

M/S Magma Fincorp Ltd. (Formerly Magma ... vs Rajesh Kumar Tiwari on 1 October, 2020

Equivalent citations: AIR 2020 SUPREME COURT 4978, AIRONLINE 2020 SC 770

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Bench: Indira Banerjee, D.Y. Chandrachud

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5622 OF 2019
(ARISING OUT OF SLP (C) NO. 33720 OF 2018)

M/S Magma Fincorp Ltd.

....Appellant

versus

Rajesh Kumar Tiwari

....Respondent

JUDGMENT

Indira Banerjee, J.

This appeal is against an order dated 2 nd August, 2018 passed by the National Consumer Disputes Redressal Commission [hereinafter referred to as the ‘National Commission’], dismissing Revision Petition No.5 of 2018, filed by the Appellant [hereinafter referred to as the Financier], under Section 21(b) of the Consumer Protection Act, 1986, against an order dated 31 st August, 2017 passed by the State Consumer Disputes Redressal Commission, Uttar Pradesh [herein after referred to as the ‘State Commission’], dismissing Appeal No. 1704 of 2008 filed by the Financier, and affirming the order dated 22nd August, 2008 passed by the District Consumer Disputes Redressal Forum, Ambedkar Nagar, Uttar Pradesh [hereinafter referred to as the ‘District Forum’], whereby the District Forum allowed Complaint Case No. 105/2005 filed by the Respondent, Rajesh Kumar Tiwari [hereinafter referred to as the ‘Complainant’], and directed the Financier to pay Rs. 2,23,335/- to the Complainant, along with interest at 10% per annum, Rs 10,000/- towards physical

and mental injury and Rs 1000/- as litigation expenses.

2. On or about 2nd August 2002, the Complainant entered into a hire-purchase agreement with the Financier, then known as Magma Leasing Ltd. for hire-purchase of a Mahindra Marshal Economic Jeep bearing the Registration No. UP-42-T/1163, which is hereinafter referred to as the 'vehicle', the cost whereof was Rs.4,21,121/- of which the complainant made an initial payment of Rs.1,06,121/-. According to the Financier, an amount of Rs.1,04,000/- from out of the initial payment of Rs.1,06,121/- was paid by the complainant to the dealer directly. The balance amount of Rs.3,15,000/- was paid by the Financier.

3. The Complainant agreed to repay a sum of Rs.4,38,585/- which was inclusive of finance charges of Rs.83,650/- to the Financier in 35 monthly instalments of Rs.12,531/-, commencing from 1st August, 2002. The monthly instalments were to be paid till 1 st June, 2005. The Complainant apparently deposited post dated cheques of Rs.12,531/-.

4. A part of the recital and some of the relevant terms and conditions of the said hire purchase agreement between the Financier and the Complainant, are set out hereinbelow for convenience:

“.....

WHEREAS the Hirer has agreed to deposit post dated cheques with the company at its registered office at 24, Park Street, Calcutta-700016 towards security for payment of monthly/quarterly hire charge and undertakes to ensure encashment of the same on the respective due dates.

WHEREAS the Hirer has agreed to hold the Hired Article in Trust for the company subject to user right and not to deal with the same in the manner specified in Clause 3(1) hereof until the entire amounts due under this agreement are duly paid to the company on the terms and conditions more particularly set out hereunder.

.....

01. HIRED ARTICLE AND TENURE The company shall provide funds for acquisition of the hired articles set out in the Schedule. I hereto and the hirer shall hold the same in trust for the company from the date of commencement of this agreement regardless of the date of physical delivery of the hired article for the period as stated in Schedule-II hereof subject only to Hirer's user rights upon the terms and conditions, herein contained.

The Hirer shall not be entitled to make any claim whatsoever on the company in respect of the Hired Article and/or relating to its specification and/or its condition and/or in any other manner whatsoever.

The Annexure hereto shall form an integral part of this agreement.

02. The Hirer shall duly perform and observe all the terms and condition contained in this agreement and the covenants on his part to be performed and observed and shall in the manner aforesaid, pay to the company, monthly/quarterly sums by way of hire instalments as mentioned in Schedule-II and Schedule-III of this agreement and shall also pay to the company all other sums of money which may become due and payable under this agreement, upon execution thereof regardless of the date of delivery of the Hired Article.

03. HIRER'S WARRANTIES The Hirer shall:

a) HIRE PAYMENTS Punctually and promptly pay to the company without any demand in respect thereof by the company, at its registered office the stipulated down payments/initial payment/instalments as mentioned in Schedule-III/other charges on the due dates, whether or not it has received delivery of the Hired Article.

b) MAINTENANCE Maintain and keep the Hired Article in good and serviceable condition at his own cost. The company and/or its Bankers shall have all the rights to inspect and to call for the Hired Article to be produced at any time for any time for any reason whatsoever. The Hirer shall be responsible and liable for damage, if any, caused to the Hired Article and/or to any other third party.

c) LOCATION Keep the Hired Article at the Hirer's said premises and shall permit the company and/or its agent at all times to enter upon any premises at which the Hired Article is kept/parked for the purpose of verification and also repossession the Hired Article under the provisions of clause 15 of this agreement and shall not under any circumstances change the location of the Hired Article, without express approval of the company.

d) INSURANCE Insure and keep comprehensively insured the Hired Article in the name of the company and/or its Banker against loss or damage by fire, accident, flood, earthquake, theft or any other cause and including against third party claims with an insurance company for the full cost of the Hired Article, such insurance policy shall be lodged with the company and/or its bankers duly assigned in their favour promptly and regularly. And loss and/or liability arising to the company for the Hirer's omission or neglect to keep the Hired Article so comprehensively insured shall be entirely to the account of the Hire and the Hirer and shall immediately make payment to the company in respect of all such losses suffered and/or liabilities incurred by the company.

In the event, the company effects or renews the insurance of the Hired Article, the Hirer will on demand, reimburse to the company such sum or sums as shall have been so spent by the company together with interest at 3% per month calculated from the date of insurance till date of actual payment.

The Hirer confirms that he/it will get the benefit of the insurance only if no amount is overdue by him to the company. If the contract of hiring is terminated either by the company or by the Hirer as provided in this agreement, the Hirer's interest in the insurance policy and his/its right of claiming anything there under shall IPSO FACTO come to an end. The Hirer further agrees that whenever

he/it is not entitled to the benefit of insurance under the clause, the same would go to the company and the company shall be considered to be the insured in his/its place. However, the said insurance shall not absolve the Hirer from his/its liabilities towards the company under this agreement and in no case shall the Hirer be entitled to claim any benefit from the company beyond any amount of claim received from the insurance company.

e) REGISTRATION Notwithstanding the fact that the company continues to remain the owner of the Hired Article until payment of the entire dues by the Hirer, the company agrees to permit the Hirer to have the Registration under the Motor Vehicles Act of the Hired Article in his/its own name with endorsement of the company's name as financier, provided that the Hirer shall be deemed to have transferred the registration in the name of the company when the Hirer commits a breach of any of the conditions of this agreement and the company is entitled to retake the possession of the Hired Article. The Hirer has, in order to facilitate taking possession of the vehicles, in the event of the Hirer committing breach of the agreement, executed necessary documents and has authorised the company to use the same as and when the occasion so arises.

f) ALIENATION OF HIRED ARTICLE Ensure not to sell, assign, mortgage, pledge, hypothecate or otherwise deal with the Hired Article or any part thereof, to part with possession of the Hired Article without the express written permission of the company previously obtained and not to use the Hired Article for any purpose other than that declared in the application.

- g)
- h)
- i)
- j)
- 04.
- 05. LOSS AND DAMAGE

In the event of the Hired Article, being from any cause whatsoever, wholly lost to the company during the said hiring, the measure of damages as admitted to be payable by the Hirer to the company shall be the aggregate of all arrears amounts. If any, and the total amount of the installment which would have been payable during the residue of the said hire purchase form. For the purpose of this clause, the Hired Article, if damaged and not forthwith repaired and restored to its original condition, shall be deemed to be wholly lost to the company. However, every opportunity and reasonable time shall be given to the hirer to restore the Hired Article to working condition subject to the hirer continuing to pay the hire installments as per the agreement.

06. RELEASE OF PROPERTY.

If the event sic of the hiring continues for the full period referred to in Schedule-III hereof and the following sums of money been punctually paid:-

- a. all installments due under this agreement.

b. other sums of money due hereunder then in such event the company shall release and relinquish all its rights and interest in the Hired Article. Until such payments, the company shall continue to have all rights and interest created by these presents over the hired Article together with any accession, improvements and additions made thereto by the hirer as clearly provided in clause 3(i) of this agreement and rights of the Hirer shall be subject to the beneficial rights of the company and the Hirer shall be deemed to be holding the Hired Article in trust for the company.

The company shall be at liberty to hypothecate the Hired Article in favour of the Bankers until the Hirer shall pay the entire amount due hereunder.

07.

08. USE OF THE HIRED ARTICLE FOR UNLAWFUL PURPOSE The Hirer undertakes not to use Hired Article either by itself/himself or through its/his servants or agents, for any unlawful purpose prohibited as per the terms and conditions of the insurance policy or do or permit to be done any act or thing which might render the insurance invalid, and in particular, not to use the Hired Articles in any acts liable to contravention of any of the provisions of the Acts of the Central and State Legislatures.

09. COLLATERAL SECURITY The monthly/quarterly payment of hire charges for the Hired Article shall be secured by the delivery to the company of a promissory note to be executed by the Hirer for the value of Rs.438585/- (Rupees Four Lac Thirty Eight Thousand Five Hundred Eighty Five only)

10.

11.

12. REVIVAL OF THE AGREEMENT In the event of the company repossessing the Hired Article under any of the circumstances stated in this agreement, the Hirer may request the company in writing to revive the agreement and apply for restoration of the same to it on payment of all sums which might have been arrived at as due thereon had the agreement not been determined or the Hired Article not repossessed by the company together with damages to be mutually agreed upon between the company and the Hirer, and the expenses which the company has incurred in repossessing the same and/or as a consequence of the agreement being determined and such request may be entertained by the company at its absolute discretion and upon such further or other terms as it thinks fit and proper in the circumstances. The company shall be under no compulsion to accept the request for revival of this agreement as stated supra.

13.

14.

15. DETERMINATION In case the Hirer shall during the continuance of this agreement do or suffer one or more of the following:-

- a) Fail to pay any of the hire installments or the interest or other amounts (for example; insurance premium, expenses incurred for collection of installments, additional taxes, additional, finance charges for late payment of installments etc.) having fallen due hereunder within 7 (seven) days of the amount falling due for payment whether demanded or not;
- b)
- c)
- d) pledge or mortgage or hypothecate or sell or attempt to pledge or sell or part with possession of or otherwise alienate or transfer the said Hired Article;
- e)....
- f) fail to keep the said Hired Article comprehensively insured as agreed hereinbefore during the period of the agreement.
- g) fail to pay to the government or any public authority and taxes or charges due in respect of the Hired Article.
- h) remove the Hired Article to any other State i.e. all such States other than the State in which the Hired Article is registered under Motor Vehicles, Act without prior written permission of the company;
- i) break or fail to perform or observe any conditions on his/its part herein contained;
- j)
- k)
- l)

then on the occurrence of any of the above such events, the rights of the Hirer under this Agreement shall forthwith stand determined “IPSO FACTO” without any notice to the Hirer and all installments due and remaining unpaid, all future instalments in terms of this agreement and any other charges. Expenses realizable from the Hirer shall become due and payable forthwith by the Hire and the company and/or its bankers and/or its agent shall thereupon be entitled to enter into the premises of the Hirer at such place the vehicle may be lying and remove and take possession of the Hired Article situated in any land or place or house wherever the same may then be without being liable to any proceedings/complaint by the Hirer or any other person claiming through/under him or

otherwise, and the company shall have the right to sue the Hirer for all such sums receivable from the Hirer as stated above and also for damages for breach of this agreement without prejudice to the company's right to otherwise obtaining and recovering possession of the Hired Article. This shall also be without prejudice to the right of the company to sell the hired articles after repossession without the intervention of the court as also to proceed against the Hirer for recovering any deficiency after adjustment of the sale proceeds of the hired articles as stated above in respect of the outstanding dues to the company.

15.1 In the event of the agreement of hiring being determined as aforesaid before its full term expires, the Hirer shall forthwith deliver to the company the Hired Article along with all certificate and policies of insurance and all other documents relating to the said Hired Article. However, refusal of the Hirer/its men or obstruction or delay in handing over to the company the physical possession of the Hired Article together with all specified relevant documents/certificates under these circumstances shall be deemed to be an unlawful detention and wrongful possession of the property by the Hirer and an offence within the purview of the provisions of the Indian Penal Code.

5. It is not in dispute that the Complainant defaulted in payment of instalments. Even though the Complainant was required to pay the first instalment within 1st August, 2002 and the subsequent instalments within the 1st of each succeeding month, the Complainant did not adhere to the schedule of repayments, which according to the Financier, was of essence to the hire-purchase agreement. Post dated cheques deposited by the Complainant were, according to the Financier, dishonoured.

6. In the circumstances, the Financier took re-possession of the vehicle on 14th July, 2003, allegedly upon notice to the Complainant, and in accordance with the conditions of the hire-purchase agreement. The factum of notice is, however, disputed by the Complainant.

7. After taking re-possession of the vehicle, the Financier called upon the Complainant to clear his outstanding dues amounting to Rs.2,80,132.59 as on the date of the notice, failing which the vehicle would be disposed of.

8. A pre sale legal notice dated 26.07.2003 was allegedly sent by the Financier to the Complainant, calling upon him to clear his total outstanding dues of Rs.2,80,132.59 within 7 days from the date of receipt of the notice, which was, according to the Financier, duly served on the Complainant. The Complainant did not make the repayment demanded, or even part thereof. The vehicle was sold by the Financier sometime in November, 2003.

9. On or about 15th July, 2005, that is, exactly two years after the Financier took possession of the vehicle, the Complainant filed the complaint under Section 12 of the Consumer Protection Act, 1986, being Complaint No.105 of 2005 in the District Forum, admitting that he had paid only 7 complete instalments. For the sake of convenience, the relevant paragraphs of the complaint are extracted hereinbelow:

“Provision-3 That Applicant/Complainant has Submitted 1,04,000 as a margin money And 3,15,000 was Finance from Opposite party. That to be Submitted in 35 Equal monthly instalments.

Provision-4 That After Agreement with Opposite party No.2 Applicant has Received Vehicle from Amit Auto Sales On 29.7.2002.

Provision-5 That Applicant Started Driving Vehicle After Completing All the Formalities Related to Vehicle Documents and Started Paying Instalment Provision-6 That Applicant has Paid Complete 7 instalments And in 8th Month Applicant Has not Completed his two instalments Due to ill health. After Recovering in Next Month When He started Driving Vehicle There was A suit Filed for Accident on Applicant Vehicle That's why Applicant vehicle was sealed. This Information was Given to Opposite party no.2 Immediately And it was Also said that After Releasing of vehicle he will be able to pay Instalment Smoothly.

Provision-7 That After Arranging Somehow applicant was able to release Vehicle And Driver. And After Paying June Instalment When Applicant was about to Started Driving Vehicle Opposite party No.2 has Lifted Vehicle Without giving any prior Notice or Information on Dated 14.07.2003. Whereas Applicant has Paid Total of 1,19,335 (One Lakh Nineteen Thousand Three Hundred and Thirty Five Rupees) in the form of Installment.

Provision-8 When Applicant Has Contacted to the office of Opposite party No.2 in relation to this They Said That your Instalments were Due to which vehicle was Lifted. When Applicant Said that He will Complete all the Due Instalment Soon And in Future he will pay all the Installment Timely. But Opposite party No.2 does not heard it And refused to give vehicle.

Provision-9 That the Applicant/Complainant was Surprised with this behaviour of Opposite party No.2 and did correspondence with Administration And Government in relation to this. That Inspection was also conducted But There was no result of all this.

Provision-10 That Applicant has done correspondence with Opposite party no.1 and tell the complete situation but Applicant vehicle was not given to Applicant again but it was sold to some other person. Applicant has done very much helter-skelter in relation to this But no result of all these. Provision-11 That the Applicant is been Continuously being upset and shocked by Opposite party no 1 and 2. Beside Assuring that he will pay all the past due Installment soon and will pay all other Installment timely, although vehicle was not Released in the favour of Applicant by Opposite party. That come under the Category of Business Misconception. In Unfair Trade Practice Act. And Due to Deficiency in Service. It is also Come Under Consumer Protection Act And Sustainable before The Honourable Court.

Provision-13 That due to Opposite party acts Applicant Has Suffered Irreparable loss and Complete Reimbursement Responsibility is on Opposite party.

... Provision-15. That Applicant is requesting for following....

(a) That Opposite party Shall make Available Applicant vehicle to him immediately/
And it is requested to order that Amount that is paid in the form of instalment should be refunded.

(b) That From the Date of Lifting of vehicle till the date of judgment or till the date of Handing over of vehicle. It is Requested to order that 18,000 p.m. to be given as a loss from Opposite party.

(c) That due to Acts of Opposite party to fulfil the Social, financial, physical and mental loss It is requested to order Rs.10,00,000 from Opposite party

(d) That It is Requested to order Rs.5000/- as suit expenses and Such other Relief Which The Hon'ble court Deems Fit.”

10. As admitted by the Complainant in Paragraph (4) of his complaint, the Complainant had received possession of the vehicle from the dealer on 29.7.2002. It is the case of the Complainant in his complaint at Paragraph (7) that the Financier had “lifted the vehicle” on 14.07.2003 without any prior notice or information. The vehicle was taken away by the Financier on 14.7.2003, almost a year after the Complainant received possession of the vehicle. Twelve instalments were payable within 14.07.2003, but the Complainant had, on his own admission in Paragraph (6) of the complaint, paid only 7 complete instalments.

11. According to the Complainant, he could not pay instalments after the 7th, timely, due to his illness. Later, an accident case was registered against the vehicle, which was detained by the Police. After the Complainant got the vehicle released from the police and started plying the vehicle, the Financier took repossession of the vehicle. According to the Complainant he paid Rs.1,19,335/- towards instalments. It is not the case of the Complainant in his complaint, that the Financier took forcible possession of the vehicle through so called recovery agents, by threat or by use of muscle power.

12. The Complainant has alleged that, even though, the Complainant had deposited Rs.1,19,335/- towards instalments, the Financier took possession of the vehicle without notice. The Complainant has also alleged that the Financier refused to concede to the request of the Complainant to release the vehicle, even though the Complainant had sought the opportunity to clear the outstanding instalments, and pay future instalments within time. [Paragraphs (8) and (11) of the complaint].

13. The vehicle was sold in November 2003. Till then, the Complainant did not even clear the instalments outstanding upto July 2003, that is, the outstanding instalments for the period during which the vehicle was in the possession of the Complainant, not to speak of any further instalments.

14. By an order dated 22nd August 2008, the District Forum allowed the Complaint and directed the Financier to pay Rs.2,23,335/- to the Complainant, along with simple interest at 10% per annum from the date of filing of the complaint till payment as also Rs.10,000 towards damages for physical and mental agony and Rs.1000/- as litigation expenses, within 45 days from the date of the order.

15. Being aggrieved by the order of the District Forum allowing the complaint, and directing the Financier to pay the Complainant the entire amount paid by the Complainant to the Financier towards instalments and other charges as well as the sum of Rs.1,04,000/- paid by the Complainant directly to the dealer, along with interest at 10% per annum, damages of Rs.10,000/- and litigation costs of Rs.1,000/-, the Financier filed an appeal before the State Commission. The Financier contended that the vehicle had to be sold since the complainant had not paid an outstanding amount of Rs.2,80,132/-.

16. By a judgment and order dated 31 st August, 2017, the State Commission dismissed the appeal. The Financier filed a Revisional Application before the National Commission, under Section 21(b) of the Consumer Protection Act, which has been dismissed by the judgment and order under appeal.

17. The Financier has contended that possession of the vehicle had been taken by the Financier upon notice to the Complainant. However, the fact finding fora under the Consumer Protection Act 1986 have concurrently found that the notice had not been sent to the address as mentioned in the Hire Purchase Agreement, and accordingly held that notice had not been served on the complainant. The relevant portion of the order of the National Commission under appeal is set out hereinbelow:

“The State Commission has affirmed the order passed by the District Forum on the finding that the address of the Respondent/complainant, as mentioned in the Hire Purchase Agreement, is “Village Rammanpur, Post-Bangaon Dehwa, Akbarpur, Ambedkar Nagar” whereas the notice for repossessing the vehicle was sent to him at “Rampur Bangadon, Akbarpur, Ambedkar Nagar, which is not the correct address of the complainant and, therefore, the notice for repossession was held to have not been served on the complainant, as a result of which the petitioner did not been served on the complainant, as a result of which the petitioner did not have any right to repossess the vehicle and put it to auction.

That being the finding, which could not be controverted by the Learned Counsel for the petitioner even before us, we are not inclined to interfere with the impugned order.

Accordingly, the revision petition fails and is dismissed in limine.”

18. The short question raised by the Financier in this appeal is, whether the Financier is the real owner of the vehicle which is the subject of a hire purchase agreement, and if so, whether there can be any impediment to the Financier, taking repossession of the vehicle, when the hirer does not make payment of instalments in terms of the hire purchase agreement.

19. Another question which arises for determination in this appeal is, whether service of proper notice on the hirer is necessary for repossession of a vehicle which is the subject of a hire purchase agreement, and if so, what is the consequence of non service of proper notice.

20. Before dealing with the aforesaid questions involved, in this appeal, it may be pertinent to refer to the relevant provisions of the Consumer Protection Act, 1986, set out hereinafter for convenience.

21. The Consumer Protection Act, 1986 has been enacted to protect the interests of consumers, by making provisions for the establishment of Consumer Councils and other fora for speedy redressal of consumer disputes and for matters connected therewith. The Consumer Protection Act, 1986 as per its Statement of Objects and Reasons placed before Parliament, has been enacted to promote and protect the rights of consumers such as:

“(a) the right to be protected against marketing of goods which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to variety of goods at competitive prices;

(d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

(f) right to consumer education.”

22. The fora constituted under the Consumer Protection Act, 1986 are quasi judicial bodies, required to observe the principles of Natural Justice and to award relief of a specific nature and to award wherever appropriate, compensation to consumers.

23. Some of the relevant provisions of the Consumer Protection Act, 1986 as amended from time to time, are set out hereinbelow for convenience:

“2. Definitions.- (1) In this Act, unless the context otherwise requires,—

(a)

(aa)

(b) “complainant” means—

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956), or under any other law for the time being in force; or

(iii) the Central Government or any State Government, who or which makes a complaint;

(iv) one or more consumers, where there are numerous consumers having the same interest;

(v) in case of death of a consumer, his legal heir or representative;

(c) “complaint” means any allegation in writing made by a complainant that—

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price—

(a) fixed by or under any law for the time being in force;

(b) displayed on the goods or any package containing such goods;

(c) displayed on the price list exhibited by him by or under any law for the time being in force;

(d) agreed between the parties;

(v) goods which will be hazardous to life and safety when used are being offered for sale to the public,—

(a) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety. with a view to obtaining any relief provided by or under this Act;

(d) “consumer” means any person who,—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose;

Explanation.—For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;

(e) “consumer dispute” means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

(g) “deficiency” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which 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 or otherwise in relation to any service;

(o) “service” means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service; (oo) “spurious goods and services” mean such goods and services which are claimed to be genuine but they are actually not so.

(r) “unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or

deceptive practice including any of the following practices, namely:

(1) the practice of making any statement, whether orally or in writing or by visible representation which,—

(i)

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii)

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) ...

(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii)

(viii) makes to the public a representation in a form that purports to be—

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.—For the purposes of clause (1), a statement that is—

- (a) expressed on an article offered or displayed for sale, or on its wrapper or container; or
 - (b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or
 - (c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;
- (2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement. Explanation.—For the purposes of clause (2), “bargaining price” means—
- (a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise; or
 - (b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold; (3) permits—
- (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;
 - (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest; (3-A) withholding from the participants of any scheme offering gifts, prizes or other items free of charge, on its closure the information about final results of the scheme. Explanation.—For the purposes of this sub-clause, the participants of a scheme shall be deemed to have been informed of the final results of the scheme where such results are within a reasonable time published, prominently in the same newspapers in which the scheme was originally advertised;
- (4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends

to raise or is intended to raise, the cost of those or other similar goods or services;

(6) manufacture of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services. Section 3. Act not in derogation of any other law.-The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Section 11. Jurisdiction of the District Forum.- (1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees twenty lakhs.

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises. Section 12. Manner in which complaint shall be made.- (1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by—

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general. (2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this sub- section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

Explanation.—For the purposes of this section, “recognised consumer association” means any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force.

Section 13. Procedure on admission of complaint.—(1) ... (2) The District Forum shall, if the complaint admitted by it under Section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,—

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,—

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or

(ii) ex parte on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum;

(c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits. (3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the

principles of natural justice have not been complied with.

(3-A) Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months, if it requires analysis or testing of commodities:

Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:

Provided further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act: Provided also that in the event of a complaint being disposed of after the period so specified, the District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.

(3-B)

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—

(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness; and

(vi) any other matter which may be prescribed. (5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of Section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Where the complainant is a consumer referred to in sub-

clause (iv) of clause (b) of sub-section (1) of Section 2, the provisions of Rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.

(7) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

Section 14. Finding of the District Forum.-(1) If, after the proceeding conducted under Section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party:

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

(e) to remove the defects in goods or deficiencies in the services in question;

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

(g) not to offer the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale; (ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature; (hb) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are

not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or services provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

(i) to provide for adequate costs to parties. (2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

Section 15. Appeal.- Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period: Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent of that amount or twenty-five thousand rupees, whichever is less. Section 17. Jurisdiction of the State Commission.- (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction,—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore; and

(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State where it

appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

Section 21. Jurisdiction of the National Commission.- Subject to the other provisions of this Act, the National Commission shall have jurisdiction,—

(a)

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Section 26. Dismissal of frivolous or vexatious complaints.-Where a complaint instituted before the District Forum, the State Commission or, as the case may be, the National Commission, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.

Section 27A. Appeal against order passed under Section

27.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal under Section 27, both on facts and on law, shall lie from—

(a) the order made by the District Forum to the State Commission;

(b) the order made by the State Commission to the National Commission; and

(c) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission:

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

24. Section 11 of the Consumer Protection Act confers jurisdiction on the District Forum, having territorial jurisdiction, to entertain a complaint, subject to the

pecuniary limit of the value of the goods or services and/or the compensation claimed. In this case the territorial or the pecuniary jurisdiction of the District Forum, to entertain the complaint, is not in dispute. There can also be no dispute that the Complainant was a consumer of services provided by the Financier.

The question is whether the complaint filed by the Complainant is a 'complaint' within the meaning of Section 11, read with Section 2(1)

(c) of the Consumer Protection Act, 1986. In other words, do the ingredients of a complaint as provided in Sections 2(1)(c) (ii), (iv), (v) and (vi) of the Consumer Protection Act exist in this case? Is there any deficiency in the services availed by the Complainant from the Financier, within the meaning of Section 2(1)(g) of the Consumer Protection Act 1986? Has the Financier, as service provider adopted any unfair trade practice within the meaning of Section 2(1)(r) of the said Act?

25. Section (2)(1)(r) defines "unfair trade practice" to mean a trade practice, for the purpose of promoting provision of any service, by adoption of unfair method or unfair or deceptive practice, including any of the practices enumerated in Sections 2(1)(r)(i) to (x), 2(r)(2), 2(r)(3) and 2(r)(3A). The complaint does not make out any case of unfair trade practice within the meaning of Section 2(1)(r) of the Consumer Protection Act 1986.

26. The Complainant has only made a vague assertion that the action of the Financier in taking possession of the vehicle, admittedly for default in payment of instalments, and in not releasing the vehicle to the Complainant, in spite of the Complainant's assurance to the Financier to clear outstanding instalments and pay future instalments timely, amounts to an act of unfair trade practice and constitutes deficiency of service.

27. As observed above, deficiency has been defined in Section 2(1)(g) set out herein above, as any fault, imperfection or shortcoming or inadequacy in the quality, nature or manner of performance which is required to be maintained by or under any law, for the time being in force, or undertaken to be performed by a person, in pursuance of a contract or otherwise, in relation to any service.

28. Under the terms and conditions of the hire purchase agreement, the ownership of the vehicle was to stand transferred to the Complainant from the Financier, upon payment of all the 35 instalments and other dues, if any. Until then, the ownership was to be with the Financier. As all the 35 instalments had not been paid by the complainant to the Financier, the ownership of the vehicle remained with the Financier.

29. The hire purchase agreement, a copy of which is annexed to the Paper Book, clearly enabled the Financier to take possession of the vehicle, on default in payment of any of the instalments. There is no term in the Hire Purchase Agreement, that requires the Financier to give notice to the Complainant before terminating the Hire Purchase Agreement, upon breach of any term thereof, or before taking possession of the vehicle.

30. On the other hand, clause 15 of the Hire Purchase Agreement expressly provides for determination of the Hire Purchase Agreement without notice to the Complainant, upon default in hire instalments. Clause 15 enables the Financier and/or its agent to enter the premises of the Complainant, where the vehicle under hire may be lying, and to take possession of the same.

31. The repossession of a vehicle under hire, in accordance with the terms and conditions of a hire purchase agreement, upon default in payment of hire instalments and refusal to release the same on mere assurance of the Complainant to clear outstanding arrears of hire instalments, and pay future instalments in time, does not constitute 'deficiency' in service.

32. The Financier has claimed to have issued notice to the Complainant before taking possession of the vehicle and also a pre sale notice. Unfortunately there was an error in the address of the Complainant in the notice purported to be issued to the Complainant before taking possession. It may thus, reasonably be assumed that an obligation to give notice to the Complainant was implicit in the Hire Purchase Agreement. The Financier also construed the Hire Purchase Agreement to contain an implicit requirement to give notice to a hirer before taking possession of the vehicle covered by the Hire Purchase Agreement.

33. The question which follows is, whether the Financier could have been directed to return the entire amount paid by the Complainant, by way of instalments or otherwise, including Rs.1,04,000/- paid by the Complainant directly to the dealer, and also to pay damages of Rs.10,000 for physical and mental suffering, only because of an error in the address of the Complainant, in the notice sent by the Financier, and that too, without even considering how the Complainant was prejudiced by the error, when the vehicle had been taken away for non payment of hire instalments and sold after about four months.

34. The object of a notice before taking possession of a vehicle on hire under a Hire Purchase Agreement, is to enable the hirer, to make a written request to the Financier to revive the hire purchase agreement in terms of Clause 12 of the said agreement, upon payment of all outstanding dues together with damages, as might be mutually agreed upon.

35. A notice also draws the attention of the hirer to the alleged breaches of agreement on the part of the hirer, on the basis of which, the Financier claims to be entitled to take possession. Such notice gives the hirer an opportunity to show that the hirer had not, in fact, committed any breach of agreement. For example, the hirer might be able to show that the Financier had erroneously omitted to give credit to the hirer for payments made, or had not presented a cheque in its possession for payment, even though there were sufficient funds in the concerned bank account of the hirer, to honour the cheque.

36. Many self employed hirers, operate vehicles taken on hire, to earn a livelihood. Such vehicles are often run over long distances. A notice ensures that the hirer is not taken by surprise and has time to stop operating the vehicle, so that third persons using the vehicle on payment of charges are not put to sudden inconvenience by reason of re-possession of the vehicle.

37. On the face of the averments in the Complaint, the Complainant had approached the Financier after possession of the vehicle was taken, to be told that the Financier had taken possession of the vehicle, as the Complainant had defaulted in payment of instalments. The Financier had not agreed to release the vehicle, on the assurance of the Complainant to clear outstanding instalments and to pay future instalments in time.

38. A District Forum constituted under the Consumer Protection Act, 1963, derives its power to grant relief from Section 14 of the said Act. If the District Forum is satisfied that the allegations contained in the complaint about the services are proved, it may direct the service provider to

(i) return the charges paid by the Complainant [Section 14(1)

(c)];

(ii) to pay such amount, as may be awarded by the District Forum as compensation to the consumer for any loss or injury suffered by the Complainant/Consumer, due to the negligence of the service provider [Section 14(1)(d)];

(iii) to pay punitive damages in such circumstances as the District Forum deems fit [Proviso to Section 14(1)(d)];

(iv) to remove the deficiencies in the service in question.

[Section 14(1)(a)];

(v) to discontinue the unfair trade practice [Section 14(1)

(f)]

39. Before a District Forum can grant relief to the consumer of a service, it has to be satisfied that the allegations in the complaint, and/or in other words, the allegations which constitute a valid complaint, that is allegations of unfair or restrictive trade practice adopted by the service provider, or the allegations of deficiency in the service hired, or availed of or agreed to be availed of by the Complainant from the service provider, or the allegations of the service provider charging a price in excess of the price fixed for the service, under any law, for the time being in force or agreed between the parties or allegations of offering spurious services or services hazardous to life or safety, are proved.

40. Section 13(2)(b) of the Consumer Protection Act, 1986 casts an obligation on the District Forum to decide a complaint on the basis of the evidence brought to its notice by the Complainant and the service provider. Irrespective of whether the service provider adduces evidence or not, the decision of the District Forum has to be based on evidence relied upon by the Complainant. The onus of proof is on the Complainant making the allegation. Section 27 of the Consumer Protection Act casts an obligation on the District Forum, the State Commission or the National Commission to dismiss

frivolous complaints with costs not exceeding Rs.10,000/-.

41. The evidence to which the Complainant drew the attention of the District Forum is apparent from its judgment and order. The Complainant produced a delivery receipt in respect of the vehicle, some payment receipts, Insurance papers in respect of the vehicle, an FIR unconnected with the Financier and/or copies thereof and some documents relating to the filing of the Complaint and payment of Court Fees etc., none of which establish any deficiency of service or unfair trade practice on the part of the Financier.

42. The District Forum drew adverse inference against the Financier for not producing the Hire Purchase Agreement and assumed that there was no provision in the Hire Purchase Agreement for taking the vehicle back or selling it to a third party. Significantly it was not even the case of the Complainant in his complaint, that the Hire Purchase Agreement, which the complainant had signed, did not authorize the Financier to take possession of the vehicle upon default, or to sell the same to a third party.

43. No adverse inference could have been drawn against the Financier for not producing the Hire Purchase Agreement before the District Forum, when there was no allegation in the complaint of breach by the Financier of the Hire Purchase Agreement, in taking possession of the vehicle. The District Forum did not exercise its power under Section 13(4)(ii) to call upon the Financier to produce the Hire Purchase Agreement. Even otherwise, the District Forum did not direct the Financier to produce the Hire Purchase Agreement.

44. In the Complaint, a copy of which is annexed to the Paper Book, there is not a whisper of application of any force in taking possession of the vehicle. The finding of the District Forum, of the vehicle having been lifted “forcefully” or “snatched” is, with the greatest of respect, contrary to the Complainant’s own case made out in the Complaint, and therefore perverse. It is well settled that a new case cannot be made out by way of evidence, when there are no pleadings to support the same.

45. The District Forum concluded that “snatching” the vehicle, without notice, was in breach of the Hire Purchase Agreement and was ‘deficiency’ in service. The State Commission dismissed the Appeal of the Financier on the ground of delay and also on merits, on the ground of non service of notice at the correct address of the Complainant.

46. The State Commission assumed that the error in the address of the complainant in the notice despatched by the Financier was deliberate, in order to sell the vehicle without the knowledge of the Complainant. Such assumption was not based on any materials on record but patently conjectural. The State Commission observed that the Complainant had been deprived of the opportunity to deposit the amount, due from him to the Financier, which again is contrary to the Complainant’s own pleadings in his complaint.

47. The State Commission further found that there was no mention of the amount due to be paid by the Complainant to the Financier, in the Written Statement filed by the Financier before the District Forum. There was also no mention in that written statement of when the vehicle had been sold and

the amount for which the vehicle had been sold, whether such amount was more than or less than the amount due from the Complainant to the Financier. Observing that the silence on the part of the Financier in not divulging anything about the sale rendered the sale 'dubious', the State Commission concluded that the Financier had surreptitiously sold the vehicle, without the knowledge of the Complainant, without notice to the Complainant, and without disclosing the details of the sale.

48. The aforesaid observation, of the sale being dubious, has been made, overlooking the terms and conditions of the hire purchase agreement, and without considering the law governing hire purchase agreements. The Financier remains the owner of the vehicle taken by the complainant on hire, on condition of option to purchase, upon payment of all hire instalments. The hire instalments are charges for use of the vehicle as also for the exercise of option to purchase the vehicle in future. The Financier being the owner of the vehicle, there was no obligation on the part of the Financier, to divulge details of the sale of that vehicle, and that too on its own, without being called upon to do so.

49. The finding of the State Commission that the Financier sold the vehicle without the knowledge of the Complainant is contrary to the Complainant's own case in his complaint before the District Forum. The Complainant has in his complaint alleged that:-

- (i) The Complainant contacted the office of the Financier, to be told that the vehicle had been lifted, as instalments were due.
- (ii) The Financier refused to return the vehicle on the assurance of the Complainant to clear all the outstanding instalments and to pay instalments timely in future.
- (iii) The Complainant entered into correspondence with the Financier and explained his situation, but the vehicle was not returned.

50. The Complainant has established that there was a discrepancy and/or error in the address of the Complainant in the notice for repossession, from which all the three fora under the Consumer Protection Act, 1986, that is the District Forum, the State Commission and the National Commission have concluded that possession of the vehicle was taken without notice. It was not the case of the Complainant that the vehicle was sold without notice to or knowledge of the complainant.

51. The error and/or discrepancy in the address is minor and there are no materials on the basis of which the State Commission concluded that the error was deliberate. The finding of the State Commission, of the error in the address being deliberate, is unsubstantiated.

52. Be that as it may, we proceed on the basis of the concurrent factual findings of the District Forum, the State Commission and the National Commission, that the Financier took possession of the vehicle without notice. Since the Financier deemed it necessary to issue notice to the complainant, and accordingly dispatched a notice, the notice should have been sent to the correct address of the Complainant, as recorded in the Hire Purchase Agreement. The question which arises is, whether repossession of the vehicle without proper notice, for admitted default in payment of hire instalments, warranted the order passed by the District Forum, which has been affirmed by the

State Commission and the National Commission.

53. By directing the Financier to pay to the Complainant, the entire amount paid by the Complainant to the Financier from the inception, as also the amount paid by the Complainant to the dealer directly, along with interest at the rate of 10% per annum, damages of Rs.10,000/- and litigation costs, the fora constituted under the Consumer Protection Act, 1986, have given a defaulting hirer the benefit of free use of the vehicle of the value of Rs.4,21,121/- for almost twelve months, plus damages, oblivious to the depreciation in the value of the vehicle by reason of wear and tear, due to use by the hirer, as also an admitted accident for which the vehicle lay seized with the Police for some time.

54. The Consumer Protection Act, 1986 creates fora for quick adjudication of consumer disputes. The Act protects consumers from defective goods, deficient services, unfair or restrictive trade practices, or spurious goods or services. The Act also protects consumers of goods and services from being charged a price, in excess of the price fixed by or under any law in force, the price agreed between the parties, or the price declared by the service provider or the supplier of the goods inter alia by display, and/or representation.

55. The Consumer Protection Act, 1986, which creates fora for expeditious adjudication and settlement of consumer disputes, is not in derogation of any law in existence, but in addition thereto, as provided in Section 3 thereof. The said Act protects consumers of services from being charged a price in excess of the price fixed for the service under any law or the price agreed between the parties and also redressal of deficiency in the services availed by the Consumer and/or against restrictive or unfair trade practices, and/or spurious services.

56. The Consumer Protection Act, 1986 does not override the Contract Act, 1872, and other enactments in force, applicable to the service availed by the consumer from the service provider.

57. The protection, to which the consumer of a service is entitled under the Consumer Protection Act, is against loss of money, by reason of being denied service, of a quality agreed upon expressly or by necessary implication, inter alia, in view of the applicable law, for which the consumer has paid, or has agreed to pay a consideration. The said Act also protects consumers from being overcharged for any service obtained and/or agreed to be obtained.

58. The consumer of a service may also be entitled to damages for any loss suffered by the consumer, by reason of denial or deficiency in service for which the consumer has paid or agreed to pay (if the parties have agreed to deferred payment), charges and/or in other words, price for the service. In cases of breach of contract, liquidated damages may be imposed on the party in breach, if the agreement provides for liquidated damages, that is a fixed amount by way of damages. Where the parties to an agreement have not agreed to liquidated damages, the party in breach of agreement may be directed to pay unliquidated damages which are compensatory. Such compensatory damages are not to punish the party in breach, but to compensate the party not in breach, for losses suffered as a result of the breach.

59. Where, however, the damages caused by the breach are severe and extensive, the party in breach may be required to pay to the party not in breach, such damages as would restore the position of the party not in breach, to the position before the breach occurred.

60. Apart from compensatory damages, an Adjudicating Authority may impose on the party in breach, punitive damages or nominal damages. Punitive damages are awarded where the party in breach of agreement has behaved in a manner, which is reprehensible and calls for punishment. Nominal damages are awarded where there is no real harm done, by reason of the breach of the contract.

61. Section 14 of the Consumer Protection Act, 1986 empowers the District Forum to award compensation to the party not in breach by directing the party in breach to return the price or the charges as may have been paid by the complainant [Section 14(1)(c)]. The said Section also enables the District Forum to award compensatory damages to the consumer for loss or injury suffered by the consumer due to negligence of the party in breach [Section 14(1)(d)]. The Forum may direct removal of the deficiency in service, if the deficiency can be removed and it can direct discontinuation of unfair trade practices or restrictive practices and direct the same not to be repeated [Section 14(1)(e) and (f)].

62. The proviso to Section 14(1)(d) of Consumer Protection Act, 1986 empowers the District Forum to grant punitive damages in such circumstances as it deems fit. Punitive damages are not generally awarded in cases of breach of contract unless the act is so reprehensible that it calls for punishment of the party in breach, by imposition of punitive and/or exemplary damages. Compensation which is compensatory, has to be assessed taking into account relevant factors, such as the loss incurred by the claimant, though some amount of guess work and/or estimation may be permissible. In the instant case, the District Forum did not even undertake the exercise of assessment of the loss/damages, if any, suffered by the complainant by reason of non-service of notice before taking possession of the vehicle.

63. The District Forum, as also the State Commission and the National Commission, did not consider the law relating to hire purchases as enunciated by this Court in a plethora of judgments.

64. In Charanjit Singh Chadha & Ors. v. Sudhir Mehra¹, relied upon by the Financier, this Court held:

“5. Hire-purchase agreements are executory contracts under which the goods are let on hire and the hirer has an option to purchase in accordance with the terms of the agreement. These types of agreements were originally entered into between the dealer and the customer and the dealer used to extend credit to the customer. But as hire- purchase scheme gained in popularity and in size, the dealers who were not endowed with liberal amount of working capital found it difficult to extend the scheme to many customers. Then the financiers came into the picture. The finance company would buy the goods from the dealer and let them to the customer under hire-purchase agreement. The dealer would deliver the goods to the customer who

would then drop out of the transaction leaving the finance company to collect instalments directly from the customer. Under hire-purchase agreement, the hirer is simply paying for the use of the goods and for the option to purchase them. The finance charge, representing the difference between the cash price and the hire-purchase price, is not interest but represents a sum which the hirer has to pay for the privilege of being allowed to discharge the purchase price of goods by instalments.

7. In *Damodar Valley Corpn. v. State of Bihar* AIR 1961 SC 440 this Court took the view that a mere contract of hiring, without more, is a species of the contract of bailment, which does not create a title in the bailee, but the law of hire purchase has undergone considerable development during the last half a century or more and has introduced a number of variations, thus leading to categories and it becomes a question of some nicety as to which category a particular contract between the parties comes under. Ordinarily, a contract of hire purchase confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions.

But a contract of hire purchase may also provide for the agreement to purchase the thing hired by deferred payments subject to the condition that title to the thing shall not pass until all the instalments have been paid. There may be other variations of a contract of hire purchase depending upon the terms agreed between the parties. When rights in third parties have been created by acts of parties or by operation of law, the question may arise as to what exactly were the rights and obligations of the parties to the original 1 (2001) 7 SCC 417 contract.

65. In *Charanjit Singh Chadha* (supra), this Court held that a Hire Purchase Agreement is an executory contract of sale, conferring no right in rem on the hirer, until the conditions for transfer of the property to him have been fulfilled. The Financier continues to be the owner of the goods under a hire purchase agreement. The hirer simply pays for use of the goods and for the option to purchase them. The finance charge, representing the difference between the price and the hire purchase price represents the sum which the hirer has to pay for the privilege of being allowed to pay the purchase price in instalments. Where the hirer had defaulted in payment of instalments and the agreement specifically provided that the Financier was entitled to repossess the vehicle in case of default, no case was made out against the Financier.

66. In *K.L. Johar & Co. v. Deputy Commercial Tax Officer, Coimbatore*² this Court took the view that a hire-purchase agreement has two elements: (1) element of bailment; and (2) element of sale, in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied, and the option is exercised, a sale takes place of the goods, which till then, had been hired.

2. AIR 1965 SC 1082

67. In *Anup Sarmah v. Bhola Nath Sharma and Others* ³ cited on behalf of the Financier, this Court held that, in an agreement of hire-purchase, the purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the latter. Thus, in case the vehicle is seized by the Financier, no criminal action can be taken against the Financier, as the Financier is only repossessing the goods owned by the Financier.

68. In *Orix Auto Finance (India) Ltd. v. Jagminder Singh and Another* ⁴, relied upon by the Financier, this Court held that if the agreement permits the Financier to take possession of the financed vehicles, there is no legal impediment to such possession being taken. Of course, the hirer could avail of such statutory remedy as might be available. But the mere fact that possession was taken could not be a ground to contend that the hirer was prejudiced. As regards the respondent's objection to improper seizure, this Court held that there could not be any generalization. Whether the seizure was improper, would depend on the facts of each case. However, it would not be appropriate for the Court to lay down any guideline which would in essence, amount to variation of the agreed terms of the agreement.

³ (2013) 1 SCC 400 ⁴ (2006) 2 SCC 598

69. In *K. A. Mathai alias Babu & Anr. v. Kora Bibbikutty & Anr.* ⁵, cited on behalf of the Financier, this Court held that where the Financier's Hire Purchase Agreement contained a clause of resumption, upon failure to make payment of instalments, it could not be said that the Financier had committed the offence of theft by taking possession of the vehicle covered by the Hire Purchase Agreement.

70. The Financier has also cited the Judgments *Jagdish Chandra Nijhawan v. S.K. Saraf* ⁶, and *Smt. Lalmuni Devi v. State of Bihar & Ors.* ⁷

71. In *Jagdish Chandra Nijhawan (supra)*, this Court held that where a Chairman, provided with rent free furnished flat by the company of which the company was not the lessee, remained in wrongful possession of the flat after his Chairmanship stood terminated, the dispute was of a civil nature. The High Court had thus, erred in law in quashing the order of discharge made by the Court of Judicial Magistrate in a Criminal Revision application. The judgment has no relevance to the issues involved in this case.

⁵ (1996) 7 SCC 212 ⁶ (1999) 1 SCC 119 ⁷ (2001) 2 SCC 17

72. In *Lalmuni Devi (supra)*, the issue before this Court was, whether facts which could give rise to a civil claim, could also amount to offence. This Court held that merely because a civil claim was maintainable did not mean that the criminal complaint would not be maintained. The Judgment was rendered in the context of the allegation that the respondent Nos. 2 and 10 had fraudulently got the father of the complainant to execute a gift deed. The judgment is of no relevance to this case.

73. In *Sundaram Finance Ltd. v. The State of Kerala & Anr.* ⁸ the majority of the Judges held that, the true effect of a transaction might be determined from the terms of the agreement, considered in

the light of surrounding circumstances. An owner of goods, who purports absolutely to convey or acknowledges to have conveyed goods, and specifically purports to hire them under a Hire Purchase Agreement, is not estopped from proving that the real bargain was a loan on the security of the goods. If there is a bona fide and completed sale of goods, evidenced by documents, anterior to and independent of a subsequent and distinct hiring to the vendor, the transaction may not be regarded as a loan transaction, even though the reason for which it was entered into, was to raise money. If the real transaction is a loan transaction, secured by a right of seizure of the goods, the property passes under the documents embodying the transaction, but subject to the terms of the hiring agreement, which 8 AIR 1966 SC 1178 become part of the buyer's title, and confer a licence to seize.

74. A hire-purchase is, however a more complex transaction where the owner enters into a transaction of hiring out goods on the terms and conditions set out in the agreement, and the option to purchase, exercisable by the customer on payment of all the instalments of hire, arises when the instalments are paid and not before. In such a hire-purchase agreement there is no agreement to buy goods; the hirer being under no obligation to buy, has an option either to return the goods or to become its owner by payment in full of the stipulated hire and the price for exercising the option. This class of hire-purchase agreements must be distinguished from transactions in which the customer is the owner of the goods and with a view to finance his purchase he enters into an arrangement which is in the form of a hire-purchase agreement with the financier, but in substance evidences a loan transaction, subsequent to a hiring agreement, under which the lender is given the license to seize the goods.

75. In the aforesaid case, the majority of the judges were of the view that the intention of the appellants in obtaining the hire- purchase and allied agreements was to secure the return of the loans advanced to their customers and no real sale of the vehicle was intended by the customer to the appellants. The transactions were merely financial transactions. The judgment of this Court in Sundaram Finance Ltd. (supra) was rendered in the context of the liability of a hirer to pay sales tax on the goods acquired under the Hire Purchase Agreement.

76. In Sundaram Finance Ltd. (supra), Subba Rao, J delivered a dissenting judgment holding:-

“6. The object of the hire-purchase system was to help to finance the customer in order that he might purchase the property. Though that was the object, the transaction took the form of hire-purchase agreement. The main feature of the agreement, apart from small variations, was that the dealer or the financier continued to be the owner till the terms of the agreement were fully complied with by the customer and the option to purchase the same was exercised by him. If the terms were not complied with, the dealer or the financier, as the case may be, could terminate the agreement and take back the goods. In such a transaction, the common intention of the dealer, the financier and the customer was that the transaction should take the form of a hire-purchase agreement which would become a sale on the compliance of the terms of that agreement. No doubt the financing operation could have taken the form of a mortgage or pledge, but the parties, for their mutual benefit and convenience, entered into a hire- purchase transaction.

7. In the absence of any fraud or undue influence, the question resolves itself into a simple question of intention. The transactions were in accordance with the mercantile usage.

Both the financier and the customers with open eyes entered into the transactions of hire-purchase. Their intention was expressed in clear terms. They could have executed hypothecation bonds, but they did not, and instead entered into hire-purchase transactions. There was no reason to camouflage the real nature of the transactions. None was suggested. They were, therefore, bound by the terms of the agreements.”

77. The law which emerges from the judgments of the Court referred to above, is that goods are let out on hire under a Hire Purchase Agreement, with an option to purchase, in accordance with the terms and conditions of the Hire Purchase Agreement. The hirer simply pays for the use of the goods and for the option to purchase them.

78. Until the option to purchase is exercised by the hirer, upon payment of all amounts agreed upon between the hirer and the Financier, the financier continues to be owner of the goods being the subject of hire purchase. Till such time the hirer remains a trustee and/or bailee of the goods covered by the Hire Purchase Agreement.

79. The Financier continues to remain the owner of a vehicle, covered by a hire purchase agreement till all the hire instalments are paid and the hirer exercises the option to purchase. Thus, when the Financier takes re-possession of a vehicle under hire, upon default by the hirer in payment of hire instalments, the Financier takes re- possession of the Financier’s own vehicle.

80. When the agreement between the Financier and the hirer permits the Financier to take possession of a vehicle financed by the Financier, there is no legal impediment to the Financier taking possession of the vehicle. When possession of the vehicle is taken, the Financier cannot be said to have committed theft.

81. Whether the transaction between a Financier and a purchaser/hirer is a hire purchase transaction, or a loan transaction, might be determined from the terms of the agreement, considered in the light of surrounding circumstances. However, even a loan transaction, secured by right of seizure of a financed vehicle, confers licence to the Financier to seize the vehicle.

82. In this case, the agreement executed by and between the Financier and the Complainant is a Hire Purchase Agreement as will appear from the terms and conditions thereof. In any event, the fora under the Consumer Protection Act, have not arrived at any specific finding to the contrary. There is no discussion of the nature of the agreement between the Financier and the Complainant. Be that as it may, the agreement clearly permits the Financier to take possession of the vehicle, upon default in payment of instalments.

83. In ICICI Bank Ltd. v. Prakash Kaur & Ors. 9 cited on behalf of the complainant, this Court deprecated the practice of hiring 9 (2007) 2 SCC 711 Recovery Agents, who were musclemen to take

possession of vehicles in cases, where the borrower might have committed default in payment of instalments. This Court held:-

“16. Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong-arm tactics.”

84. The Judgment was rendered in the facts and circumstances of the case where it was alleged that possession of a truck had been taken, by engaging goons and musclemen as Recovery Agents. The disputes were settled before this Court in view of the submission of Counsel that the truck could be returned upon payment of a sum of Rs.50,000/-

85. In Citicorp Maruti Finance Ltd. v. S. Vijaylaxmi 10 cited by the complainant, this Court held that the fora under the Consumer Protection Act, 1986 were right in holding that the vehicles had been illegally and wrongfully recovered by use of force from the loanees.

The judgment was rendered in the facts and circumstance of the case and this Court deprecated the use of force. In this case, there was no allegation in the complaint of use of force. Significantly, in Citicorp 10 (2012) 1 SCC 1 Maruti Finance Ltd. (supra), Kabir, J. held:-

“27. Till such time as the ownership is not transferred to the purchaser, the hirer normally continues to be the owner of the goods, but that does not entitle him on the strength of the agreement to take back the possession of the vehicle by use of force. The guidelines which had been laid down by Reserve Bank of India as well as the appellant Bank itself, it fact, support and make a virtue of such conduct. If any action is taken for recovery in violation of such guidelines or the principles as laid down by this Court, such an action cannot be struck down.”

86. This Court held that the Financier continues to be the owner of the goods. There is an obvious typographical error in paragraph (27) of the judgment where hirer has been erroneously been typed in place of lender/financier.

87. The question raised by the Financier in this appeal, that is, whether the Financier is the real owner of the vehicle, which is the subject of a Hire Purchase Agreement, has to be answered in the affirmative in view of the law enunciated by this Court in Haranjit Singh Chadha (supra), K.L. Johar & Co. (supra) and Anup Sarmah (supra). The Financier being the owner of the vehicle which is the subject of a Hire Purchase Agreement, there can be no impediment to the Financier taking possession of the

vehicle when the hirer does not make payment of instalments/hire charges in terms of the Hire Purchase Agreement. However, such repossession cannot be taken by recourse to physical violence, assault and/or criminal intimidation. Nor can such possession be taken by engaging gangsters, goons and musclemen as so called Recovery Agents.

88. Whether the service of proper notice on the hirer would be necessary for repossession of a vehicle, which is the subject matter of a Hire Purchase Agreement, would depend on the terms and conditions of the Hire Purchase Agreement, some of which may stand modified by the course of conduct of the parties. If the hire purchase agreement provides for notice on the hirer before repossession, such notice would be mandatory. Notice may also be necessary, if a requirement to give notice is implicit in the agreement from the course of conduct of the parties.

89. If the hirer commits breaches of the conditions of a hire purchase agreement which expressly provides for immediate repossession of a vehicle without further notice to the hirer, in case of default in payment of hire charges and/or hire instalments repossession would not be vitiated for want of notice. In this case, however a duty to give notice to the Complainant before repossession, was implicit in the Hire Purchase Agreement. The Hire Purchase Agreement was a stereotype agreement in a standard form, prepared by the Financier. The same kind of agreements, containing, identical terms, except for minor modifications are executed by all hirers of vehicles, equipment, machinery and other goods, who enter into hire purchase agreements with the Financier. The Financier who set down the terms and conditions of the hire purchase, construed the hire purchase agreement to contain an implied term for service of notice and accordingly despatched a notice, but did not address it to the correct address of the Complainant as given in the hire purchase agreement.

90. In a case where the requirement to serve notice before repossession is implicit in the hire purchase agreement, non service of proper notice would tantamount to deficiency of service for breach of the hire purchase agreement giving rise to a claim in damages.

The Complainant consumer would be entitled to compensatory damages, based on an assessment of the loss caused to the complainant by reason of the omission to give notice. Where there is no evidence of any loss to the hirer by reason of omission to give notice, nominal damages may be awarded.

91. A forum constituted under the Consumer Protection Act has, as observed above, the power to award punitive damages. Punitive damages should, however, be granted only in exceptional circumstances, where the action of the Financier is so reprehensible that punishment is warranted. To cite an example, where a Financier erroneously and/or wrongfully invokes the power to repossess without notice to the hirer, causing thereby extensive pecuniary loss to the hirer or loss of

goodwill and repute, a forum constituted under the Consumer Protection Act may award punitive damages.

92. In the instant case, there is no evidence of any loss suffered by the complainant by reason of non-receipt of notice. Admittedly, several instalments, remained unpaid. After repossession the complainant contacted the Financier and was informed of the reasons for the repossession. He only made an offer to pay outstanding instalments and gave an assurance to pay future instalments in time. If the Financier was not agreeable to accept the offer, the Financier was within its rights under the hire purchase agreement. This is not a case where payment had been tendered by the hirer but not accepted by the Financier/lender. The Complainant had not tendered payment.

93. The Financier admittedly paid Rs.3,15,000/- for acquisition of the vehicle, out of which the Financier had been able to realize Rs.1,19,000/- inclusive of all charges. There was depreciation in the value of the vehicle by reason of usage by the Complainant, for about a year. The District Forum did not even notionally assess the depreciation in the value of the vehicle.

94. The District Forum was not justified in directing the Financier to pay the Complainant Rs.2,23,335/- being the entire amount paid by the Complainant to the Financier from the inception as well as the payment of Rs.1,04,000/- made by the Complainant to the dealer along with damage of Rs.10,000/- and litigation costs of Rs.1,000/- after the Complainant had held and used the vehicle for almost a year. The Complainant, admittedly a defaulter, has in effect, been allowed free use of the vehicle for about a year, plus damages, for an error in the notice of repossession, without considering the prejudice, if any, caused to the complainant by the error and consequential non receipt of the notice, and without making any assessment of the loss, if at all, to the Complainant by reason of the error/omission.

95. For the reasons discussed above, the impugned orders of the National Commission, the State Commission and the District Forum, under the Consumer Protection Act, 1986 cannot be sustained and the same are set aside.

96. The appeal is accordingly allowed. The Financier shall, however, pay a composite sum of Rs.15,000/- to the Complainant towards damages for 'deficiency' in service and costs for omission to give the Complainant a proper notice before taking repossession of the vehicle.

.....J. [D.Y. CHANDRACHUD]J. [INDIRA BANERJEE]
NEW DELHI OCTOBER 01, 2020