

**BEFORE THE CONSUMER DISPUTES REDRESSAL FORUM
ERNAKULAM**

**Complaint Case No. CC/20/69
(Date of Filing : 10 Feb 2020)**

1. ANTONY K V
HOUSE NO.VI/12 KOTHAD KOTHAD P.O ERNAKULAM
PIN-682027

.....Complainant(s)

Versus

1. HINDUJA LEYLAND FINANCE LTD.
AMBILI BUILDINGS WARRIOM RD JOS JN
ERNAKULAM SOUTH KOCHI PIN-682016

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. D.B BINU PRESIDENT
HON'BLE MR. RAMACHANDRAN .V MEMBER
HON'BLE MRS. SREEVIDHIA T.N MEMBER**

PRESENT:

Dated : 21 Feb 2024

Final Order / Judgement

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION ERNAKULAM

Dated this the 21st day of February,
2024.

Filed on: 10/02/2020

PRESENT

Shri.D.B.Binu

President

Shri.V.Ramachandran

Member Smt.Sreevidhia.T.N

Member

C.C. No. 69/2020

COMPLAINANT

Antony K. V, S/o. Varghese K.J., H. No. VI/12, Kothad P.O., Ernakulam 682027

(Rep. by Adv. Rajesh Vijayendran)

V/s

Opposite Parties

The Manager, M/s Hindhuja Leyland Finance Ltd., Ambily Buildings, Warriom Road, Jose Junction, Ernakulam South, Kochi 682016.

(Rep. by Adv. Pramoj Abraham, Room No. 738, 7th Floor, KHCAA Chamber Complex, Cochin 682031)

FINAL ORDER

D.B. Binu, President.

1. A brief statement of facts of this complaint is as stated below:

The complaint was filed under Section 12 of the Consumer Protection Act, of 1986. The complaint is centered around the claim of deficiency of service by the opposite parties, as alleged by the complainant. The core issue is the failure of the opposite parties to lift the hypothecation on the complainant's vehicle (KL-7-CE-1746) despite full repayment of the loan. The complainant, a goods vehicle driver, states that this failure has caused significant financial loss and mental agony to him and therefore, seeking compensation and also for lifting of the hypothecation along with the handover of necessary documents.

The opposite parties contested the claim, denying any service deficiency and attempting to justify their actions without providing clear evidence of the complainant's alleged default or the calculation of the claimed default amount as of 16.09.2020. However, their lack of cross-examination of the complainant and failure to provide any oral or documentary evidence in their defense weakens their position.

The complainant's history of successfully repaying loans from various financial institutions since 2000 was brought to light, countering the portrayal of him as a defaulter. The complaint details the hardships faced by the complainant, including the need to take private loans at high interest rates and sell personal assets, due to the opposite parties' actions.

The evidence and circumstances presented in the complaint strongly suggest that the opposite parties' refusal to lift the hypothecation and their subsequent actions have resulted in significant financial loss and mental agony for the complainant. The complaint argues for the granting of the sought reliefs due to the established deficiency in service on the part of the opposite party.

2) Notice

The notice to the opposite party was sent by the Commission. The opposite party filed a version.

3) THE VERSION OF THE OPPOSITE PARTY

The opposite party stated that the complaint lacks merit both legally and factually, labelling it as an abuse of the legal process and deserving of dismissal. The finance company asserts that it operates primarily on a hypothecation and guarantee basis, and while it acknowledges the loan

agreement with the complainant, it refutes the claim of financial loss due to cheque handling as described by the complainant.

The opposite party contends that the complainant has defaulted on monthly loan repayments and is unwilling to settle the debt despite repeated demands. They indicate plans to pursue arbitration as outlined in the loan agreement, suggesting that the complaint was filed to pressure the finance company and as a reaction to the initiation of arbitration proceedings. Furthermore, they assert that the commission lacks jurisdiction over the matter due to the arbitration clause within the loan agreement.

Denying all allegations of deficiency in service, the opposite party maintains that the complainant owes them a balance of Rs. 1,00,144 as of 16.09.2020 and that the complainant's default status has been rightfully reported to CIBIL. They stated that the complaint was filed to harass the company and evade financial responsibilities, without any substantiated claims or evidence of service deficiency.

In conclusion, the opposite party requests the dismissal of the complaint, stating that the complainant has not established a valid cause for action and is not entitled to any relief. They seek dismissal of the case with compensatory costs awarded to them, emphasizing that the complainant's claims are baseless and constitute an attempt to mislead the forum and avoid loan repayment obligations.

4) Evidence

The complainant filed a proof affidavit and Seven documents before the commission, which were marked as Exhibits A-1 and A-7.

Exhibit A-1: A true copy of the consumer information statement dated 28-01-2020 issued by CIBIL, demonstrating the complainant's credit status as reported by the credit bureau.

Exhibit A-2: A true copy of the Lawyer Notice dated 06-02-2018 issued by the Opposite Party.

Exhibit A-3: A true copy of the reply Lawyer Notice dated 07-03-2018 issued on behalf of the complainant.

Exhibit A-4: A true copy of the Credit Facility application form submitted by the complainant before ICICI Bank.

Exhibit A-5: A true copy of the Statement of Accounts as of 14-12-2017 & and a schedule of repayment statement issued by the Opposite Party.

Exhibit A-6: A true copy of the Statement of Accounts for the period from 01-01-2013 to 14-12-2017 issued by Union Bank of India, Chittoor South Branch.

Exhibit A-7: A true copy of the passbook of the complainant issued by Syndicate Bank, Vaduthala Branch.

5) The main points to be analyzed in this case are as follows:

- i) Whether there is any deficiency in service or unfair trade practice from the side of the opposite party to the complainant?

ii) If so, whether the complainant is entitled to get any relief from the side of the opposite party?

iii) Costs of the proceedings if any?

6) The issues mentioned above are considered together and answered as follows:

In the present case in hand, as per Section 2 (1) (d) of the Consumer Protection Act, 1986, a consumer is a person who buys any goods or hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. A true copy of the Statement of Accounts as of 14-12-2017 & and a schedule of repayment statement issued by the Opposite Party, providing a detailed account of the loan repayments (**Exhibit A-5**). Hence, the complainant is a consumer as defined under the Consumer Protection Act, 1986 (**Point No. i**) goes against the opposite party.

The complaint was lodged by the complainant against the opposite parties, alleging deficiency in service concerning the non-lifting of the hypothecation of the vehicle bearing registration number KL-7-CE-1746, despite the repayment of the entire loan amount. The complainant sought compensation and other incidental reliefs, including the lifting of hypothecation and the handover of necessary documents.

We have heard Sri. Rajesh Vijayendran, the learned counsel appearing for the complainants who has submitted that the case against the opposite party articulated a clear allegation of deficiency of service, focusing on the failure to lift the hypothecation on the vehicle (KL-7-CE-1746) despite the full repayment of the loan. The complainant seeks various reliefs including compensation, the lifting of hypothecation, and the handover of necessary documents.

The complainant outlines several key points:

- 1. Allegation of Deficiency of Service:** The complainant alleges that the opposite parties have not lifted the hypothecation despite full repayment, causing financial, mental, and employment-related hardships.
- 2. Opposite Party's Response:** The opposite parties deny the allegations but have not provided evidence to support their claim of no service deficiency or justified the calculation of the alleged default amount.
- 3. Lack of Cross-Examination and Evidence by Opposite Parties:** The complainant emphasizes that they were not cross-examined, and the opposite parties did not present any oral or documentary evidence, which strengthens the complainant's position.
- 4. Financial Transactions and Hardships:** Detailed accounts of loan repayments, improper handling of repayment cheques by the opposite party leading to financial penalties, and the impact of these actions on the complainant's credit score and ability to obtain loans are discussed.
- 5. Attempts to Sell Vehicle and Refinancing Difficulties:** The complainant describes efforts to sell the vehicle and secure new financing, which were thwarted by the actions of the opposite party, further exacerbating financial distress.
- 6. Evidence of Compliance and Suffering:** The complainant has provided substantial evidence through documents (**Exhibits A1 to A7**) to substantiate timely loan repayments and the negative consequences of the opposite party's actions.

The argument notes conclude that the evidence demonstrates the deficiency of service on the part of the opposite party, justifying the complainant's entitlement to the requested reliefs.

The exhibits marked A1 to A-7 serve as critical evidence supporting the complainant's claims, ranging from credit information and legal notices to financial statements and proof of financial hardship due to the inability to sell the vehicle or secure new loans. This comprehensive presentation of facts, evidence, and legal arguments aims to establish the deficiency in service by the opposite party and justify the reliefs sought by the complainant.

After due consideration of the arguments, evidence presented, and the relevant provisions of the Consumer Protection Act, 1986, the Commission has arrived at its decision.

A. Deficiency in Service and Negligence: The core issue revolves around the alleged deficiency in service and negligence on the part of the opposite party. Under Section 2(1) (g) of the Consumer Protection Act, 1986, "deficiency" means any fault, imperfection, shortcoming, or inadequacy in the quality, nature, and manner of performance that is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract with a consumer. The failure of the opposite party to lift the hypothecation of the vehicle, even after the full repayment of the loan by the complainant, squarely falls within the ambit of deficiency in service.

The exhibits submitted by the complainant marked as **A-1 to A-7**, serve as crucial evidence supporting the allegations of deficiency in service. **Exhibit A-1**, the consumer information statement from CIBIL, demonstrates the complainant's credit status and serves as a testament to their financial credibility. Additionally, **Exhibits A-2 to A-4** provide a chronology of communications between the parties, showcasing the efforts made by the complainant to address the issue amicably.

Exhibit A-5, the statement of accounts issued by the opposite party, and **Exhibit A-6**, the statement of accounts from Union Bank of India, corroborate the complainant's claims regarding timely loan repayments and financial transactions. Moreover, **Exhibit A-7**, the passbook from Syndicate Bank, further substantiates the complainant's assertions regarding the pledging of assets to mitigate financial difficulties.

In the landmark judgment of *Lucknow Development Authority vs. M.K. Gupta*, the Hon'ble Supreme Court of India elaborated on the scope of deficiency in service and unfair trade practice, emphasizing the protection of consumer rights against such deficiencies and practices. Drawing from this precedent, it is clear that the opposite parties' failure to act as per the contractual obligations and statutory duties constitutes a deficiency in service.

The complainant has furnished substantial evidence through exhibits A-1 to A-7, corroborating the claim of full repayment of the loan and the consequent entitlement to have the hypothecation lifted. The opposite party defense, primarily based on denial and lack of substantive evidence to counter the claims made by the complainant, fails to dismantle the complainant's case.

The absence of cross-examination of the complainant by the opposite party and their failure to present any oral or documentary evidence to substantiate their defense. This omission significantly undermines the opposite party's position and lends credence to the complainant's allegations.

B. Liability of the Opposite Party: Given the evidence and circumstances presented, the Commission finds the opposite party is liable for deficiency in service as alleged by the

complainant. The actions of the opposite party has resulted in financial loss, mental agony, and hardship to the complainant, warranting compensatory relief.

Based on the foregoing analysis and legal reasoning, and in light of the established principles of consumer protection law, the Commission finds in favour of the complainant. The complaint is upheld under Section 12 of the Consumer Protection Act, 1986.

We determine that issue numbers (I) to (III) are resolved in the complainant's favour due to the significant service deficiency and unfair trade practice on the part of the opposite party. Consequently, the complainant has endured considerable inconvenience, mental distress, hardships, and financial losses as a result of the negligence of the opposite party.

In view of the above facts and circumstances of the case, we are of the opinion that the opposite party is liable to compensate the complainant.

Hence the prayer is partly allowed as follows:

- I. The Opposite Party is hereby directed to immediately lift the hypothecation on the vehicle bearing registration number KL-7-CE-1746 and hand over all necessary documents to the complainant.
- II. The Opposite Party is directed to pay ₹1,00,000 (One Lakh Rupees) as compensation to the complainant for the financial loss, emotional distress, and mental agony suffered due to the deficiency of service and unfair trade practice committed by the Opposite Party.
- III. The Opposite Party shall also pay the complainant ₹20,000 (Twenty Thousand Rupees) towards the cost of the proceedings.

The Opposite Party is liable for compliance with the directions mentioned above, which must be executed by the Opposite Parties within 30 days from the date of receiving a copy of this order. Should there be a failure to comply with the amounts ordered under point II above, interest at the rate of 9% per annum will be applied from the date of filing this complaint (10-02-2020) until the date of full payment realization.

Pronounced in the Open Commission on this the 21st day of February, 2024

Sd/-

D.B.Binu, President

Sd/-

V. Ramachandran, Member

Sd/-

Sreevidhia.T.N, Member

Forwarded/By Order

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Assistant Registrar

APPENDIX

COMPLAINANT EVIDENCE

Exhibit A-2: A true copy of the Lawyer Notice dated 06-02-2018 issued by the Opposite Party.

Exhibit A-3: A true copy of the reply Lawyer Notice dated 07-03-2018 issued on behalf of the complainant.

Exhibit A-4: A true copy of the Credit Facility application form submitted by the complainant before ICICI Bank.

Exhibit A-5: A true copy of the Statement of Accounts as of 14-12-2017 & and a schedule of repayment statement issued by the Opposite Party.

Exhibit A-6: A true copy of the Statement of Accounts for the period from 01-01-2013 to 14-12-2017 issued by Union Bank of India, Chittoor South Branch.

Exhibit A-7: A true copy of the passbook of the complainant issued by Syndicate Bank, Vaduthala Branch.

OPPOSITE PARTY'S EVIDENCE

Nil

Despatch date:

By hand: By post

kp/

CC No. 69/2020

Order Date: 21/02/2024

**[HON'BLE MR. D.B BINU]
PRESIDENT**

[HON'BLE MR. RAMACHANDRAN .V]

MEMBER

**[HON'BLE MRS. SREEVIDHIA T.N]
MEMBER**