

IN THE DELHI STATE CONSUMER DISPUTES
REDRESSAL COMMISSION

Date of Institution:09.01.2023

Date of hearing: 08.05.2023

Date of Decision: 06.09.2023

FIRST APPEAL NO.-13/2023

IN THE MATTER OF
M/S PNB HOUSING FINANCE LTD
REGISTERD OFFICE AT
9TH FLOOR, ANTRIKH BHAWAN
22 KASTURBA GANDHI MARG,
CONNAUGHT PLACE, DELHI-110001

(Through: Ms. Aditi Tomar, Advocate)

...Appellant

VERSUS

1. MRS. MENKA SAWHNEY
W/O SH. MANOJ SAWHNEY
PLOT NO.12, ROAD NO.C-9,DLF CITY
PHASE-1, GURGAON, HARYANA -122002

2. MR. MANOJ SAWHNEY
S/O LATE SHRI HARI KISHAN SAWHNEY
PLOT NO.12, ROAD NO.C-9,DLF CITY
PHASE-1, GURGAON, HARYANA -122002

(Through: Mr. Nikhlesh Jain, Advocate)

...Respondent

CORAM:

**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL
(PRESIDENT)**

HON'BLE MS. PINKI, MEMBER (JUDICIAL)

HO'BLE MR. J.P. AGRAWAL, MEMBER (GENERAL)

Present: Ms. Aditi Tomar, Counsel for the Appellant

Mr. Nikhlesh Jain, Counsel for the Respondent.

**PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,
PRESIDENT**

JUDGMENT

1. The brief facts of the case as per the District Commission record are:

“Briefly stated that the facts of the case are that Complainant are consumer of Opposite Party.

The OP is a non banking financial corporation engaged in the services of providing loans. The Complainants approached the OP for loan for purchasing house and also for non housing loan. The OP had given non housing loan of 2 Crore and 45 Lakhs to Complainants for 180 months at floating rate of interest 9.5%P.A. The EMI was Rs.255836/- and in the housing loan, the loan amount was 2,27,000/- for 180 months at the interest rate of Rs. 8.65% P.A. and the EMI was 2,25,536/- It is also stated that the

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signature of Complainants were obtained on the document on blank forms.

It is further stated that in the year of 2019 OP increased the EMI by Rs.3527/- in the non housing loan. The new amount of EMI was Rs 2,59,353/- similarly in the housing loan OP increased EMI by Rs. 1272/- and the new EMI was Rs. 2,26,808/-. It is stated that the said act of OP is arbitrary. It is also stated that rate of interests have fallen sharply in the entire banking an non banking sector. The OP is charging interest as low as 8.25%P.A. for non housing loan from other customers but from Complainants they are charging 10.75% P.A. It is further stated that in the housing loan the OP is charging 7.60% from other customer where as from Complainant was charging interest at the rate 8.45% P.A. which is illegal and arbitrary. It is prayed OP be directed to accept EMI form Complainant according current rate of interest i.e. Rs.188437/- and Rs.213128 till the disposal of the complaint.”

2. The District Commission after taking into consideration the material available on record passed the order dated **29.11.2022**, whereby it held as under:

“We have heard the LD. Counsel for the Complainant. The Complainant has raised the triable issue, in the said facts and circumstance. We directed the OP to accept EMI

from Complainant according to the current rate of interest i.e. Rs. 188437/- and Rs. 213128/- till the disposal of the complaint.”

3. Aggrieved by the aforesaid order of the District Commission, the Appellant has submitted that the District Commission directed the Appellant to comply with the Interim Order dated 26.08.2022 without granting an opportunity to be heard on the review application filed by the Appellant. It is further submitted that the District Commission passed an ex-parte interim order against the Appellant on the first date of hearing and thereafter didn't consider the bona fide review application filed against the said interim order. Secondly, it is submitted that the District Commission has proceeded with the issue of delay in filing the written statement and has now fixed the matter for arguments on the application for condonation of delay. It is therefore submitted that the District Commission is causing delay in hearing the review application. Pressing the aforesaid contentions, the Appellant has prayed for setting aside the Impugned Order and to direct the District Commission to hear and decide the review application within a month.
4. The Respondent has filed its reply and has stated therein that the Appellant moved a review application before the District Commission which was listed for 06.10.2022 for hearing but no one appeared on behalf of the Appellant/Opposite Party on the said date. It is further submitted that the Impugned Order does not suffer from any infirmity as the Appellant/Opposite Party failed to file the

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written statement within 30 days after the receipt of notice. Therefore, the District Commission rightly fixed the matter for arguments on application for condonation of delay in filing the written statement.

5. We have perused the material on record and heard the counsels for the parties at length.
6. The *first question* that falls for our consideration is *whether the Impugned Order suffers from any infirmity.*
7. To resolve this issue we deem it appropriate to refer to *Impugned Order dated 29.11.2022*, relevant extract is reproduced hereunder for ready reference:

“We have heard the LD. Counsel for the Complainant. The Complainant has raised the triable issue, in the said facts and circumstance. We direct the OP to accept EMI from Complainant according to the current rate of interest i.e. Rs. 188437/- and Rs. 213128/- till the disposal of the complaint.”

8. In this regard we deem it appropriate to refer to Regulation 17 of the Consumer Protection Regulations, 2019 hereunder as:

“Ex-parte interim order- If an application for vacating or modifying or discharging the ex parte interim order is filed by any of the parties, it shall be decided within forty-five days and the Commission shall have the discretion to extend the ex parte interim order if such application is not decided within forty-five days.”

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9. The Appellant has submitted that the District Commission passed an ex-parte interim order against the Appellant on the first date of hearing and thereafter failed to consider the bona fide review application filed against the said interim order. A perusal of the aforesaid regulations makes it clear that the Consumer Commission is empowered to pass an ex-parte interim order and if an application for vacating, modifying or discharging the ex-parte interim order is filed by any of the parties, it shall be decided within forty-five days. However, the Commission shall have the discretion to extend the ex-parte interim order if such application is not decided within forty-five days. Therefore, it is clear that the District Commission can pass ex-parte interim order and has the discretion to further extend such ex-parte interim orders.
10. It is worthwhile to mention here that the order passed by the District Commission is not conclusive or final and is passed in a routine manner as general/day to day proceedings of the case, being directory in nature.
11. On a perusal of the Impugned Order, which is a daily order passed by the District Commission, it is evident that the Appeal is premature and not maintainable solely on the ground that the Appellant has failed to point out any irregularity in the said order which the Appellant seeks to challenge by way of the present appeal. Thus, there is nothing in the order which could be challenged by the Appellant.
12. In our view, it was the duty of the counsel for the Appellant to apprise the District Commission regarding the pending application

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and the objections/grounds raised by way of the present Appeal should have been raised before the District Commission.

13. Furthermore, as per the facts of the case, the Respondent/Complainant has alleged that in the year of 2019 Appellant/Opposite Party increased the EMI by Rs.3527/- in the non housing loan. The new amount of EMI was Rs 2,59,353/-. Similarly in the housing loan OP increased EMI by Rs. 1272/- and the new EMI was Rs. 2,26,808/-. It is further alleged that the Appellant/Opposite Party is charging interest as low as 8.25%P.A. for non housing loan from other customers but from Respondent/Complainant they are charging 10.75% P.A. It is further stated that in the housing loan the Appellant/Opposite Party is charging 7.60% from other customer where as from Respondent/Complainant was charging interest at the rate 8.45% P.A. which is illegal and arbitrary.
14. A perusal of the Impugned Order divulges that the District Commission arrived at the finding that the Respondent/Complainant has raised a triable issue. Accordingly, after perusing the material on record and keeping in view the said facts and circumstances of the case, the District Commission directed the Appellant/Opposite Party to accept EMI from Respondent/Complainant according to current rate of interest i.e. Rs.188437/- and Rs.213128/-. It is to be noted that a cursory glance of the facts carves out a prima facie triable issue as to whether the floating rate or current rate of interest shall prevail. We opine that undue hardship shall be caused to the Respondent/Complainant for no reason during the pendency of the

case if the Respondent/Complainant is made to pay the EMIs as per the increased rates. Therefore, we hold that District Commission rightly passed the ex-parte interim order as per current rate of interest, so as to not cause any undue hardship to the Respondent/Complainant. Thus, in light of the above discussion it is clear that the interim order does not suffer from any irregularity.

15. *The next question that falls for our consideration is whether the District Commission failed to consider the review application and whether the procedure followed by the District Commission suffers from any infirmity.*
16. Here, we deem it appropriate to refer to the order dated 06.10.2022 which is reproduced hereunder for ready reference:

“18.10.2022

CC/209/2022

Present: Sh. Nikhlesh Jain, AR of Complainant.

None for OP.

Be Awaited.

It is 12:15 p.m.

An application moved on behalf of OP for review of order dated 26.08.2022. none has appeared for OP even on second call.

Be listed for filing of written statement/ reply and arguments on the application for review on 18.10.2022”

17. A perusal of the aforesaid order does not disclose any infirmity in the procedure followed by the District Commission. A cursory glance of the aforesaid order makes it clear that the District Commission clearly considered the review application filed by the Appellant/Opposite Party and the matter was listed for 06.10.2022 for further hearing. However, none appeared on behalf of the Appellant/Opposite Party on the said date i.e 06.10.2022. Here is to be noted that the aforementioned order clearly states that the matter shall be listed for “filing of written statement and arguments on the application for review”. Therefore it cannot be said that the aforesaid order is in deviation with the established procedure of law.
18. We further deem it pertinent refer to the order dated 18.10.2022 which is reproduced hereunder as :

“18.10.2022

CC/209/2022

Present: Sh. Nikhlesh Jain, AR of Complainant.

Ms. Aditi Tomar, Counsel for OP.

Written statement filed along with application for condonation of delay.

To come up for reply and arguments on the application for condonation of delay.

Another application moved on behalf of OP for review of order dated 26.08.2022. AR of complainant states that he

has not received the complete set of documents filed with the application for review, the same have been supplied. To come up for reply and arguments on the application on 03.11.2022. Interim order to be continued till next date.”

19. A perusal of the aforesaid order reveals no anomaly in the procedure followed by the District Commission. Here, it is to be noted that on receipt of the notice, the Appellant/Opposite Party was served on 31.08.2022 and was to file the written statement within the statutory period of 30 days. However, the Appellant/Opposite Party failed to file the written statement within the statutory period and filed the same on 17.10.2022 i.e. beyond the period of 30 days along with an application for condonation of delay. The aforesaid order clearly records that the matter shall be listed for “*reply and arguments on the application for condonation of delay.*” The order further records that the complete set of documents pertaining to the application for review filed by the Appellant/Opposite Party have been supplied to the AR of the Complainant.
20. We further deem it appropriate to refer to the order dated 03.11.2022 reproduced hereunder as :

“03.11.2022

CC/209/2022

*Pr: AR of Complainant, Sh. Nikhlesh Jain,
Counsel for OP, Ms. Aditi Tomar,*

More time is sought to file reply to the application moved by OP and Rejoinder. The same be filed before next date with advance copy of the opposite side.

To come up for reply and arguments on reply on 29.11.2022”

21. A perusal of the aforesaid order reveals that the further time was sought by the AR of the Complainant to file the reply to the application moved by the Appellant and for filing of rejoinder. Accordingly, in the interest of justice, further time was granted to the Complaint for filing of the reply to the application filed by the Appellant/Opposite Party which is again not in deviation with the procedure established by law.
22. A combined reading of the aforesaid orders clearly divulges that the District Commission only followed the routine practice and passed the orders as per the usual course of conducting proceedings. No anomaly or discrepancy can be made out in the procedure followed by the District Commission. It is worthwhile to note here that the aforesaid orders passed by the District Commission are not conclusive or final and are passed in a routine manner as general/day to day proceedings of the case.
23. Therefore, in view of the aforesaid discussion, we opine that the contention of the Appellant that the District Commission does not intend to hear the review application holds no water.

24. Consequently, *we find no reason to interfere with the Impugned Order dated 29.11.2022 passed by the Consumer Disputes Redressal Commission-VI, Vikas Bhawan, New Delhi-110002.*
25. The District Commission-VI is accordingly directed to decide the Complaint on merits after due notice and hearing to all the parties. Parties are directed to appear before the District Commission-VI on 06.10.2023.
26. Applications pending, if any, stand disposed of in terms of the aforesaid judgment.
27. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties.
28. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT**

**(PINKI)
MEMBER (JUDICIAL)**

**(J.P. AGRAWAL)
MEMBER (GENERAL)**

Pronounced On:

06.09.2023