(2007) 02 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

ABN Amro Bank APPELLANT

Vs

SANGEET SRIVASTAVA RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Citation : 2007 1 CPR 488 : 2007 2 CPJ 269

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Final Decision : Revision Petition dismissed

Judgement

1. IN this revision, challenge is to the order dated 5.9.2006 of State Commission, Delhi dismissing appeal against the order dated 8.7.2005 of a District Forum whereby petitioner was directed to refund Rs. 65,223 to the respondent and also pay to him an amount of Rs. 5,000 as compensation towards mental agony.

2. RESPONDENT/complainant had purchased a Tata Indica Car after taking loan from the petitioner/opposite party. Loan amount was to be paid in equal monthly instalments of Rs. 7,427. RESPONDENT alleged that he paid the instalments upto July, 2002 regularly and due to financial difficulties, she was unable to make payment of instalments for the months of August, September and October, 2002 amounting to Rs. 21,741. RESPONDENT further alleged that on 22.11.2002 the petitioner bank forcibly took possession of the car despite the fact that she was ready to pay the amount due from her. RESPONDENT sent notice on 25.11.2002 which was replied by the letter dated 2.12.2002 by the petitioner with false averments. RESPONDENT filed complaint seeking certain reliefs. Petitioner was proceeded ex-parte on 15.7.2003 as it failed to put in appearance despite service of notice. Considering the averments made in complaint and unrebutted affidavit filed by the respondent, order to the said effect was passed by the District Forum. Main thrust of argument advanced by Mr. Punit Kumar Bhalla for petitioner is that the petitioner was not served with the notice in complaint for 15.7.2003 and respondent is not entitled to the refund of margin money amount. It was pointed out that plea of non-service of notice though was taken in appeal but was not considered by the State Commission while passing the order under

challenge. In order to ascertain whether notice was sent by post for 15.7.2003, we have requisitioned the file of the District Forum. File would show that notice was sent by post to the petitioner on 1.5.2003 and an entry to that effect made at serial No. 2447 in the Despatch Register for postal dak. Notice was sent on the address of the petitioner bank shown in the cause title of the complaint. It is not the case of the petitioner that the said address is incorrect. Under Clause (e) of Section 114 of the Indian Evidence Act, 1872, Court may presume that judicial and official acts have been regularly performed. Under Clause (f) it may also be presumed that common course of business has been followed in particular case. Thus, it has to be presumed that the notice for 15.7.2003 was sent by the District Forum and received by the petitioner bank. It is for the petitioner to rebut that presumption. Along with Memo of Appeal wherein ground of non-service was also taken, the bank had filed the affidavit of Sachin Sachdeva, Principal Officer of the bank. Alongwith revision petition the bank has filed the affidavit of Tarun Sharma, Authorised Signatory of the petitioner bank. Neither of these officials is the person receiving the Dak. For the reasons best known to petitioner bank, it has not filed the affidavit of concerned receipt clerk of Dak along with Dak register in support of the assertion that notice sent by post for 15.7.2003 was not received in petitioner bank. Though issue of non-service of notice was not considered by the State Commission still for the foregoing discussion, we hold that petitioner bank was served with the notice for 15.7.2003. The District Forum had, thus, rightly proceeded ex parte against the petitioner on 15.7.2003 as no body put in appearance on its behalf.

This brings us to the second limb of submission referred to above. Admittedly, petitioner bank had not financed the total cost of the car. Amount of Rs. 65,223 was contributed by the respondent towards margin money for purchase of the car which was re-possessed and sold by the petitioner. As may be seen from the order of District Forum the grievance of the respondent was that she was not served by the bank any notice prior to sale of car on 2.11.2002. Order for refund of margin money etc. was passed by the District Forum considering the averments made in complaint and unrebutted affidavit filed in support thereto by the respondent There is no merit in either of the said two submissions advanced on behalf of the petitioner bank. Accordingly, revision petition is dismissed. Revision Petition dismissed.