opposite party on 16.09.2003 and the vehicle was when damaged same was in possession of opposite party.

On the basis of above discussion, we have come to said conclusion that the opposite party in lieu of the disputed vehicle will be liable to pay deposited amount of Rs.2 lacs margin money, Rs.14500/- towards first installment interest @6% from the date of deposit along with Rs.1000/- towards the cost of litigation.

Order

Complaint is allowed. Opposite party is directed that within 30 days they shall pay a sum of Rs. 214500/- (Rupees Two Lacs Fourteen Thousand Five Hundred only) to complainant. Interest @6% p.a. from 10.06.2003, Rs.1000/- towards the cost of litigation. Opposite party will be liable to pay penal interest @9% beyond the period of order."

8. In appeal the same issues were pleaded and the appellate forum has also confirmed the finding of the District Commission and has also referred to the judgment of the Apex Court in the case of **ICICI Bank Ltd. v. Prakash Kaur**, (2007) 2 SCC 711 in support of its conclusions.

9. The fact that the petitioner had given a loan of Rs.1,50,000/- for purchase of the car is not disputed. However, the onus was on the petitioner to have proved its case about the vehicle having been driven by the driver as named by them and that possession was taken lawfully. On this, the State Commission, while confirming the findings has opined as under:

"Firstly, there is no evidence on file record that Rajkumar was the driver of respondent, however the respondent himself has stated that he had no driver and the vehicle had being plied by himself. It is wonder that the appellant has taken one accidental vehicle under his custody without making any formalities and obtaining permission of police or owner of vehicle. The appellant has not produced any evidence before District Forum which may show that the accident was made by appellant or by his any person. It is cleared by circumstantial evidences that on depositing the installment by complainant, the appellant through his agent forcefully taken the vehicle under his custody and the vehicle got damaged under the custody of appellant by his associate. The District Forum has also held in its decision that if the accident of this vehicle would have done by complainant then in that case the police would have not given the vehicle under the custody of opposite parties in any condition. We do agree with the conclusion of District Forum. The appellant without giving notice to apposite parties took the vehicle under his custody on 16.9.2003 forcefully and in irregular manner through his agent. The accident of vehicle was made by appellant only after taking the same under his custody. As such the appellant illegally without service notice taken the vehicle under his custody and the accident of vehicle was made under his custody. As such the appellant/respondent surely made deficiency in service

and has adopted unfair trade practice.

In view of above facts we find that the alleged order of District Forum is based upon evidences and is according to law and there is no need of make interference in same.

Hence, dismissed. the appeal is deserved to be dismissed.”

10. The aforesaid findings are based on the material on record and nothing has been shown to us, which may amount to any perversity or illegality in the findings recorded in the impugned orders by the fora below. The scope of a revision is limited as held by the Apex Court in the case of Rubi (Chandra) Dutta Vs. United India Insurance Company, (2011) 11 SCC 269”, which is followed by the recent decisions of the Apex Court in the case of Sunil Kumar Maity v. SBI, 2022 SCC OnLine SC 77 and Rajiv Shukla vs. Gold Rush Sales and Services Ltd. and Ors., (2022) 9 SCC 31. Accordingly, we do not find any merit in the revision petition and is hereby dismissed.