

Latest HLJ 2025 (HP)(1) 264

Himachal Pradesh State Consumer Disputes Redressal Commission Shimla.

First Appeal No. 06/2023 Date of Order:10.12.2024.

Consumer Protection Act, 1986 Section–2–Deficiency in Service and unfair trade practices–Illegal/Forcible repossession of vehicle–Loan default–Complaint allowed–Appeal–Whether the appellants illegally repossessed the vehicle–Held–No–That, the repossession of vehicle conducted in accordance with the hypothecation agreement–Notices, reminders including a letter to the police and complainant, indicating that the vehicle was being repossession due to loan default–

Repossession of vehicle was deemed legal and has not taken the forcible possession–Complaint dismissed–Appeal allowed. (Para 13) Parties represented by:

For the Appellants: Mr. Mr. Nikhil Katwal, Advocate vice Mr. Deepak Gupta, Advocate.

For the Respondents: Mr. Akshay Katoch, Advocate vice Mr. Vinay Mehta, Advocate.

Justice Inder Singh Mehta, President

Order:- Present appeal is preferred against the order dated 18.10.2022 of learned District Commission Chamba, in consumer complaint No.69/2018 titled Vidya Sagar Mahajan Versus Mahindra & Mahindra Finance Services Ltd. & Ors., whereby, the complaint filed by the complainant was allowed.

Brief facts of the Case:

2. Brief facts of the case are that the complainant is registered owner of vehicle No.HP-44 2802 (Bolero Camper) bearing Chassis No.36481 Engine No.63519 which was financed by opposite parties/finance company vide agreement No.3506335. The complainant was regularly paying the installments of the above said vehicle, but due to unavoidable circumstances he could not make payment of installment of the said vehicle for some time. The vehicle was insured for a sum of Rs.4,00,000/-. The opposite parties/finance company have served the notice dated 27.02.2018 to complainant to make the payment of outstanding loan amount to the tune of Rs.1,92,880/-. The complainant after receiving the notice visited the office of finance company for seeking one month's time to clear all the outstanding amount of loan. But on 22.03.2018, the officials/agents of opposite parties/finance company forcibly took the vehicle from the driver of complainant against the term and condition of the agreement. Thereafter, complainant served legal notice dated 31.07.2018 upon the opposite parties requesting the opposite parties to settle the loan account of complainant, but opposite parties have not paid any heed to the legal notice of complainant. There is deficiency in service and unfair trade practice on the part of the opposite parties/finance company. Hence, this complaint.

3. The complaint so filed was resisted and contested by the opposite parties by filing reply and stated that the complainant was in default of payment to repay the loan to the extent of

Rs.56,630/- even after selling the vehicle to recover the agreement value of Rs.7,08,120/-. The financed amount was Rs.5,64,000/- and the agreement value i.e. the total amount to be paid till the end was Rs.7,08,120/- in 36 EMIs, out of which the complainant paid only 26 EMIS totaling Rs.5,15,240/ and now an amount of Rs.56,630/- is balance as per the terms and conditions of the loan agreement. The complainant has not approached the opposite parties/finance company for settlement and sufficient time was given to complainant to repay the loan amount. There is no deficiency in service and unfair trade practice on the part of the opposite parties/finance company. A prayer for dismissal of complaint was made.

4. Thereafter, the parties led evidence in support of their respective pleadings.

5. After hearing the parties, learned District Commission allowed the complaint of the complainant.

6. Feeling aggrieved by the order of learned District Commission, the appellant/finance company has preferred the instant appeal before this Commission.

7. Arguments heard on behalf of the parties and perused the record of the case carefully.

8. Learned counsel of the appellant/finance company has submitted that complainant/respondent has purchased a vehicle bearing No.HP-44-2802 which was financed by appellant company through hypothecation agreement. He further

submitted that complainant failed to repay the loan amount, therefore, the appellant has sold the vehicle in question in the public auction after issuing proper notice to the complainant. He further submitted that despite issuance of notice complainant failed to make the payment of loan amount. He further submitted that the impugned order is bad in law and same is required to be set aside. He has relied upon the order of this Commission in case titled Mahindra & Mahindra & Anr. Vs. Satya Devi, F.A. No.09/2024 dated 30.09.2024 and prays that appeal of the appellant/finance company be allowed.

9. On the other hand, learned counsel of the respondent/complainant has submitted that the impugned order does not require any interference and prays that appeal of the appellant/finance company be dismissed.

FINDINGS:

10. The admitted fact emerging on record is that the complainant purchased a vehicle bearing No.HP-44 2802 (Bolero Camper), Chassis No.36481, Engine No.63519 which was hypothecated with the opposite parties/finance company vide agreement Annexure OP/6.

11. The complainant has alleged that on 22.03.2018, the officials/agents of the opposite parties/finance company forcibly took possession of the vehicle in question from the driver of the complainant.

12. The complainant has further alleged that he was paying the loan installments regularly except some installments, despite this fact, the opposite parties/finance company forcibly took

possession of the vehicle in question without intimating the complainant.

13. The aforesaid pleas of the complainant i.e. making of regular installments and taking forcible possession of the vehicle in question by the opposite parties/finance company loses its significance on the following grounds:

1. That R/C Annexure OPs-3 indicates that the vehicle in question is hypothecated with the Mahindra and Mahindra finance company vide lease agreement Annexure OP-6.
2. That prior to taking the possession of the vehicle in question, the opposite parties/ finance company had issued letter to the complainant Annexure OPs-14 vide which the complainant had surrendered the vehicle in question to the opposite parties/finance company in default of making the payment of loan amount.
3. That prior to repossession of the vehicle in question, the opposite parties/finance company had also issued letter to the police of police Station Chamba Annexure OPs-12 mentioning that the complainant has defaulted in the payment of loan installments, despite repeated reminders, as such the opposite parties/finance company is exercising the authority to repossess the vehicle in question.
4. That the cheques Annexure OPs-5, 7 & 9 issued by the complainant to the finance company were dishonoured on presentation vide returning memos Annexure Ops-6, 8 & 10 due to "Insufficient Funds" in the account of the complainant.
5. That statement of account Annexure OPs-11 further indicates that an amount of Rs.1,92,288/- is pending against the complainant.
6. That the complainant had filed the complaint with the police vide Annexure C-6 on 26.07.2018, when the vehicle in question had already been resold to another person vide auction proceedings Annexure OPs-19 and agreement Annexure OP-18.

14. In view of the above stated facts and documents placed on record, it is crystal clear that the finance company has not taken the forcible possession of the vehicle in question without intimating the complainant. The possession of the vehicle in question was taken in accordance with the hypothecation agreement, Annexure OP-6 that too on account of default of loan installments of the vehicle in question.

15. Moreover, the complainant has not placed on record any document except his affidavit Ext.CW-1 showing that after issuing letter Annexure OPs-14 by the finance company, the complainant made any effort to settle the loan amount with the finance company. The complainant has also not participated in the auction proceedings Annexure OPs-19 to repossess the vehicle in question and to settle the matter with the finance company. Once, the complainant had not participated in the auction proceedings, the plea of taking forcible possession of the vehicle in question does not arise at all.

16. In view of the above stated facts and circumstances of the case, no deficiency in service and unfair trade practice can be attributed to the opposite parties/financer and as such, order

passed by learned District Commission below is required to be set aside.

17. Consequently, appeal of the appellants/ finance company is allowed and impugned order passed by learned District Commission is set aside.

18. Parties are left to bear their own costs.

19. Certified copy of order be sent to the parties and their counsel(s) strictly as per rules. File of District Commission along with certified copy of order be sent back and file of State Commission be consigned to record room after due completion. Appeal is disposed of. Pending application(s), if any, also disposed of.