(2010) 10 NCDRC CK 0028

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Pushap Vihar		APPELLANT
	Vs	
Rafiq Ahmed		RESPONDENT

Date of Decision: Oct. 7, 2010

Citation: 2010 0 NCDRC 193

Hon'ble Judges: Ashok Bhan , Vineeta Rai J.

Final Decision: Petition is disposed of

Judgement

1. THIS present revision petition has been filed by Citi Financial Consumer Finance India Ltd., (hereinafter referred to as Petitioner), aggrieved by the order of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as State Commission) in favour of Shri Rafiq Ahmed, the Respondent in this case.

2. BRIEFLY the facts of the case according to the Respondent who was the original complainant before the District Forum is that he had taken a loan from the Petitioner for financing the purchase of a RTV for his own business. The vehicle was financed for Rs.5,40,450/- and he was given a discount of Rs.10,000/- as per mutual settlement between the parties. The Respondent paid Rs.1,70,449/- in cash to the Petitioner for which three receipts for Rs.50,000/- dated 13.09.2002, Rs.94,149/- dated 16.09.2002 and Rs.26,300/- dated 20.09.2002 were issued. The balance amount of Rs.3,60,000/- was to be paid to the Petitioner in 35 equal monthly installments of Rs.14,029/- each. Complainant/ Respondent says that he paid 27 installments through cash and cheque, on 31.05.2005. On 31.05.2005, when the Respondent was out of station and when the vehicle was on the road, the Petitioner with the help of three or four persons took forcible possession of the vehicle after

pushing out the driver. This was objected to by the Respondents son who was present in the vehicle. Respondent on his return to Delhi on 03.02.2005 met the Petitioner and objected to the illegal and forcible possession of the vehicle and requested for its release. Petitioner declined to do so. Aggrieved by this action, Respondent filed a complaint before the District Forum seeking Rs.2.00 lakh for mental harassment besides a direction to the Petitioner to hand back the vehicle to him.

The Petitioner on the other hand, totally denied most of the contentions of the Respondent. While admitting sanction of the loan as stated by the Respondent, it was clarified that the loan was repayable in 36 and not 35 installments as is evident from the written agreement between the parties. Respondent had also given 36 post dated cheques. Further, it is incorrect to state that the Respondent had paid 27 EMIs, because it is evident from the Record of Accounts that only 23 monthly installments had been paid. Some post dated cheques for the months of April, June, July were dishonoured and fresh payments for these was made at a later date by the Respondent. Again cheques for the months of November, December 2004 and January 2005 were also dishonoured and despite repeated requests by the Petitioner including written reminders on 07.12.2004 and 27.12.2004 no payments were received. Petitioner was therefore, constrained to send a loan termination notice by registered post to the Respondent on 10.01.2005. It was also stated in this notice that necessary legal action including repossession of the vehicle would be initiated by the Petitioner. Thereafter, the Petitioner initiated the process of repossessing of the vehicle in accordance with the law and in conformity with the loan agreement. Petitioner also informed the local police on 31.01.2005 regarding the repossession of the vehicle. It is also incorrect that the vehicle was forcibly re-possessed. In fact, the complainant voluntarily surrendered the vehicle and also gave a written statement stating that he was doing so of his own accord without any pressure since he was not able to pay the dues against the loans. Post re-possession, the Petitioner again wrote to the Respondent informing him that an amount of Rs.1,92,526/- was outstanding against him and if he does not make the required payment within seven days from the date of the receipt of the letter, the company would be at liberty to dispose off the vehicle in consonance with the agreement to recover the outstandings amounts. Further, the Respondent will be liable to pay the deficit if the amount realized is insufficient to clear the outstanding amount. The vehicle was finally sold to M/s A S Motors for Rs. 1,01,000/- on 25.02.2005 at a price below the depreciated value of the vehicle (which is @ 20% each year).

The District Forum accepted the version of the Respondent and allowed the complaint. The relevant portion of the District Forums order reads as follows: Rs.36,000/- were disbursed as loan on 30.09.2002 to be paid in 36 equal monthly installments of Rs.114,029/- each. First default is reported in April 2004 then again in July 2004, default was reported and OP rescheduled the remaining payment from

November 2004 onwards. The complainant is reported to have defaulted in November and December 2004 and immediately thereafter in January 2005 vehicle was repossessed. We feel that by simply not receiving two installments in time OP was not justified in repossess the vehicle forcibly especially when the owner of the vehicle was not there. Forcible removal of the driver and son of the owner from the seat and repossession of the vehicle cannot be justified. On the one hand OP maintains that the vehicle was got repossessed on 31.01.2005 and on the other hand it is taking a plea that the vehicle was surrendered by the complainant to the OP vide surrender letter dated 21.01.2005. It is not acceptable that the vehicle was voluntarily surrendered by the complainant on 21.01.2005. Even the letter dated 31.01.2005 sent by the OP to the SHO Janakpuri does not mention date and time of peaceful surrender of vehicle, though format of the letter is so designed that date and time of surrender is required to be mentioned. It was not done. No poor persons who has paid a number of loan installments and when a few installments were left to be paid will surrender his vehicle which is the only source of his livelihood. If the complainant had surrendered his vehicle voluntarily on 21.01.2005, where was the need for the OP to repossess it forcibly on 31.01.2005. This is not fair and we hold the OP guilty of unfair trade practice. OP had sold the vehicle on 25.02.2005 for Rs.1,01,000/- and as per its accounts Rs.91,525.48 p are still outstanding against the complainant. Complainant had paid installments upto July 2004. His vehicle had been snatched and to tell him to pay Rs.91,525.48 p is not only unfair but also totally unjustified... The District Forum directed the Petitioner to pay the Respondent the principal amount, Rs.10,000/- as compensation for mental harassment and Rs.2000/- towards litigation cost.

3. AGGRIEVED by this order, the Petitioner has filed an appeal before the State Commission, which upheld the order of the District Forum in toto.

Petitioner has therefore filed the present revision petition.

4. LEARNED Counsel for both the parties made oral submissions. Counsel for the Petitioner has stated that the learned Fora below had erroneously concluded that the insured vehicle was forcibly re-possessed by the Petitioner, primarily because of a typographical error since in one of the pleadings it was wrongly stated that the

vehicle was repossessed on 21.01.2005 instead of on 31.05.2005. Apart from this, there is ample and credible evidence on record that the Respondent was given several opportunities to pay the defaulting amount. A specific notice was also sent informing him that the vehicle would be repossessed. On 31.01.2005 the Respondent himself gave in writing that he was willing and without pressure surrendering the vehicle, because he was not able to pay the remaining loan amount to the Petitioner. After the vehicle was repossessed and before selling it, as has come in evidence the Respondent was given an opportunity to make the defaulting payment and take back the vehicle. It was only after he failed to do so that the vehicle was sold for a sum of Rs.1,01,000/-. Even after adjusting this amount, Rs.91,000/- is still pending against the Respondent which the Petitioner magnanimously has decided to write off.

The Counsel for the Respondent on the other hand has reiterated that the letter purported to have been written by the Respondent stating that he was voluntarily surrendering the vehicle was fabricated because on that date i.e. 31.01.2005, Respondent was not even in Delhi. Further, the Respondent has paid 27 out of the 35 installments and interest thereon and there was no reason for him to surrender the vehicle as only a small part of the principal loan amount remained to be paid. This was well appreciated by the learned Fora who ruled in his favour.

We have heard learned Counsel for both the parties and have carefully gone through the records. In the first place, we cannot accept the contention of the Respondent that the vehicle was repossessed forcibly and without notice. There is ample and credible evidence on record, which has not been denied by the Respondent that the Petitioner had sent notices to the Respondent regarding default in payment by him on 06.06.2004, 26.06.2004, 09.07.2004, 07.12.2004 and 27.12.2004. Notices to repossess the vehicle and after repossession before selling the vehicle on 25.02.2005 were also sent and received by him. The police also were informed about the repossession. We also have no reason to doubt that the vehicle was repossessed on 31.01.2005 and that 21.01.2005 was merely a typographical error. Unfortunately, the District Forum put a great deal of reliance on the discrepancy in these two dates and reached a conclusion that the vehicle was forcibly repossessed. The District Forum also erroneously noted that the Petitioner had stated that the vehicle was voluntarily surrendered by the Respondent on 21.01.2005. In fact the note from the Respondent on this issue which is in evidence clearly indicates that the date of voluntarily surrender was 31.01.2005. In view of the above facts, we feel that there is no justification to uphold the quantum of relief given by the learned Fora below to the Respondent on the grounds of deficiency in service/ unfair trade practice.

5. AS per Statement of Accounts maintained by the Petitioner, Respondent apart from paying Rs.1,70,449/- as seed money, has paid to the Petitioner Rs.2,01,331/- in respect of the principal amount and interest amount of Rs.1,21,314/- on the principal amount. Petitioner had advanced a loan of Rs.3,60,000/- to the Respondent, out of which the Petitioner has received a sum of Rs.3,22,645/-. Respondent had sold the car for Rs.1,01,000/- .

6. KEEPING in view the fact that the Respondent had paid most of the loan installments, without creating a precedent we feel that it would be in the interest of equity and justice if some relief is given to the Respondent on this account. Therefore, while we cannot uphold the order of the learned Fora below in toto regarding the quantum of compensation, it would be a fair balance if the Petitioner pays the Respondent Rs.1,01,000/- which was the amount he received for selling the vehicle after repossession.

To sum up, we set aside the order of the State Commission pertaining to payment of principal amount to the Respondent as well as compensation of Rs.10,000/- and Rs.2000/- as litigation cost. We order that Petitioner in lieu shall pay to the Respondent a sum of Rs.1,01,000/- for the reasons stated in the foregoing paragraphs. The revision petition is disposed of accordingly.