

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 1216 OF 2022

(Against the Order dated 25/02/2022 in Appeal No. 89/2019 of the State Commission
Chandigarh)

1. NARESH KUMAR SHARMA & ANR.

.....Petitioner(s)

Versus

1. ICICI BANK LIMITED & ANR.

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER :

FOR THE PETITIONERS : MS. SWETA RANI, ADVOCATE

FOR THE RESPONDENT :

FOR THE RESPONDENTS : MS. AISHWARYA, ADVOCATE
(VC)

Dated : 21 November 2024

ORDER

1. This Revision Petition No.1216 of 2022 challenges the impugned order of the learned State Consumer Disputes Redressal Commission, U.T. Chandigarh ('the State Commission') dated 25.02.2022. Vide this order, the State Commission allowed the Appeal No.89 of 2019 and set aside the learned District Consumer Disputes Redressal Forum, U.T. Chandigarh (the District Forum') order dated 05.02.2019 whereby the District Forum allowed the Complaint.

2. As per report of the Registry, there is a delay of 111 days in filing the present Revision Petition. However, as per I.A. No.9002 of 2022, the delay is 84 days. For the reasons stated in the said I.A. No.9002 of 2022, the delay is condoned.

3. For convenience, the parties are referred to as placed in the original complaint before the District Forum.

4. Briefly, the case of the Petitioners/Complainants is that they took two housing loans from the Opposite Parties (OPs). The First Loan of ₹10,35,000 was taken on 26.02.2006 for a tenure of 20 years (240 instalments) with interest @ 9.25% (floating), with EMI of ₹8,497. The Second Loan of ₹4,00,000 was taken on 20.05.2007 for a tenure of 15 years (180 instalments) with interest @ 12.75% (floating), with EMI of ₹5,260. Towards the First Loan, as on 10.04.2016, the complainants paid ₹13,16,798 without default. However, only ₹64,715 was adjusted toward the principal, with the rest applied to finance charges. Also, the OP increased EMI from ₹8,497 to ₹11,970, and interest rate from 9.25% to 14.25%, currently at

13.60%. As regards the Second Loan, as on 10.04.2016, the complainants paid ₹5,49,951. However, only ₹28,532 was adjusted towards the principal. Also, the OP increased EMI from ₹5,260 to ₹5,324, with an interest rate increase from 12% to 13.75% since inception. In addition, the OPs overcharged them ₹5,91,885 towards the first loan and ₹1,11,469 towards second loan making the total excess charges: ₹7,03,354. Being aggrieved, they filed a Consumer Complaint before the District Forum and sought a refund of the excess charges, along with compensation for mental and physical harassment, and litigation costs.

5. The OPs' in their written statement before the District Forum raised objections, stating that the complaint is not maintainable, essentially amounting to a suit for account rendition and recovery. The complaint is barred by limitation, and since the total amount exceeds ₹20 lakh, it falls outside the Forum's pecuniary jurisdiction. The floating interest rate was charged as per the agreement terms and applicable guidelines. They sought dismissal of the complaint on these grounds.

6. The learned District Forum, vide order dated 05.02.2019 partly allowed the complaint with the following directions:

“17. As a sequel to the above discussion, the present consumer complaint deserves to succeed and the same is accordingly partly allowed. The OPs are directed as under:-

- i. To immediately refund the amount of Rs. 7,03,354/- charged in excess from the complainants along with interest @ 9% per annum from the date of closure of the accounts i.e. 29.9.2016 till realisation.***
- ii. To pay Rs. 25,000/- to the complainants as compensation for deficiency in service and mental agony and harassment caused to them;***
- iii. To pay to complainants Rs. 10,000/- as costs of litigation.***

18. This order be complied with by the OPs within thirty days from the date of receipt of its certified copy, failing which, they shall make the payment of the amounts mentioned at Sr.No.(i) & (ii) above, with interest 12% per annum from the date of this order, till realization, apart from compliance of direction at Sr. No.(iii) above. ”

7. Being aggrieved by the learned District Forum order, the OP filed an Appeal and the State Commission vide order dated 25.02.2022 set aside the District Forum order and dismissed the complaint being barred by limitation. The relevant portion of the impugned order are reproduced below:

“11. So far as the objection qua the complaint being barred by limitation, it may be stated that there is force in the argument raised. The complaint filed in the year 2016 i.e. after a period of ten years, when the complainants sought relief for the period 2006/2007 onwards, is definitely barred by limitation. The complainants filed complaint on 01.09.2016 and till that period, their loan accounts were open and the complainants were paying the agreed EMI. The last instalment of EMI was made on 19.09.2016 and thereafter amended complaint was filed in the year 2018 Thus, as per the provisions of Section 24 of Consumer Protection Act, 1986, the limitation to file the complaint is within 2 years from the date on which cause of action has arisen. Thus, the complaint filed by the complainants before the District Commission in the year 2016 i.e. on 01.08.2016 was definitely barred by limitation.

12. In view of the foregoing discussion, the appeal filed by the appellants/opposite parties is liable to be accepted and the impugned order is liable to be set aside being not sustainable in the eyes of law.

13. For the reasons recorded above, this appeal is allowed and the impugned order dated 05.02.2019 passed by the District Commission-1, U.T., Chandigarh in Consumer Complaint No.732 of 2016 is set aside, Consumer Complaint No.732 of 2016 stands dismissed with no order as to costs.”

8. The learned counsel for the Petitioner reiterated the grounds of the Revision Petition and facts of the complaint and asserted that the learned State Commission erred in holding that the present claim of the petitioner is barred by limitation as the claim of the Petitioner goes back to the year 2006-2007. He further argued that the claim of the Petitioners is a running/continuous cause of action as the Respondents had been arbitrarily changing higher rate of interest from the Petitioner without prior intimation or approval. He sought to set aside the impugned Order passed by the learned State Commission and upheld the order passed by the District Forum and consequently, the present Revision Petition be allowed.

9. The learned Counsel for the Respondent argued that the complaint was time barred as the cause of action accrued in 2006, the Complainant had filed the complaint before the District Forum on 01.09.2016 i.e. after the expiry of two years. He argued in favour of the impugned order passed by the State Commission. He also relied upon Central Bank of India vs. Ravindra and Ors. (2002) 1SCC 374; ICICI Bank vs. Maharaja Krishna Dutta (2015) 17 SCC 535; ICICI Bank vs. Vishnu Bansal, 2022 SCC OnLine NCDRC 1187; Rajesh Monga vs. Housing Development Finance Corporation 2024 SCC OnLine 228.

10. I have examined the pleadings and associated documents placed on record, including the orders of the learned District Forum and the State Commission as well as the arguments advanced by the learned counsels for both the parties.

11. The learned State Commission considered the period for filing the complaint before the District Commission as elapsed as the complainant had failed to file the complaint within two years from the disbursement of loans in question and thus dismissed the Complaint.

12. In the present case, the complainants contention is that their claim is a continuous cause of action as the OPs had been arbitrary changing the rate of interest from them without prior intimation or approval. On the other hand, OPs argued that the loan disbursement was in the year 2006 and however, the complaint filed before District Forum on 01.09.2016, much after two years time prescribed under the Act. The District Forum vide order dated 05.02.2019 opined that the complaint is not time barred as unwarranted activities of the OPs continued from 2007 onwards which were continuing and due to unfair trade practice adopted by the OPs and the accounts were closed. The learned State Commission vide order dated 25.02.2022 allowed the Appeal and dismissed the complaint on the grounds of lapse of limitation period. Hon'ble Supreme Court in *M/s.Samruddhi Cooperative Housing Society Ltd. Vs. Mumbai Mahalaxmi Construction Pvt. Ltd., 2022 LiveLaw (SC) 36* held as under:

13 In CWT v. Suresh Seth (1981) 2 SCC 790, a two-judge Bench of this Court dealt with the question of whether a default in filing a return under the Wealth Tax Act amounted to a continuing wrong. Justice ES Venkataramia (as the learned Chief Justice then was) observed that:

“11. [...] The distinctive nature of a continuing wrong is that the law that is violated makes the wrongdoer continuously liable for penalty. A wrong or default which is complete but whose effect may continue to be felt even after its completion is, however, not a continuing wrong or default. It is reasonable to take the view that the court should not be eager to hold that an act or omission is a continuing wrong or default unless there are words in the statute concerned which make out that such was the intention of the legislature. In the instant case whenever the question of levying penalty arises what has to be first considered is whether the assessee has failed without reasonable cause of file the return as required by law and if it is held that he has failed to do so then penalty has to be levied in accordance with the measure provided in the Act. When the default is the filing of delayed return the penalty may be correlated to the time-lag between the last day for filing it without penalty and the day on which it is filed and the quantum of tax or wealth involved in the case for purposes of determining the quantum of penalty but the default however is only one which takes place on the expiry of the last day for filing the return without penalty and not a continuing one. The default in question does not, however, give rise to a fresh cause of action every day. Explaining the expression “a

continuing cause of action” Lord Lindley in Hole v. Chard Union [(1894) 1 Ch D 293 : 63 LJ Ch 469 : 70 LT 52] observed:

“What is a continuing cause of action? Speaking accurately, there is no such thing; but what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought.”

(emphasis supplied)

The Court further provided illustrations of continuous wrongs:

“17. The true principle appears to be that where the wrong complained of is the omission to perform a positive duty requiring a person to do a certain act the test to determine whether such a wrong is a continuing one is whether the duty in question is one which requires him to continue to do that act. Breach of a covenant to keep the premises in good repair, breach of a continuing guarantee, obstruction to a right of way, obstruction to the right of a person to the unobstructed flow of water, refusal by a man to maintain his wife and children whom he is bound to maintain under law and the carrying on of mining operations or the running of a factory without complying with the measures intended for the safety and well-being of workmen may be illustrations of continuing breaches or wrongs giving rise to civil or criminal liability, as the case may be, de die in diem.”

14 In M. Siddiq v. Suresh Das (2020) 1 SCC, a Constitution Bench of this Court (of which one of us (Justice DY Chandrachud) was a part) examined the precedents with regards to a continuing wrong. The Court observed that:

“343. The submission of Nirmohi Akhara is based on the principle of continuing wrong as a defence to a plea of limitation. In assessing the submission, a distinction must be made between the source of a legal injury and the effect of the injury. The source of a legal injury is founded in a breach of an obligation. A continuing wrong arises where there is an obligation imposed by law, agreement or otherwise to continue to act or to desist from acting in a particular manner. The breach of such an obligation extends beyond a single completed act or omission. The breach is of a continuing nature, giving rise to a legal injury which assumes the nature of a continuing wrong. For a continuing wrong to arise, there must in the first place be a wrong which is actionable because in the absence of a wrong, there can be no continuing wrong. It is when there is a wrong that a further line of enquiry of whether there is a continuing wrong would arise. Without a wrong there cannot be a continuing wrong. A wrong postulates a breach of an obligation

imposed on an individual, whether positive or negative, to act or desist from acting in a particular manner. The obligation on one individual finds a corresponding reflection of a right which inheres in another. A continuing wrong postulates a breach of a continuing duty or a breach of an obligation which is of a continuing nature. [...]

Hence, in evaluating whether there is a continuing wrong within the meaning of Section 23, the mere fact that the effect of the injury caused has continued, is not sufficient to constitute it as a continuing wrong. For instance, when the wrong is complete as a result of the act or omission which is complained of, no continuing wrong arises even though the effect or damage that is sustained may ensue in the future. What makes a wrong, a wrong of a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation.”
(emphasis supplied)

15 A continuing wrong occurs when a party continuously breaches an obligation imposed by law or agreement. Section 3 of the MOFA imposes certain general obligations on a promoter. These obligations inter alia include making disclosures on the nature of title to the land, encumbrances on the land, fixtures, fittings and amenities to be provided, and to not grant possession of a flat until a completion certificate is given by the local authority. The responsibility to obtain the occupancy certificate from the local authority has also been imposed under the agreement to sell between the members of the appellant and the respondent on the latter.

13. In the present case, the main claim of the petitioners is that the grievance in question is a running/continuous cause of action, as the OPs were arbitrary in changing the rate of interest from the Petitioner, without prior intimation or approval. This was negated by the OP bank.

14. In this regard, it is undisputed that the complainants obtained two housing loans from OPs. The 1st loan ₹10,35,000 was on 26.02.2006 for 20 years with interest @ 9.25% (floating), with EMI of ₹8,497. The 2nd loan ₹4,00,000 was on 20.05.2007 for 15 years with interest @ 12.75% (floating), with EMI of ₹5,260. Their main grievance was arbitrary overcharging of the interest element, without any notice and adjusting significant portions towards interest elements and excess charge of a total of ₹7,03,354. In the entire contentions of both the parties, the grant of loans, agreement entered into, terms of rates of interest, payments made by the complainants and the allocation of payments made by the OP towards the principal/ interest components of the total dues are undisputed. Their main contentions are that the interest rates were changed arbitrarily, the change of interest rates was not

notified, and the allocations of payments towards principal and interest components were improper. On the other hand, the OP contended that the loans were granted as sought on Floating Rate of Interest and the changes were duly notified as per policy and the allocations were as per the contract mutually agreed upon.

15. The learned State Commission allowed the Appeal of the OPs, set aside the District Forum order and dismissed the complaint as barred by limitation, as the complaint was filed on 01.09.2016, after lapse of about ten years. In this regard, it is a matter of record that the loans were obtained on 26.02.2006 and 20.05.2007. While Section 24 of the Consumer Protection Act, 1986 provides that the complaint is to be filed within 2 years from the date on which cause of action arose, in the present case, as the complaint was filed before the learned District Forum on 01.09.2016, it was considered as barred by limitation. Whereas, the main contention of the complainant in this regard is that the cause of action in question is continuing in nature, the last EMI instalment was paid on 19.09.2016 and thereafter amended complaint was filed in 2018. Thus, the complainant was well in time as per law.

16. As regards the period of limitation, it is undisputed that the complainants made a representation dated 11.05.2016 to OP Bank highlighting their grievances with respect to increase in the percentage of interest liability as well as substantial allocation of payments made by them to the interest component and other accounts, other than the principal. The OP Bank replied vide letter dated 30.03.2016 bringing out their version of the terms of the agreement, policy and calculations. Subsequently, the complainants forwarded a detailed representation along with their grievances to the Banking Ombudsman of the Reserve Bank of India vide letter dated 04.05.2016. The Banking Ombudsman undertook the scrutiny of the grievances and forwarded a reply vide letter dated 23.05.2016. Perusal of the said reply by the Banking Ombudsman reveals that, after the complainants were granted loans on 26.02.2006 and 20.05.2007, over a period of about 9 years, the Floating Rate of Interest, agreed between the parties as part of loan agreement, was changed 36 times. Of the 36 times, 25 times the rate of interest was increased and 11 times the same was decreased. The last increase was on 23.08.2013. Thereafter, the interest rate was decreased on 10.04.2015, 26.06.2015 and 05.10.2015, for which the complainant could not have had any grievance. Whereas, the present complaint was filed by the complainants on 01.09.2016. Thus, even for the sake of argument, if it is considered that due notice of change of interest was not given to the complainant, the last increase of interest rate was on 23.08.2013 and the complaint was filed on 30.09.2016, after the lapse of over 3 years from the last increase of the Floating Rate of Interest. Therefore, the findings and orders of the learned State Commission with respect to the lapse of period of limitation under section 24 of the Act, 1986 is appropriate and the order passed by the learned State Commission in this regard does not require any interference.

17. In view of the foregoing, I find no illegality or impropriety with respect to the order of the learned State Commission dated 25.02.2022 in Appeal No. 89 of 2019. Therefore, the present Revision Petition 1216 of 2022 is dismissed.

18. There shall be no orders as to costs.

19. All pending Applications, if any, also stands disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER