**BEFORE THE TELANGANA STATE CONSUMER DISPUTES REDRESSAL COMMISSION : HYDERABAD.**

**FA.NO. 832 OF 2020**
**AGAINST ORDERS IN CC.NO. 72 OF 2019, DISTRICT CONSUMER COMMISSION, KHAMMAM**

**Between:**
1. Hinduja Leyland Finance Ltd.,
Represented by its Manager,
Above IOB, Mamata Hospital Road, Khammam.

2. Hinduja Leyland Finance Limited,
Represented by its Authorised Signatory,
Head Office : # 401, Vasanth Plaza, $4^{th}$ floor,
M.G.Road, Vijayawada-520 010.

.....Appellants/Opposite Parties

**And :**

1. Merugu Bhagavan Rao, S/o of Late Lakshmaiah,
Aged 43 years, Occ : Employee,
R/o H.No.5-5-270/6, Pakabanda Bazar, Khammam
.....Respondent No.1/Complainant

2. District Consumer Dispute Redressal Forum,
Khammam.
.......Respondent No.2

*(R2 is not necessary party in this appeal)*

Counsel for the Appellants/Opposite Parties : M/s N.Vinesh Raj

Counsel for the Respondent No.1/Complainant : M/s M.K.Sree Ramya

For the Respondent No.2 : Not necessary party

**FA.NO. 26 OF 2021**
**AGAINST ORDERS IN CC.NO. 72 OF 2019, DISTRICT CONSUMER COMMISSION, KHAMMAM**

**Between:**

Merugu Bhagavan Rao,
S/o of Late Lakshmaiah,
Aged 44 years, Occupation : Employee,
R/o H.No.5-5-270/6, Pakabanda Bazar,
Khammam; 9849576598

....Appellant/Complainant

**And:**
1. Hinduja Leyland Finance Ltd., Represented by its Manager,
Above IOB, Mamta Hospital Road, Khammam.

2. Hinduja Leyland Finance Limited,
Represented by its Authorised Signatory,
Head Office : # 401, Vasanth Plaza,
Vijayawada-520 010.
.....Respondents/Opposite Parties

Counsel for the Appellant/Complainant : M/s M.K.Sree Ramya

Counsel for the Respondents/Opp.Parties : M/s N. Vinesh Raj

**QUORAM:**

**HON'BLE SMT.MEENA RAMANATHAN .... IN-CHARGE PRESIDENT**
**&**
**HON'BLE SRI V.V.SESHUBABU .... MEMBER-JUDICIAL**

**WEDNESDAY, THE 20th DAY OF NOVEMBER**
**TWO THOUSAND TWENTY FOUR**

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**Order : (Per HON'BLE SRI V.V.SESHUBABU, MEMBER-JUDICIAL)**

1. The FA 832/2020 is filed u/s 41 of Consumer Protection Act, 2019 by the Opposite Parties, aggrieved by the order of District Consumer Commission, Khammam, dated 13.02.2020 in CC CC.No.72/2019, where under the opposite parties are directed to pay Rs.1,00,000/- as compensation within one month from the date of order, failing which the amount will carry interest @ 9% per annum, since 17.06.2019 till realization and they are further directed to issue "No due certificate" towards clearance of entire loan dues.

2. The FA 26/2021 is filed u/s 41 of Consumer Protection Act, 2019 by the complainant, aggrieved by the order of District Consumer Commission, Khammam, dated 13.02.2020 in CC CC.No.72/2019, having not satisfied with the quantum of compensation given.

3. The brief averments of the complaint are that the complainant obtained finance from the opposite parties for the purchase of TATA Venture EX-BS-III, passenger utility 7 + 1 seater on 31.08.2012; that the opposite party No.1 agreed to finance

Rs.3,85,000/- repayable with interest @ 8% per annum in 48 monthly instalments @ Rs.11,100/- p.m.; that the opposite party No.1 paid Rs.3,79,000/- only to the vehicle dealer and complainant paid the shortfall amount of Rs.6,000/- on 21.09.2012 by way of cash; that 08 blank cheques were collected from the complainant by opposite party No.1, besides land documents of the guarantor by name Mr.Syed Khadar; that the complainant paid in total Rs.1,40,680/- in 13 instalments which commenced from 13.10.2012, but due to ill-health of his mother in January 2013, failed to pay the balance; that on 16.01.2014, opposite party No.1 issued a notice demanding the complainant to clear the over dues of Rs.40,106/-; when the complainant was liable to pay only 02 instalments for the month of July and November 2013, which are to the tune of Rs.22,000/-; that when the complainant approached the opposite party No.1 to pay the two instalments, he was insisted to pay over dues of Rs.40,106/-; that on 27.01.2014, the opposite party No.1 seized the vehicle with the help of muscle men without giving prior notice; that the complainant approached opposite party No.1 to pay Rs.40,106/-, but it was not accepted by the opposite party No.1; that on 24.02.2014, the opposite party No.1 issued a notice informing that the vehicle was sold for Rs.1,50,000/- to the highest quotation of a person and the amount was adjusted towards over dues; that on 24.02.2014 issued another notice informing the complainant that he is liable to pay the dues; that as per the insured estimated value as on September 2014, the cost of the vehicle was at Rs.4,21,664/- and in such circumstances selling the vehicle for Rs.1,50,000/- shows malafides on the part of the opposite party No.1; that on 05.03.2014, received another notice from opposite party No.1, to settle the over dues standing at Rs.3,89,162/- and on such payment can take back the vehicle; that on 17.03.2014 another notice was given by opposite party No.1 to settle dues in 03 days and to settle the amount with Rs.3/- interest and can take back the vehicle ; that the complainant issued reply notice on 28.03.2014 mentioning the irregularities committed by opposite party No.1 and requested to increase the number of instalments and also EMIs from 48 to 60 and not to auction vehicle until disposal of the present complaint by the District Commission; that on 08.05.2014, the opposite party No.1 issued a reply notice informing that the vehicle was sold away for which, the complainant given another reply notice, dated 10.05.2014, with a request to not to sell the vehicle; that in August 2014, the opposite party No.1 sent Form 37 notice under Rule 61(3) to surrender the Certificate of Registration for cancellation of hypothecation; that the complainant issued a legal notice for the same by way of reply; that the complainant issued a notice to the R.T.O., Khammam, informing not to transfer the vehicle AP 20 TB 8422 to anybody; that as per the website of the RTO Authorities, the vehicle was not transferred until August, 2015 and is still in the name of complainant. On 21.01.2015 the opposite party No.1 issued a notice demanding to clear dues of Rs.2,53,491.60ps., within 07 days, otherwise, he would inform the CIBIL authorities about the default of the loan; that the complainant gave a reply to the same on 29.01.2015; that finally on 23.02.2017, the complainant issued a legal notice and despite receiving the same, the opposite parties not furnished the statement of account; that the complaint is filed within time; that the acts and actions of opposite parties amount to deficiency of service; that the complainant demanded to refund of Rs.2,71,664/- with interest @ 12% per annum from the date of agreement, dated 13.09.2014 or to refund Rs.1,00,000/- besides 13 instalments to the tune of Rs.1,40,680/- with interest @ 12% and also to return 08 blank cheques and land documents of guarantor; compensation of Rs.1,75,000/-; and relevant to delete his name from the CIBIL record and costs.

4. The brief averments of written version of opposite party No.1 & 2 are that the complaint is not maintainable either on facts or under law; that the complainant is put to strict proof of all the averments made in the complaint, except, those that are admitted; that there is no cause of action to the complaint; that the

vehicle was purchased for commercial operations, as such, the complaint is hit by Sec.21(d) of the Consumer Protection Act; that both the parties entered into an agreement and terms and conditions are binding on both of them and contrary to the same, the complainant cannot plead anything; that by exercising the rights, vehicle was seized and sold; that the complainant is a chronic defaulter in the payment of EMIs; that the dispute shall be taken before the Arbitrator, as per clause in the agreement; as such, Commission has no jurisdiction to entertain the complaint; that the opposite party No.1 has to initiate steps for recovery of Rs.62,492/- by approaching the Arbitrator. With this, requested to dismiss the complaint with costs.

5. Before the Commission below, complainant filed proof affidavit as PW1 and got marked Ex.A1 to A25. The opposite parties got marked Ex.B1 and B2. Written arguments are filed by both the parties.

6. The Commission below, settled the following points for discussion viz..:

- **Whether the complainant comes under purview of C.P.Act?**
- **Whether this complaint is filed within limitation?**
- **Whether there is any deficiency of service on the part of the opposite parties?**
- **If so, to what relief?**

7. Having heard both sides, the Commission below allowed the complaint in part. Aggrieved by the same, the opposite parties filed appeal No. 832/2020 with the following grounds :-

- The order of the Commission below is contrary to law, facts and probabilities of the case.
- The Commission below failed to observe that the complaint is hit by Sec.21(d) of C.P.Act.
- The Commission below, totally ignored agreement entered by the parties to the complaint.

- The Commission below ignored default of EMIs, by the complainant from July 2013 onwards.
- The Commission below erred in calculating the amounts.

With these grounds and others that will be urged at the time of arguments, requested to set aside the order of the Commission below and to allow the appeal.

8. Having heard both sides, the Commission below allowed the complaint in part. Aggrieved by the same, the complainant filed appeal No. 26/2021 with the following grounds :-

- The Commission below failed to appreciate the judgment of the Hon'ble Supreme Court in (2007) 2 SCC 711 and other case law.
- The Commission below grossly erred in awarding the amount in its order and failed to appreciate several notices issued by opposite party No.1.

With these grounds and others that will be urged at the time of arguments, requested to allow the appeal and award amounts as claimed in the complaint.

9. Now the points for determination in the appeal are :

**(1) Whether there is any deficiency of service and unfair trade practice on the part of opposite parties No.1 & 2?**
**(2) Whether the complainant is entitled for the amounts as claimed in the complaint?**
**(3) Whether the order under appeal is sustainable as per law?**
**(4) Relief?**

10. Heard both sides. For the sake of the convenience, the parties will be addressed as they arrayed in the impugned order/complaint.

11. Admittedly, PW1 borrowed Rs.3,85,000/- from the opposite party No.1 and purchased vehicle, which can be observed in Ex.A3. Ex.A4 goes to show that the loan amounts shall be

repaid from 15.10.2012 to 15.08.2016. PW1 hypothecated vehicle in favour of opposite party No.1 on 13.09.2012. It is the contention of PW1 that he paid the instalments regularly, but due to the ill-health of his mother in January 2013 and as she died on 07.04.2013, defaults took place in the payment of EMIs. It is further mentioned that he committed default in the payment of EMIs of month July 2013 and November 2013.

12. It is the contention of the complainant that due to non-payment of EMIs, the vehicle was seized on 27.01.2014 without giving any notice to him. As per Ex.A18 notice issued by the complainant, the vehicle was seized from him on 28.01.2014. In Ex.A19, PW1 contended that the vehicle was seized from his custody on 28.01.2014 and on the said date a letter was forcibly taken from him by the opposite parties. It means the contention of PW1 that without notice, the vehicle was seized from him is not correct. In the absence of any proof, it cannot be believed that letter was forcibly taken from PW1.

13. No single document is filed by PW1 to show that he paid any instalments to clear the over dues or after the seizure of the vehicle. PW1 only repeatedly saying that he requested opposite parties to enhance the number of instalments and reduce the amount of EMIs, but, they were not considered. Unless, a person pays something, there is no question of other side believing a person. One thing is clear that, PW1 committed wilful default. No document is filed to show that, PW1 incurred heavy expenditure for the treatment of his mother and for the said reason failed to clear the regular EMIs.

14. As per Ex.A4, dated 16.01.2014, issued by opposite parties, PW1 was overdue in the payment of instalments, at Rs.40,106/-. As per Ex.A6, dated 24.02.2014, PW1 was informed

that his vehicle was sold away by the opposite parties for Rs.1,50,000/- and no details are given regarding the date of sale, name of the purchaser and in what manner the sale was conducted. Ex.A8 dated 05.03.2014 goes to show that, PW1 was asked to settle the loan account by paying Rs.3,89,162/- and then take back the vehicle, else they would sell the vehicle in the open market. It means, the vehicle was not sold as on 05.03.2014. Another letter under Ex.A9 was issued on 17.03.2014 stating that if he fails to settle the account within 03 days, the vehicle will be sold in the open market. Similar threat was given under Ex.A10, dated 03.05.2014. For the 1st time, under Ex.A11 dated 21.01.2015, it was informed that the vehicle was sold in an open auction, but no date was given and how much amounts was realized is not mentioned. So, it is very clear that no evidence is placed before this Commission to establish that on a particular day, the vehicle was sold for so much of amount. The opposite parties not even filed registration certificate of the vehicle standing in the name of purchaser, which will establish the date on which the vehicle was transferred in the name of purchaser.

15. Ex.A12 goes to show that on 12.08.2014, the registering authorities of Khammam, demanded PW1 to surrender the transfer certificate to clear the hypothecation entry made in the favour of opposite parties. Ex.A15 dated 10.05.2014, goes to show that PW1 demanded the opposite party No.1 not to sell the vehicle until the complaint filed by him vide CC 72/2019, before District Consumer Commission, Khammam, is disposed off. Similar letter was addressed to RT Authorities, besides Ex.A17 to the legal officer of opposite party No.1 by PW1 on 29.01.2015. The details of purchase of the vehicle by the third party are not given. Ex.A20 is the vehicle registration certificate which shows the vehicle is standing in the name of PW1. However, nothing is mentioned on what date Ex.A20 was taken. Same as the case with Ex.A21.

16. After going through the above documents, it is very clear that the opposite parties not at all informed PW1 regarding the date of proposed sale of the vehicle and not even informed what happened to the vehicle, who purchased the same and for what price. This action of opposite parties, amounts not only deficiency of service but also unfair trade practice.

17. It is pleaded in the complaint that the opposite parties charged more interest than what was agreed. To clarify the same, the opposite parties filed Ex.B1 & B2. As per Ex.B1, the amounts received on sale of asset was shown at Rs.1,32,000/- but, not Rs.1,50,000/- as mentioned in the Ex.A6. Ex.B2 goes to show that PW1 and opposite parties entered into a loan agreement, where under the rate of interest is mentioned at 8.5%. No document is filed by PW1 to show that higher rate of interest was charged.

18. In view of the above discussions, it is very clear that PW1 is wilful defaulter in the payment of EMIs. At the same time, it is to be observed that opposite parties also is not fair enough in furnishing the information regarding the sale of vehicle and how much it realized etc. When the instalments are to be paid for four years, PW1 paid only few instalments. Naturally, over dues and payable amount will increase day by day. In such circumstances, we are of the view that the complainant is not at all entitled for the enhancement of any compensation. For the unfair trade practice, the opposite parties are liable to honour the order of Commission below, which is confirmed in all respects

19. In the result, the FA 832/2020 is dismissed without costs by confirming the order dated 13.02.2020 in CC 72/2019 passed by the District Consumer Commission, Khammam.

The Respondent No.1/Complainant is at liberty to withdraw the amount deposited by appellants/Opposite parties to the credit of FA 832/2020 along with accrued interest thereon, towards part satisfaction of the decretal amount after the lapse of revision time.

20. In the result, the FA 26/2021 is dismissed without costs by confirming the order dated 13.02.2020 in CC 72/2019 passed by the District Consumer Commission, Khammam.

Dictated to Stenographer, transcribed & typed by her; corrected by me and pronounced by us in the Open Court on this the 20th day of November' 2024.

**Sd/-** **Sd/-**
**I/C PRESIDENT** **MEMBER-JUDICIAL**
**Dt: 20.11.2024**
AD*