
(2009) 02 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

Bank of Baroda, Lodra

APPELLANT

Vs

Gitaben Baldevbhai Raval And Ors.

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Citation : 2009 0 NCDRC 47 : 2009 3 CPJ 366 : 2009 3 UC 1650

Hon'ble Judges : R.K.BATTA J.

Final Decision : Petition dismissed

Judgement

1. COMPLAINANTS 1 and 3 had invested a sum of Rs. 2,00,000 in four fixed deposits with opponent No. 1/Petitioner. At that time, opponent No. 2/ Respondent No. 4 was working as a Manager with the Petitioner and he was also tenant in the house of the complainant. The complainants 1 and 3 had accompanied opponent No. 2/Respondent No. 4 to the bank for making the said deposits. Complainant No. 2's /Respondent No. 2's name was subsequently added in the fixed deposits. According to the complainants they had signed different papers as required and submitted by opponent No. 2/ Respondent No. 4. The fixed deposits were to mature on 6.2.1995. The amount in the fixed deposit was withdrawn within a month of its deposit. The complainants came to know of the same after the opponent No. 2/Respondent No. 4 was transferred from the bank. Correspondence was exchanged between the complainants and the bank as also notices after which the complainants approached District Forum for redressal of their grievances. Subsequently, when the proceedings were pending before the District Forum, the bank had filed FIR with the Police against Manager -opponent No. 2 alleging fraud, forgery and misappropriation of money by him.

2. DISTRICT Forum held both opponents namely bank and the Manager jointly and severally liable and directed them to pay the said amount of Rs. 2,00,000 with interest @ 13% upto maturity date and thereafter 12% interest per annum. The opponents were also directed to pay Rs. 2,500 towards mental harassment and Rs. 1,000 as costs. Appeals were filed against the order of the District Forum

both by the bank and the Bank Manager. The State Commission concurred with the findings of the District Forum and confirmed the order of the District Forum except that the subsequent rate of interest was reduced from 12% to 9% and compensation of Rs. 2,500 awarded was set aside. The State Commission further directed that the payment shall be made only after the complainants submit Indemnity Bond to the bank and file a true copy thereof in the Commission.

3. THE order of the State Commission is the subject matter of challenge in this revision filed by the bank. No revision has been filed by Bank Manager. We have heard Counsel appearing for Petitioner bank, complainants/ Respondent Nos. 1 to 3 and Respondent No. 4.

4. LEARNED Counsel appearing on behalf of the Petitioner took us through the correspondence exchanged between the complainants and the bank and submitted that the complainants are not as illiterate as sought to be made inasmuch as the correspondence on record shows that the complainants were aware of trading, overdraft and the banking procedure. According to the Learned Counsel for the Petitioner, the amount of Rs. 2,00,000 is said to have been deposited in the bank on account of the complainants reposing trust on the Bank Manager /opponent No. 2 who had with the connivance of the complainants withdrawn the said amount for which the bank cannot be held responsible. He also submitted that the amount was deposited in Fast Access Deposit Scheme with overdraft facility and the deposits receipts were required to be kept with the bank as security/lien towards the overdraft facility. However, the complainants with the connivance of the Bank Manager had managed to keep fixed deposit receipts with them. The amount from the said account was withdrawn by cheques signed by the complainants, which could not be done without the connivance of the complainants. Learned Counsel for the Petitioner emphasised that the Bank Manager had not acted within the scope of employment and the complainants having connived with him, the bank is not responsible for making any payment. In this respect, Learned Counsel for the Petitioner has placed reliance on judgment of the Apex Court in State Bank of India (Successor to the Imperial Bank of India) v. Smt. Shyama Devi, : (1978) 3 SCC 399 and Akshay Corporation v. Julio Sandip Plastics (P) Ltd. and Ors., O.P. No. 197 of 1996 decided by this Commission on 15.1.2009. Learned Counsel for the Petitioner further submitted that the services of the Bank Manager have been terminated and that the impugned order insofar as it fixed the responsibility on it be set aside. Learned Counsel for the complainants, on the other hand, argued that there is nothing on record to show that the complainants were in any manner involved or had connived with the Bank Manager in the fraud and mis - appropriation; that the complainants had signed the papers as suggested and required by the Bank Manager/opponent No. 2 in good faith and that there is no infirmity in the order passed by the Fora below.

5. LEARNED Counsel for the Respondent No. 4 - Bank Manager submitted before us that the Bank Manager had no link or connection with the complainants; that

he was not staying as tenant in the house of the complainants and that all the allegations against him are false. It was also urged that the Respondent No. 4 was not allowed to cross-examine the witnesses and was not provided fair opportunity by the District Forum.

6. THERE is no dispute that the sum of Rs. 2,00,000 was deposited by the complainants with the bank. The dispute is whether the said amount was deposited as fixed deposit or the deposit was made under the Fast Access Deposit Scheme with over draft facility. The complainants right from the beginning had come out with the case that the said amount was deposited in the fixed deposit for a period of 3 years. The Bank Manager /opponent No. 2 was staying in their house as tenant and they had gone to the bank along with him for making the said deposits. They had signed some papers as per directions of the Bank Manager/opponent No. 2 on account of trust and faith reposed in him. The fixed deposits were to mature on 6.2.1995. The opponent No. 2/Bank Manager had in fact put the said amount of Rs. 2,00,000 in Fast Access Deposit Scheme which had overdraft facility. The State Commission had permitted cross-examination of complainant No. 1 -Gitaben as also opponent No. 1's Manager - Mr. Jayantilal Jadav. Gitaben had denied having taken any overdraft facility from the bank or having received any passbook, cheque and/or cheque book. She also denied having gone to bank for withdrawal of any amount from the account except on the occasion of depositing the amount of Rs. 2,00,000 in the fixed deposit account and receiving the fixed deposit receipts. After analysing the evidence of the complainant -Gitaben, the State Commission came to the conclusion that there was nothing to suggest that the complainants were in any manner involved in any transaction with opponent No. 2 -Bank Manager with regard to misappropriation of said deposit. It is pertinent to note that opponent No. 2 - Bank Manager had not entered into witness box. The District Forum had come to the conclusion that the fixed deposits in question were misappropriated without the knowledge of the complainants and that the opponents had failed to prove that the complainants had withdrawn the amount. The State Commission found that opponent No. 2 had obtained signatures on cheque No. 676901 for Rs. 1.50 lakh and had put the date as 6.2.1992. It was found that writing on the cheque was in the handwriting of Petitioner Manager -opponent No. 2 and that opponent No. 2 had informed Gitaben that signatures were required for opening fixed deposit account. The State Commission also found that opponent No. 2 managed to show that the fixed deposits were prepaid and credited on 6.2.1992 in the fixed deposit account. The credit voucher contained handwriting of opponent No. 2. The debit voucher of Rs. 1,658 being the amount of interest was also passed by opponent No. 2 and the balance amount of Rs. 48,500 was also shown to have been withdrawn in the name of Complainant -Gitaben vide Cheque No. 606903 on 7.3.1992, leaving balance of Rs. 342, which was withdrawn by Cheque No. 606904 dated 2.2.1993. The State Commission also found that the fixed deposit receipts ought to have been in possession of the opponent bank, but it transpired that the same were not taken in possession of

opponent No. 1 bank and no pledge or lien was shown against the said fixed deposit receipts in the ledger book. For all this Bank Manager -opponent No. 2 is responsible. The Petitioner had lodged FIR against Respondent No. 2 stating that he was staying as tenant in the house of complainant and he had misused the authority and power, which he had as Manager of the opponent No. 1 -bank by fabricating loan documents and misappropriated the amount. This FIR was lodged by the opponent No. 1 bank after making preliminary inquiry and scrutiny of the papers. On the basis of these facts, the State Commission rightly came to the conclusion that the transactions in questions were entered into by opponent No. 2 Manager in his capacity as Branch Manager of opponent No. 1 bank on account of which, the bank is vicariously liable for the acts and omissions on the part of opponent No. 2 Manager who had acted in his capacity as the employee of opponent No. 1 bank.

7. THE main contention of the Counsel appearing on behalf of the Petitioner bank is that the Bank Manager - opponent No. 2 had not acted within the scope of his employment and in this respect reliance has been placed on the judgment of Apex Court in State Bank of India (Successor to the Imperial Bank of India) v. Smt. Shyama Devi (supra). In the case before the Apex Court it was found that there was no proof of deposit by the customers with the bank and a fake entry was made in the customers passbook by the bank employee. The customer had handed over the cheque to the employee of the bank and not to the bank and the bank employee had misappropriated the money. In view of this fact, the Apex Court held that the bank was not vicariously liable for the act of the employee. The Apex Court had laid down that - The relevant legal principles governing vicarious liability of an employer for the loss caused to a customer are: (a) the employer is not liable for the act of the servant if the cause of the loss or damage arose without the employer's actual fault or privity and without the fault or neglect of his agents or servants in the course of their employment; (b) before the employer is made liable, it must be shown that the damage complained of was caused by the wrongful act of his servant or agent done within the scope or course of the servant's of agent's employment even if the wrongful act amounted to a crime; and (c) the master is liable for his servant's fraud perpetrated in the course of his master's business whether the fraud was for the master's benefit or not if it was committed by the servant in the course of his employment. There is no difference in the liability of a master for wrongs whether for fraud or any other wrong committed by a servant in the course of his employment and it is a question of fact in each case whether it was committed in the course of employment.

8. IN the case before us admittedly the amount of Rs. 2,00,000 was deposited with the bank. The transactions were entered by Manager in his capacity as Branch Manager of the bank; the Bank Manager -opponent No. 2 had withdrawn Rs. 1,50,000 through cheque in his writing and he had managed to show that the fixed deposits were prepaid and credited on 6.2.1992 in the fixed deposit account. The credit vouchers contained handwriting of opponent No. 2 -Bank

Manager. The debit voucher of Rs. 1,658, being interest amount, was also passed by opponent No. 2. Balance amount of Rs. 48,500 was shown to have been withdrawn in the name of complainant -Gitaben on 7.3.1992. The bank after making preliminary inquiry and scrutiny of papers had lodged complaint against opponent No. 2 stating that opponent No. 2 had misused the " authority and power which he had as manager of opponent No. 1 bank by fabricating loan documents and misappropriated the amount (Emphasis supplied) The receipts were not taken in possession by Manager -opponent No. 2 and no pledge or lien was shown against the FDRs in the ledger book. Receipts in fact were handed over by opponent No. 2 to the complainant which goes to substantiate the case put forward by the complainants that the amount was deposited in the fixed deposit receipts which were given to them by opponent No. 2 -Manager whereas the same should have been kept with the bank. Thus, there is ample evidence on record that Bank Manager - opponent No. 2 had acted within the scope of his employment in order to make the bank vicariously liable for the acts of Bank Manager -opponent No. 2. In the ruling of this Commission, which has been relied upon by the Learned Counsel for the Petitioner, it was held in view of evidence that LCs were not signed in the course of his employment and as such Bank was not vicariously liable in view of ratio in Shyama Devi's case (supra). The fact situation in the matter under consideration before us is totally different. For the aforesaid reasons, we find that the orders of the Fora below are not only based on material on record, but are supported by strong reasons. We do not find any infirmity, illegality or any other justification whatsoever to interfere with the findings of the Fora below in exercise of our revisional jurisdiction under Clause (b) of Section 21 of the Consumer Protection Act, 1986. The revision is accordingly dismissed with costs of Rs. 10,000 to be paid by the Petitioner to the Complainants/ Respondents Nos. 1, 2 and 3.