

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3519 OF 2017

(Against the Order dated 10/08/2017 in Appeal No. 665/2016 of the State Commission
Chhattisgarh)

1. PUNJAB NATIONAL BANK (ERSTWHILE UNITED
BANK OF INDIA)

A BODY CORPORATE CONSTITUTED UNDER THE
BANKING COMPANIES (ACQUISITION & TRANSFER OF
UNDERTAKING) ACT, 1970 HAVING ITS HEAD OFFICE
AT 11, HEMANTA BASU SARANI,
KOLKATA - 700001

.....Petitioner(s)

Versus

1. RAJENDRA MAHARANA & ANR.

S/O R.N MAHARANA R/O RAJKISHORE NAGAR, PLOT
NO. 130, PHAS -I, P.S. SARKANDA, TEHSIL &
DISTRICT BILASPUR

CG

2. DILIP SHARMA AIIAS PINTO

S/O SHRI PARMESHWAR PRASAD SHARMA R/O SHIV
VIHAR NAYAPARA DHOOMA ROAD BILASPUR TEH &
DIST. BILASPUR

CG

.....Respondent(s)

BEFORE:

**HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER
HON'BLE BHARATKUMAR PANDYA, MEMBER**

FOR THE PETITIONER : MR. S.S. LINGWAL, ADVOCATE

FOR THE RESPONDENT : FOR RESPONDENT NO.1 MR SHOBHIT MISHRA, ADVOCATE
ALONG WITH
MR RAJENDRA MZAHARANA – IN PERSON

Dated : 21 September 2023

ORDER

PER MR SUBHASH CHANDRA

1. This revision petition under section 21 (b) of the Consumer Protection Act, 1986 (in short, the "Act") assails the order dated 11.08.2017 in First Appeal No. 664 of 2016 of the State Consumer Disputes Redressal Commission, Pandri, Raipur (in short, the 'State Commission') arising from the order dated 23.09.2016 of the District Consumer Disputes Redressal Forum, Bilaspur (in short, the 'District Forum') in Consumer Complaint no. 85 of 2014. The State Commission's order upholds the order of the District Forum allowing the complaint of the respondent/complainant. This order will also dispose of Revision Petition

No. 3519 of 2017 which arises from the same set of facts and has the same grievance. For the sake of convenience, the facts are taken from RP 3518 of 2017.

2. The brief conspectus of facts, as per the petitioner/opposite party, are that the petitioner sanctioned a loan of Rs 19,00,000/- to respondents 1 and 2 under the United Housing Loan Scheme on 20.10.2010 based on their application for the stated purpose of purchase of land and construction of a house. Disbursements were made in tranches to the Savings Bank account of the respondents who made payments to the contractor (respondent no. 3) from time to time. Respondent no. 1 executed the following loan/security documents on 20.10.2010:

- (i) Demand Promissory Note for Rs 19 lakhs dated 20.10.2010;
- (ii) Agreement under United Housing Loan Scheme dated 20.10.2010;
- (iii) Text of consent clause from the guarantor;
- (iv) Guarantor's Consent Letter dated 22.10.2010;
- (v) Letter of Set-off dated 22.10.2010;
- (vi) Letter from borrower for disbursement of loan dated 22.10.2010.

Respondent no. 1 and 2 also submitted a letter dated 22.10.2010 in favour of the petitioner bank for monthly deduction of loan instalments @ Rs 19,000/- from their SB Account No 17480. Respondent no. 1 also submitted a letter of authority on 22.10.2010 to his employer to continue payment of his salary through the petitioner bank till liquidation of the loan. A mortgage was created for the land measuring 1200 sq ft situated at Plot no. 28, Khaitan No. 676/45, Village Sirgitti, District Bilaspur and deposited the original Sale Deed dated 20.10.2010 with the petitioner. Work of construction of the house was entrusted to respondent no. 3 with whom a House Construction Agreement was executed on 30.12.2011. A total of Rs 17,00,000/- was disbursed to the loan account of respondent no. 1 by the petitioner between 22.10.2010 and 28.12.2011. The petitioner issued a letter dated 07.10.2013 to respondent no. 1 for default in repayment of loan instalment followed by a notice under section 13(2) read with 13(13) of SRAFAESI Act, 2002 on 20.11.2013 to respondents 1 and 2 seeking repayment of Rs 18,87,277 along with further interest and expenses with effect from 30.09.2013.

3. Respondents 1 and 2 filed a consumer complaint before the District Forum against respondent 3 praying for completion of construction and handing over of the house as per agreement, refund of Rs 1,95,000/-, and in case the construction was not completed, Rs 9,12,763/- which was the value of the balance of the incomplete work should not be recovered from the complainants/respondent 1 & 2 who would undertake further construction. Rs 2,00,000/- towards future loss due to cost escalation was also sought. The petitioner Bank was proceeded *ex parte* and the complaint allowed on 23.09.2016 with compensation and costs. On appeal, the State Commission was dismissed on the ground that the petitioner Bank had not filed a reply before the District Forum and did not rebut the submissions. This order is impugned before us by way of the instant Revision Petition.

4. We have heard the learned counsel for the petitioner and respondent nos.1 and 2 in RP No. 3518 of 2017 and respondent no.1 in RP No. 3519 of 2017 were heard. However, respondent no.3 to 5 in RP No. 3518 of 2017 and respondent no.2 in RP no. 3519 of 2017 were proceeded *ex parte* on 3rd August 2023 as they did not appear despite publication in the newspaper and have carefully considered the material on the record.

5. On behalf of the petitioner it was contended that the State Commission erred in failing to appreciate the fact that the order of the District Forum erred in concluding that there was deficiency in service on part of the petitioner and that the District Forum acted on presumption and assumption. The Petitioner was proceeded against *ex parte* and was denied an opportunity to file its reply. It is contended that the petitioner was made a victim of the dispute between respondents 1 and 2 and respondent no 3 and impleaded falsely also as a counter to the proceedings under SARFAESI Act. Respondent nos. 1 and 2 had failed to establish deficiency in service on part of the petitioner. The State Commission is alleged to have acted without exercising its jurisdiction and with material irregularity since the finding that the loan instalments were released without inspection was incorrect in view of the fact that releases were as per progress reported by the respondent.

6. *Per contra*, on behalf of the respondent no.1 it was argued that respondent no.2 approached respondent no.1 and assured him to provide land for construction of a house and also assured respondent no.1 to get the loan sanctioned for the construction of the house from the petitioner Bank. Relying on respondent no.2, respondent no.1 signed the documents and the loan was sanctioned by the petitioner/ Bank. Learned counsel for respondent no.1 states that petitioner bank sanctioned a loan of Rs.20,00,000/- with the precondition that loan will be disbursed as per the stages of construction and the disbursement of loan shall be co-related with the actual progress made in the construction of the house.

7. Learned counsel for respondent no.1 contends that the petitioner Bank in connivance with respondent no.2 paid an amount of Rs.17,00,000/- to respondent no.2 without verifying the actual progress of the construction and respondent no.2 utilized the said amount for his own use and left the construction work incomplete. Learned counsel for respondent no.1 states that at the time of sanction of loan, the petitioner bank obtained five cheques from respondent no.1 and these were utilized by the petitioner bank to divert funds of loan from the account of respondent no.1 to the account of respondent no.2 fraudulently. Learned counsel for respondent no.1 submits that the Branch Manager of the petitioner bank who sanctioned the loan to respondent no.1 and acted in connivance with respondent no.2 committed suicide on the intervening night of 28-29.06.2012. In the suicide note, the Branch Manager of the petitioner bank has stated that respondent no.2 pressurized him for disbursement of the loan and due to the undue pressure he disbursed the loan and a FIR was registered against respondent no. 2 under section 306 read with section 420 of the IPC.

8. Learned counsel for respondent no.1 submits that the petitioner bank carried out due diligence before sanctioning the loan. The sanction letter dated 13.10.2010 states that the EMI was to start from 10.10.2011. Learned counsel for respondent no.1 alleges that in contravention of the agreement the petitioner bank commenced debiting the amount from the savings account of respondent no.1 from 08.11.2010. It was stated that once respondent no.1

came to know about the fact of the cheques being misused by the petitioner – Bank without his knowledge, he cancelled two cheques to avoid further misuse of the cheques. Respondent no.1 also complained to senior officials of the petitioner - bank who assured of taking strict action against the erring officials. However, the petitioner-bank did not initiate any action against the erring officials. The learned counsel for respondent no.1 prays that the petitioner was not entitled to any relief and that the revision petition was devoid of merit and was liable to be rejected with exemplary cost.

9. Learned counsel for respondent no.2 relied upon the arguments advanced by the learned counsel for respondent no.1.

10. In support of its averments, respondent relied upon this Commission's judgment in **Pradeep Kumar Agarwal Vs. Sanjay Agarwal & Anr.**, III (2013) CPJ 699 (NC) regarding the non-execution of the documents relied upon and **Sunil Kumar Maity Vs. State Bank of India & Anr.**, 2022 SCC OnLine SC 77 dated 21.01.2022 regarding the limited jurisdiction of the National Commission under section 21.

11. The District Forum's findings in its order are as below:

7. *On perusal of the un rebutted affidavits and documents produced by the applicants, it is clear that the non-applicant no.1 firstly got executed the registration of the land of his brother on deceitful manner to construct the house of applicants and thereafter got the loan sanctioned from the non-applicant no.2 Bank for construction of house on the said plot of land, and in connivance with the then Manager of the bank got transferred the amount of Rs.17,85,000/- in his account within a short span of time without construction of the house and utilized the amount in his own use and therefore, committed the deficiency of service with the applicants, for which the non-applicant bank is also equally liable, by way of which, instead of paying the installment on the basis of construction linked plan, the non-applicant no.1 was paid and in this regard efforts for spot inspection was also not carried out.*

8. *In the light of the aforesaid discussion, we reached to the conclusion that non-applicants while acting unprofessionally committed deficiency in service. Therefore, we pass the following order in favour of the applicants and against the non-applicants;*

(i) *The applicants will not be responsible for making the payment of the loan amount in the matter in dispute. The non-applicant no.2 shall either bear the same as penalty or recover the amount from the under the constructed house mortgaged property;*

(ii) *The non-applicant no.2 shall pay the amount of installment that was deducted from their account to the applicants within a period of one month from the date of order;*

(iii) *The non-applicant no.1 shall pay to the applicants an amount of Rs.2,00,000/- as compensation amount for their mental agony;*

(iv) *The non-applicant no.2 is advised to distance itself from such professional business activities in future and advised to maintain such arrangement that in future the bank may not become the medium of any deceit; and*

(v) *The non-applicants will pay jointly and severally Rs.5,000/- to the applicants as litigation charges.*

12. The State Commission in its order dated 12.08.2016 states as under:

13. The counsel on behalf of the appellant/ non-applicant no.2/ Bank has submitted that the order passed by the District Forum is against the facts and provisions of law and is liable to be set aside. The District Forum has passed its order arbitrarily without analyzing the documents and evidence. In reply to this the respondent no.1 and 2/ complainants have filed their written statement stating that the respondent no.2/ non-applicant no.1 in connivance with the appellant/ non-applicant no.2/ Bank has withdrawn an amount of Rs.17,00,000/- from the home loan account of the respondent no.1 and 2/ complainant without completing the construction of which a complaint was made to appellant/ non-applicant no .2 Bank and also the matter was reported to the police. The then Manager of the appellant/ non-applicant no.2 Bank who was in service at the time of sanction of loan had committed suicide and on the complaint of respondent no.1 and 2/ complainants a case under section 420 IPC was also initiated against the respondent no.3/ non-applicant no.1 Dilip Singh and respondent no.3/ non-applicant no.1 was also arrested.

14. As per our opinion the appellant/ non-applicant no.2/ Bank made the payment of house loan amount of Rs.17,00,000/- to respondent no.3/ non-applicant no.1 without completing the construction and spot inspection and without giving information to respondent no.1 and 2/ complainants which definitely reflects the deficiency in service on the part of appellant and definitely committed the deficiency in service and in that event the order passed by the District Forum is absolutely right and in accordance with law and there is no need to interfere with.

13. From the records it is apparent that the petitioner has challenged the impugned order on the very same grounds which were raised before the District Forum as well as the State Commission in appeal. After entering appearance following notice, the petitioner remained unrepresented before the District Forum even after getting an order declaring him *ex parte* set aside. The concurrent findings on facts of these two *foras* are based on opportunity to the parties and documents on record. The present revision petition is therefore an attempt by the petitioner to urge this Commission to re-assess, re-appreciate the evidence which cannot be done in revisional jurisdiction. Learned counsel for the petitioner has failed to show that the findings in the impugned order are perverse.

14. This Commission, in exercise of its revisional jurisdiction, is not required to re-assess and re-appreciate the evidence on record when the findings of the lower *fora* are concurrent on facts. It can interfere with the concurrent findings of the *fora* below only on the grounds that the findings are either perverse or that the *fora* below have acted without jurisdiction. Findings can be concluded to be perverse only when they are based on either evidence that have not been produced or based on conjecture or surmises i.e., evidence which are either

not part of the record or when material evidence on record is not considered. The power of this Commission to review under section 21 of the Act is therefore, limited to cases where some *prima facie* error appears in the impugned order. Different interpretation of same sets of facts has been held to be not permissible by the Hon'ble Supreme Court.

15. The Hon'ble Supreme Court in ***Rubi (Chandra) Dutta*** (2011) 11 SCC 269 dated 18.03.2011 has held that:

“23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora.”

16. Reiterating this principle, the Hon'ble Supreme Court in ***Lourdes Society Snehanjali Girls Hostel and Ors. vs H & R Johnson (India) Ltd., and Ors.*** (2016) 8 SCC 286 dated 02.08.2016 held:

“17. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons.”

17. The Hon'ble Supreme Court in its judgment dated 05.04.2019 in the case of ***T Ramalingeswara Rao (Dead) Through LRs & Ors. Vs. N Madhava Rao and Ors.***, Civil Appeal No. 3408 of 2019 dated 05.04.2019 held as under:

“12. When the two Courts below have recorded concurrent findings of fact against the Plaintiffs, which are based on appreciation of facts and evidence, in our view, such findings being concurrent in nature are binding on the High court. It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be perverse, a case for interference may call for by the High Court in its second appellate jurisdiction.”

18. The *foras* below have pronounced orders which are detailed and have dealt with all the contentions of the petitioner which have been raised before me in this revision petition. It is also seen that the orders of these *fora* are based on evidence on record. In view of the settled

proposition of law that where two interpretations of evidence are possible, concurrent findings based on evidence have to be accepted and such findings cannot be substituted in revisional jurisdiction, this petition is liable to fail.

19. We, therefore, find no illegality or infirmity or perversity in the impugned order warranting any interference of this Commission. The present revision petition is, therefore, found to be without merits and is accordingly dismissed. Pending IAs, if any, stand disposed of with this order.

20. RP No. 3519 of 2017 is also disposed of in terms of this order.

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SUBHASH CHANDRA
PRESIDING MEMBER

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BHARATKUMAR PANDYA
MEMBER