

GAHC010066522024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/36/2024

HINDUJA LEYLAND FINANCE LTD AND 2 ORS
THROUGH MANAGING DIRECTOR NO. 1 SARDAR PATEL ROAD, GUINDY
CHENNAI- 700032

2: AREA MANAGER
HINDUJA LEYLAND FINANCE LTD. HIJUGURI
PO AND PS TINSUKIA
DISTRICT- TINSUKIA

3: BRANCH MANAGER
HINDUJA LEYLAND FINANCE LTD. C/O M/S EASY COMMUNICATIONS
ASSAM TRIBUNE BUILDING BNP ROAD
AMOLAPATTY
CHIRINGCHAPORI
DIBRUGARH
ASSA

VERSUS

JHULAN BARUAH
S/O- LATE GOKULESWAR BARUAH, R/O- SUSHIL BURAGOHAIN PATH
CHIRINGCHAPORI, DIBRUGARH

Advocate for the Petitioner : MR. L N DIHINGIA

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

01.04.2024

Heard Mr. KN Choudhury, the learned senior counsel, assisted by Mr. LN Dihingia, the learned counsel appearing on behalf of the petitioners.

2. This is an application under Article 227 of the Constitution challenging the order dated 17.11.2023 passed by the National Consumer Dispute Redressal Commission (for short, the NCDRC) in IA No.6840/2022 arising out of Revision Petition No.941/2022. Before proceeding with the disposal of the instant application, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of *M/s Universal Sompo General Insurance Company Limited Vs. Suresh Chand Jain and Another* reported in *AIR 2023 SC 3699* wherein the Supreme Court had categorically observed that against an order passed in exercise of the powers under Section 58(b) of the Consumer Protection Act, 2019, a proceeding under Article 226/227 of the Constitution of India is maintainable. Taking into account the above, this Court, therefore, proceeds to entertain the instant revision petition.

3. It appears from the materials on record that a complaint was filed before the District Consumer Forum at Dibrugarh by the respondent herein which was registered and numbered as CP No.26/12. The said case was disposed of by the judgment and order dated 23.03.2015 whereby the District Consumer Forum came to a finding that there was deficiency in service by the petitioners herein who were the respondents in the said proceedings and accordingly imposed a consolidated compensation of Rs.12,00,000/- along with interest @7% per

annum from the date of claim till the realization for the loss of asset; mental loss, pain and suffering and the petitioners were directed to return the unused cheques to the complainants/respondents herein. The said amount was directed to be disbursed within a period of two months from the date of the judgment.

4. The petitioners herein, as appellants preferred an appeal before the Assam State Consumer Disputes Redressal Commission (for short, ASCDRC) at Guwahati which was registered and numbered as First Appeal No.18/2015. The ASCDRC vide order dated 25.06.2018 having not found any merit in the appeal, dismissed the appeal by categorically holding that there was deficiency in service committed by the petitioners herein who were the appellants. Thereupon, no second appeal was filed against the said judgment and order dated 25.06.2018. But a revision petition was filed being Revision Pet.No.941/2022 before the NCDRC. There was a delay of 1402 days in filing the said revision application and as such, an application seeking condonation of delay was filed which was registered and numbered as Petition No.6840/2022. It is relevant to take note of that the revision was filed sometime in the month of August 2022 as submitted by the learned senior counsel appearing for the petitioners.

5. It has been brought to the attention of the NCDRC that although the judgment and order dated 25.06.2018 was passed by the ASCDRC, but on account of certain miscommunication, the said revision could not be filed. Further to that, the in-house Legal Assistant had also expired and various documents could not be traced out. The NCDRC vide the impugned order dated 17.11.2023 had rejected the said application for condonation of delay of 1402

days and it is against the said rejection order dated 17.11.2023, the petitioners have approached this Court by filing the instant proceedings.

6. It has also been submitted by the learned senior counsel appearing for the petitioners by drawing the attention of this Court to the order dated 04.01.2024 passed by the District Consumer Redressal Commission, Dibrugarh that bailable warrant has been issued against each of the petitioners i.e. the Managing Director and the Deputy Legal Manager of the petitioner No.1 in the execution of the said judgment dated 23.03.2015 passed by the District Consumer Redressal Commission. The learned counsel appearing on behalf of the petitioners further submitted that vide order dated 22.02.2024, a fresh bailable warrant was issued thereby fixing 02.04.2024 for appearance of the Managing Director as well as the Deputy Legal Manager.

7. In the backdrop of the above, this Court had duly heard Mr. KN Choudhury, the learned senior counsel appearing on behalf of the petitioners, who submitted that the District Consumer Redressal Commission Dibrugarh as well as the ASCDRC completely failed to take into account that the petitioners herein were entitled to various amounts from the respondents/complainants and that amount was not set off while passing the award of compensation. He submitted that this very aspect of the matter ought to have been taken into consideration by the NCDRC while passing the impugned order.

8. The learned counsel further drew the attention of this Court to the order of the Supreme Court in the case of *Suryapal Singh Vs. Siddhi Vinayak Motors and Another*, reported in *(2012) 12 SCC 355* and submitted that it is a well settled

principle of law that in a hire-purchase agreement the financier is the real owner and as such there cannot be any allegation against him for having possession of the vehicle. The learned senior counsel further submitted that in view of the said law, both the District Consumer Redressal Commission Dibrugarh as well as the ASCDRC had committed grave error of law. On the aspect of delay, which is the subject matter of the question, the learned senior counsel submitted that it was on account of certain miscommunication which had resulted in such delay. Be that as it may, the learned senior counsel submitted that it is the requirement that while deciding on the question of delay, the NCDRC was required also to look into the merits of the dispute.

9. Having heard the learned senior counsel for the petitioner, this Court is of the opinion that as this Court is entertaining a proceeding under Article 227 of the Constitution only on the question as to whether the NCDRC had committed jurisdictional error of law in rejecting the application for condonation of delay, the submission so made on merits has to take a back seat. Therefore, the question arises as to whether the NCDRC had committed any jurisdictional error in dismissing the said application which was delayed by 1402 days. This Court has perused the impugned order and from a perusal of the impugned order, it is seen that the learned NCDRC had duly recorded the contents of the application which was filed for condonation of delay.

10. This Court has also taken note of that the appeal was filed against the judgment passed by the learned District Consumer Dispute Redressal Commission by the petitioners herein. The judgment in the said First Appeal was delivered on 25.06.2018. The contents of the application which has been

reproduced in the impugned order do not speak anything as to when the impugned order was received by the petitioners and why even prior to 15.03.2020 no action could be taken. Though, there is a mention about the in-house Legal Assistant having expired, but there is no mention as to when the Legal Assistant had expired and also no relevant documents have been placed. Under such circumstances, how the death of the Legal Assistant had impaired the petitioners to approach the NCDRC to file their revision application within the time stipulated is not known. Consequently, this Court is of the opinion that the impugned order dated 17.11.2023 does not call for any interference, more so, in a proceedings under Article 227 of the Constitution.

11. This Court has also duly taken note of the order dated 04.01.2024 passed by the learned District Consumer Redressal Commission Dibrugarh whereby bailable warrant has been issued against the Managing Director as well as the Deputy Legal Manager of the petitioner No.1. It has also been brought to the attention of this Court that on 02.04.2024 is the next date fixed.

12. Mr. KN Choudhury, the learned senior counsel appearing on behalf of the petitioners duly submitted that sometime may be given to the petitioners to pay the amount as per the judgment and order passed by the learned District Consumer Redressal Commission Dibrugarh and the petitioners should also be permitted to claim their dues in accordance with law.

13. The learned senior counsel further submitted on instruction that on or before 05.06.2024, the amount as directed to be paid by the learned District

Consumer Forum at Dibrugarh in its judgment and order dated 23.03.2015 shall be deposited before the learned District Consumer Redressal Commission Dibrugarh and till then, no coercive measures be taken against the petitioners.

14. This Court having given an anxious consideration to the above aspect of the matter is of the opinion that for the interest of justice, certain protection is required to be given to the petitioners. Accordingly, this Court on the basis of the said submissions and undertaking given during the course of the hearing, directs the petitioners to deposit the said amount as directed vide judgment and order dated 23.05.2015 by the learned District Consumer Redressal Commission Dibrugarh on or before 05.06.2024 before the District Consumer Redressal Commission Dibrugarh. Further till that time, no further coercive measures be taken against the petitioners herein.

15. This Court observes that the petitioners in view of their undertaking have to deposit the amount before the learned District Consumer Redressal Commission Dibrugarh on or before 05.06.2024. Failure to do so would not only entail consequences, as per the provisions of the Consumer Protection Act, but would be deemed as failure to comply with the undertaking given before this Court which would ensue consequences.

16. This Court further clarifies that the directions passed herein shall not act as a bar to the petitioners to claim such dues from the respondent, if otherwise, permissible under the law.

17. With the above, the revision petition stands disposed of.

JUDGE

Comparing Assistant