

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 920 OF 2019

(Against the Order dated 27/11/2018 in Appeal No. 142/2015 of the State Commission West Bengal)

1. MANAGER, INDUSIND BANK LIMITED & ANR.
GROUND FLOOR, 8/1, HARDUTRAI CHAMARIA ROAD,
P.O. &
DISTRICT-HAWRAH-711101
WEST BENGAL

2. THE MANAGER, INDUSIND BANK LTD.
41, SHAKESPEAR SARANI,
KOLKATA-700017
WEST BENGAL

.....Petitioner(s)

Versus

1. SANJAY GHOSH
S/O. LT. ANATH BANDHU GHOSH, 51/1, D.SHEW
CHANDRA STREET, BELUR, P.S. BALLY, P.O. BELUR,
DISTRICT-HOWRAH-711202
WEST BENGAL

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER

FOR THE PETITIONER : MR. M YAGESH KANNA, ADVOCATE
MR. VASU KALRA, ADVOCATE

FOR THE RESPONDENT : MR. GAUTAM BAJAJ, ADVOCATE

Dated : 08 August 2023

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioners against the Respondent as detailed above, under section 21 (b) of the Consumer

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Protection Act 1986, against the order dated 27.11.2018 of the State Consumer Disputes Redressal Commission West Bengal (hereinafter referred to as the 'State Commission') in First Appeal (FA) No. 142 of 2015 in which order dated 27.11.2014 of District Consumer Disputes Redressal Commission Howrah (hereinafter referred to as District Forum) in Consumer Complaint ((CC) No. 178 of 2012 was challenged, inter alia praying for :

(i) Setting aside the order dated 27.11.2018 of the State Commission.

(ii) To direct the Respondent to repay the outstanding arrear amount which would be due till the date of judgment.

2. Petitioners have challenged the said order dated 27.11.2018 of the State Commission inter alia on the following grounds :

(a) The present Complaint is not maintainable as there is an arbitration clause executed between the Complainant and the Petitioner.

(b) The State Commission did not consider that Respondent was regular defaulter in making payments against the loan amount and the finance charges as agreed between the parties as per first and second schedule of the Hire Purchase Agreement did not remain the same.

(c) If there is delay in payment of the instalment then rate of additional interest as provided in clause 2.9 (e), and clause 15.1 would prevail with regard to interest deposit which is included in the instalment and the borrower is bound to pay the instalments regularly

(d) Petitioner has acted as per the relevant rules and instructions and policy and terms of the bank are public documents and it cannot be said that respondent was not aware about the same.

(e) State Commission did not consider the fact that complaint is not maintainable as complainant does not fall under the definition of consumer.

(f) The Bank is empowered to take possession of the assets in case of default committed by the borrowers.

3. Heard both sides.

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4. In this case, loan of Rs.8.00 lacs was granted by the Petitioner to the Respondent. Due to default on the part of the Respondent in paying the due instalments, the vehicle was possessed by the Petitioner and sold at a price of Rs.5.00 lacs. Petitioner has not been able to place on record any document(s) showing (a) price / Invoice of the vehicle paid by the respondent which is generally necessitated by the financiers at the time of giving loan, (b) whether any valuation of the said vehicle was done before its sale , (c) any record showing the sale of the said vehicle, (d) process adopted. In the absence of these, it is not possible to say whether the price fetched in the sale was reasonable or not. The Petitioner has drawn our attention to letter dated 27.07.2013 addressed to the Complainant, which states that amount of Rs.3,56,004/- is outstanding and they have initiated the process of appointment of Sole Arbitrator. However, Petitioner has not placed on record whether any Arbitrator was actually appointed and whether any Award was passed by the Arbitrator.

5. We have carefully gone through the orders of the State Commission as well as District Forum. There are concurrent findings against the Petitioner by both the Fora below. The State Commission has clearly observed that Petitioner had acted in total violation of the instructions contained in the Code of Bank's Commitment to Customers formulated by Reserve Bank of India on 01.07.2006, which contains detailed guidelines with respect to giving notice to borrowers, repossession of security, valuation and sale of property, opportunity for the borrower to take back the security etc.

6. As regards contention of Petitioner about non-maintainability of complaint on account of Arbitration clause, it is to be noted that, as was held by Hon'ble Supreme Court in **Imperia Structures Ltd. Vs. Anil Patni and Anr.** (2020) 10 SCC 783, remedies under the Consumer Protection Act are in addition to the remedies under the Special Statutes. In **Emaar MGF Land Ltd. Vs. Aftab Singh** (2019) 1 CPJ 5 (SC), Hon'ble Supreme Court held "*Arbitration clause does not exclude the jurisdiction of Consumer Fora*".

7. As was held by the Hon'ble Supreme Court in **Rubi Chandra Dutta Vs. United India Insurance Co. Ltd.** [(2011) 11 SCC 269], the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In **Sunil Kumar Maity Vs. State Bank of India & Ors.** [AIR (2022) SC 577], the

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Hon'ble Supreme Court held that "*the revisional jurisdiction of the National Commission under [Section 21\(b\)](#) of the said Act is extremely limited. It should*

be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity."

8. The Petitioner has not been able to bring out any illegality or material irregularity or jurisdictional error in the order of the State Commission. Both the State Commission and District Forum have given a well-reasoned order. A perusal of order of District Forum also show that the Petitioner sold the vehicle during the pendency of the case despite interim orders passed in favour of Complainant. Accordingly, order of the State Commission is upheld. Revision Petition is dismissed.

9. Parties to bear their respective costs.

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DR. INDER JIT SINGH
PRESIDING MEMBER