(1998) 08 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

BRANCH MANAGER, BANK OF MAHARASHTRA — APPELLANT

Vs

DEEPALI ENTERPRISES — RESPONDENT

Date of Decision : 17-08-1998

Acts Referred:

Citation : 1998 2 CPC 467 : 1998 3 CPJ 1 : 1998 3 CPR 1

Hon'ble Judges : S.C.Sen , R.Thamarajakshi , S.P.Bagla , C.L.Chaudhry , J.K.Mehra J.

Final Decision : Complaint dismissed

Judgement

1. THIS appeal arises from an order of the State Consumer Disputes Redressal Commission, Maharashtra whereby the claim of the complainant (respondent herein) was allowed with interest and costs. Some of the important facts in this case are that the respondent had approached the appellant Bank to furnish a Bank guarantee in favour of Bengal Immunity Ltd., Bombay for the purpose of his business. The Bank issued Bank guarantee in favour of the said beneficiary i.e. Bengal Immunity Ltd. after taking a fixed deposit in the sum of Rs. 50,000/- as margin money being security for the said Bank guarantee. THIS fixed deposit was created for a period of five years. The State Commission has proceeded on the assumption that the Bank guarantee was for a period of 12 months. That conclusion of the State Commission is not supported by the terms of the said Bank guarantee. The main clause binding the Bank under the said guarantee reads as under: "Now this agreement witnesses that in consideration of allowing contractor credit, the Bank at the request of the contractors (hereby testified) undertakes with Bengal, Immunity Ltd., Bombay to pay to Bengal, Immunity Ltd., upon demand in writing, wherever required by him, from time to time, so to do, a sum not exceeding in the whole Rs. 1,50,000/- (Rupees one lakh fifty thousand only) under the terms of allowing 45 days credit".

2. IT will be seen from the above that there is no time limit set in the guarantee document itself. On the other hand it appears that this was a continuing guarantee to cover various transactions between the beneficiary and respondent

from time to time and the only limit placed under the said document of guarantee was in terms of money i.e. Rs. 1.50 lakhs. Our attention was drawn to certain letters exchanged between the appellant and the respondent to create an impression that understanding between the two was that the guarantee will be for a term of one year only. That appears to be not supported by the document and the conduct of the parties. The fixed deposit created which was to remain pledged with the Bank as security was for a term of five years and not one year. There is no communication to the beneficiary or from the beneficiary limiting the operation of the guarantee to any specific period. The letter of the respondent-complainant to the Bank not to honour the guarantee is of no consequence because guarantee is a contract between the guarantor and the beneficiary and unless and until it is brought to an end by either lapse of time if there is any time limit specified in the document, itself or by discharge of the guarantee or by putting an end to the contract by the party in which case the beneficiary has to give a due discharge to the guarantor from its obligations under the guarantee. The two other relevant facts to be noted are: (i) the fact that came to light in response to a query from the Bench is that the complainant-respondent had filed a suit against the beneficiary- Bengal Immunity Ltd. which was compromised between the parties in 1996. This suit was instituted after the payment by the Bank under the guarantee; (ii) that the appellant-Bank has already instituted a civil suit for claiming the excess balance amount - after adjusting the amount of FDR, which is stated to be due and payable by the complainant-respondent to the Bank and which is pending adjudication.

The Bank was called upon to pay under the guarantee by the beneficiary on 7th of November, 1990 and the payment under that guarantee was made on 14th August, 1991. The complaint was filed in the year 1993. Obviously, the complainant had knowledge of the payment by the Bank under the guarantee. The facts of such litigation were held back by the complainant- respondent from the State Commission. It may be safely presumed, even though such information was never placed on record, that when the complainant-respondent compromised its suit with the Bengal Immunity Ltd., the beneficiary under the guarantee, in the year 1996, he would have obviously taken into consideration all monetary payments including the payments by the Bank to the beneficiary (Bengal Immunity Ltd.) and would have reached a compromise after taking into account all such facts. However, no details of the said suit have been placed on record and all particulars thereof have been withheld by the complainant-respondent.

3. IN any event in the suit filed by the appellant against the complainant-respondent which is still pending disposal all questions of the relationship between the parties that the guarantor and its customer (complainant-respondent) could be gone into and if so advised the complainant-respondent could have even raised a counter claim. The complainant- respondent is free to raise such pleas as may be available to him under law. It is in the light of the above peculiar facts and circumstances prevailing in this case that we are of the

considered view that the State Commission should not have passed the impugned order.

4. IN the light of the above discussion, the impugned order passed by the State Consumer Disputes Redressal Commission, Maharashtra is hereby set aside. The complaint of the respondent is dismissed with no order as to costs. Complaint dismissed.