NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 439 OF 2020

(Against the Order dated 11/12/2019 in Appeal No. 2362/2007 of the State Commission Madhya Pradesh)

1. BRANCH MANAGER, SYNDICATE BANK
THROUGH ITS AUTHORIZED REPRESENTATIVE
KHAIRLANJI BRANCH
DISTRICT-BALAGHAT
MADHYA PRADESH ....Petitioner(s)

Versus

1. ISHWAR DAYAL
S/O. SHRI GHURAN LAL KUTRAHE, R/O. VILLAGE PIND KEPAR, P.S. RAM PAILI TEHSIL VARASIVNI,
DISTRICT-BALAGHAT
MADHYA PRADESH ....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH,PRESIDING MEMBER

FOR THE PETITIONER : MR. ANAND SHARMA, ADVOCATE
FOR THE RESPONDENT : ALREADY EX PARTE

Dated : 30 April 2024

ORDER

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 21 of Consumer Protection Act 1986, against the order dated 11.12.2019 of the State Consumer Disputes Redressal Commission Madhya Pradesh (hereinafter referred to as the ‘State Commission’), in First Appeal (FA) No.2362 of 2007 in which order dated 28.09.2007 of Balaghat District Consumer Disputes Redressal Forum (hereinafter referred to as District Forum) in Consumer Complaint (CC) no. 36 of 2007 was challenged, inter alia praying for setting aside the order dated 11.12.2019.

2. While the Revision Petitioner (hereinafter also referred to as OPs) was Respondent before the State Commission and OP before the District Forum, the Respondent (hereinafter also referred to as Complainant) was Appellant before the State Commission and Complainant before the District Forum.

3. Notice was issued to the Respondent on 25.08.2022. Petitioner filed Written Arguments/Synopsis on 23.02.2024. Due to non appearance despite service, respondent was proceeded ex parte.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Forum and other case records are that Complainant got financed a tractor from the OPs on 10.02.2004 and same was hypothecated with the Bank. The truck was got insured for the period w.e.f. 12.05.2004 to 13.05.2005 and for the insurance for the period 13.05.2005 to 12.5.2006, he deposited a sum of Rs.6000/-. However, the bank did not get the insurance done. The tractor in question met with an accident on 01.01.2006 and in the said accident, one person died and three persons were injured. The Motor Accident Claim Tribunal passed an award against the Complainant. It is the case of the complainant that despite receiving the premium for the insurance, the Bank did not get the insurance done and due to this award was passed against him. Being aggrieved, the Complainant filed CC before the District Forum and District Forum vide order dated 28.09.2007 dismissed the complaint of the Complainant. Being aggrieved, the Complainant preferred an appeal before the State Commission and State Commission vide order dated 11.12.2019, the appeal was party allowed. Therefore, the OP is before this Commission now in the present RP.

5. Petitioner(s) have challenged the said Order dated 11.12.2019 of the State Commission mainly on following grounds:

i. State Commission has mentioned the contention of the respondent wherein it was contended that respondent had furnished a cheque of Rs.6000/- on 20.01.2005 which was an advance cheque for the insurance which was going to be expired on 13.05.2005. The said contention is contrary to the record as there was no such mention of such cheque in the complaint filed before the District Forum.

ii. State Commission failed to appreciate the fact that it is the duty of the borrower i.e. the respondent herein to get the vehicle insured in time and same was mentioned in the loan document also. It was the respondent who was negligent in not getting the vehicle insured during the relevant period of time.

iii. State Commission without considering the findings of District Forum passed the order on the premise that complainant had deposited cheque of Rs.6000/- towards advance premium.

iv. State Commission failed to appreciate that complainant is a defaulter to said loan account and even the proceedings under the Madhya Pradesh Public Money (Recovery of Dues) Act, 1981 were initiated against the complainant and co-borrowers before the Recovery Officer i.e. the Tehsildar for recovery of sum of Rs.2,72000/- and further the

Bank has asked the respondent to deposit the due amount of Rs.2,72,415/- as the account was irregular.

v. Once the terms and conditions incorporated in the written argument were accepted by the parties and in compliance thereof the bank has disbursed the loan amount.

6. Heard counsels of petitioner. On account of absence despite notice, Respondent were proceeded ex-parte. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, and records of State Commission and District Forum are summed up below.

6.1 Learned counsel for the Petitioner argued that respondent failed to adhere with the repayment schedule of the said loan and various notices dated 12.11.2005, 18.02.2006, 06.03.2005 and 24.02.2005 were issued to the respondent for clearing the due amount and nothing was done by the respondent. Learned counsel further argued that Bank initiated recovery proceedings for recovery of Rs.2,72,000/- before the Recovery Officer. It is further argued that tractor was involved in an accident on 01.01.206 and proceedings under the Motor Vehicle Act were initiated and award was passed against the respondent as the vehicle was not insured on the date of accident i.e. 01.01.2006 as the previous insurance had expired on 13.05.2005 and the respondent did not renew the insurance thereafter.

6.2. It is further argued that the said issue has been settled by the Hon'ble Supreme Court in **Central Bank of India Vs. Jagbir Singh** in Civil Appeal No. 365 of 2015 arising out of SLP (Civil) No. 2343 of 2014. In this case, Hon'ble Supreme Court observed that:-

"8. A Three-Judge Bench of this Court, in HDFC Bank Ltd. v. Kumari Reshma and others, has further explained the law relating to liability of the creditor bank, and it has been held that the liability of such bank to get the vehicle insured is only till the vehicle comes out on the road. In other words, the creditor bank is not liable to get renewed the insurance policy on behalf of the owner of the vehicle from time to time….."

7. We have carefully gone through the orders of the State Commission, District Forum, other relevant records, case laws and rival contentions of the parties. As per the record, the complainant issued a cheque of Rs. 6,000/- bearing No.30516 on 20.01.2005 to the OP bank towards insurance. The OP has relied upon a letter dated 26.12.2006, wherein the insurance of the tractor was mentioned. However, whether the said letter was received by the complainant or not, no evidence was produced by the OP bank. The bank arranged the

insurance for the period 12.05.2004 to 13.05.2005, for which a sum of Rs. 6,437/- was taken from the complainant, and the tractor was insured by the bank. The complainant had given a sum of Rs. 6,000/- towards the insurance for the period after 13.05.2005. If the said amount was deficient, evidence placed on record by the bank shows that the complainant was not given any information to this effect. In the present case, the complainant has obtained insurance from the bank in the past and has deposited the amount for subsequent insurance as well, despite which the OP bank has not arranged for the insurance. It is clear from the record that after receiving the payment, the bank has not arranged for the insurance of the tractor, and the same shall be considered as a deficiency of service against the bank. There is nothing on record to show as to what action did the OP Bank take after getting the cheque for Rs.6000/- from the Complainant / borrower. Getting the vehicle insured was in the interest of the bank also as the loan granted by it was secured against this vehicle. Hence, either the bank ought to have taken the insurance or atleast insisted with the Complainant / borrower that he takes the insurance and submits a copy of the same to the Bank as continuous insurance is always the requirement of bank too with a view to secure its loan till full repayment. **In Canara Bank V. Leatheroid Plastics (P) Ltd**. (2020) 5 SCC 722, where the Bank had done insurance of part of the assets of Complainant / borrower and omitted certain assets, Hon'ble Supreme Court stated the need for bank to atleast alert the Complainant / borrower. On account of the deficiency of services of the OP bank, financial losses have occurred to the complainant, and therefore, the complainant is liable to be indemnified for the deficiency of services by the OP bank. We agree with finding of State Commission, there is no illegality or material irregularity or jurisdictional error in the order. Accordingly, the RP is dismissed and the order of the State Commission is upheld

8. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER