(2005) 12 NCDRC CK 0036

In the National Consumer Disputes Redressal Commission

B.M. PALAMAU KSHETRIYA GRAMIN BANK — APPELLANT

Vs

PRAHLAD PANDEY — RESPONDENT

Date of Decision : 21-12-2005

Acts Referred:

Citation : 2007 1 CPJ 255

Hon'ble Judges : Chowdhry , S.N.Mishra , S.Hansda , Kalyani Kar Roy J.

Advocate : Praveen Jaiswal , Satish Kumar Tiwary

Judgement

1. -BRANCH Manager, Palamau Kshetriya Gramin Bank, Garhwa is the appellant before us against the judgment and order dated 30.5.2005 passed in complaint case Nos. 107/03 and 33/2004 by the District Forum, Garhwa, whereby the appellant has been directed to pay a sum of Rs. 40,000 with interest @ 15% per annum since the date of expiry of six months from the first instalment within the time mentioned in the order itself under the following circumstances : The complainant/respondent applied for loan of Rs. 85,000 for establishing mini dairy farm. On 17.12.2002 loan was sanctioned and the first instalment of Rs. 43,500 was released on 19.12.2002. According to the Scheme, second instalment was payable after lapse of six months from the date of payment of first instalment and, that too, after seeing the performance of the loanee. According to the agreement the second instalment is payable after lapse of six months from the date of payment of first instalment. Meanwhile, the loanee was required to pay the instalment @ Rs. 1,111 per month. It is submitted that the complainant defaulted in payment of the instalment and accordingly, the second instalment was not released. In support of his contentions, learned Counsel has relied upon a letter written by the complainant which is made Annexure 1 to the counter wherein it is stated that the complainant has admitted the dues to the bank and promised to discharge the dues within one month. Accordingly, the second instalment of Rs. 29,000 was sanctioned on the same date i.e., 25.5.2004.

2. MR. Jaiswal appearing on behalf of the appellant submits that the order under challenge is vitiated in law in view of the fact that the appellant was not obliged

to release the second instalment unless and until instalment, as agreed upon, is paid. Since the instalment has not been paid, the second instalment has not been released. In opposition, however, learned Counsel for the respondent submits that the entire dues has already been paid before the due date of second instalment, but, except oral submission, on the contrary, a letter referred to by the appellant goes to show that there is dues of about Rs. 8,000 and odd which the complainant has promised to pay within one month and this shows the complainant has not discharged his liability in terms of the agreement and accordingly the bank was justified in not releasing the second instalment. Second objection raised on behalf of the respondent is that though the order to release the second instalment was passed on 25.5.2004 when the complainant has given undertaking to discharge the dues but actually the amount was realised in the month of July, 2004. Again there is no document to accept the submission of the learned Counsel but on the contrary, from the materials on record, it appears that the said instalment of Rs. 29,000 was released on the same day. In this connection, reference may be made to the decision in the case of Ramraj Singh v. L.I.C. of India, reported in III (2003) CPJ 167 (NC), wherein, it has been held that if the complainant defaulted in repayment of instalments, further release of instalment cannot be claimed as a matter of right and in that event, Life Insurance Corporation cannot be held deficient in service. The other aspect of the matters is that, admittedly, three complaints were separately filed for same cause of action being complaint case Nos. 107/03 on 24.1.2003, 33/2004 on 29.4.2004 and 54/2004 on 13.7.2004. The complaint case No. 107/03 was dismissed as withdrawn on the statement made by the complainant himself that he does not want to enter into litigation and he has settled the issue between the parties. Curiously, the similar complaint petition was filed on 25.8.2004 praying for review of the said order and accordingly the complaint was revived and the order was passed. The procedure adopted by the complainant and accepted by the Court below is highly deprecated. The second complaint can be entertained only after taking permission from the Court below. Be that as it may even on merit, the complaint has no merit. Having regard to the discussion aforesaid, order under challenge is hereby set aside but in the facts and circumstances, there shall be no order as to cost. Ordered accordingly.

