(2001) 06 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

CENTRAL BANK OF INDIA — APPELLANT

Vs

PRAVIN JAGJIVAN GOSALIA — RESPONDENT

Date of Decision : 28-06-2001

Acts Referred:

Citation : 2002 1 CLT 682 : 2002 1 CPC 580 : 2002 1 CPR 449 : 2002 2 CPJ 462

Hon'ble Judges : M.S.Rane , R.N.Varhadi J.

Final Decision : Appeal disposed of

Judgement

1. WE are proceeding to dispose of group of these appeals with a common judgment as under. This is so because the factual aspects obtained in each of the matters herein are common and identical. The appellants who are the original opposite parties in the respective complaints are also common except in A. No. 300/2001 and the issues involved in all these appeals are also identical. WE are formally admitting these groups of appeals. Respondents Advocate waives service. The appeals are made returnable forthwith.

2. THE appellants herein the Central Bank of India - a Nationalised Bank are the original opposite party in the respective complaints mentioned in the cause-title of the judgments impugned herein on the file of the District Forum, Thane and they have challenged the judgments dated 18.11.2000 and 30.12.2000 passed by that Forum, ordering and directing the appellants herein to refund the amount to the respective complainants as specifically mentioned in the operative clause of the orders with 10% interest from the date specified therein plus pay cost of Rs. 400/- in the proceedings For brevity''s sake, appellants/original opposite parties are referred to as "Bank" and the respondents/original complainants herein are referred to as "depositors".

The new relevant facts are : (i) The Bank had floated a Scheme known as "Mini-Deposit Account". They had engaged authorised Agents for the purpose of collecting deposits from the prospective investors/depositors and who had opened account with the Bank. As far as these matters are concerned, one Mr. Jagannath B. Sawant was engaged/appointed by the Bank as an Agent. It is noticed that the depositors joined the said Scheme somewhere around 1991 and the same was continued till the end of July, 1997.

(ii) The Scheme worked in this manner- (a) The Agent of the Bank used to visit the houses of the depositors daily or at a fixed intervals and collect the money from the depositors. At a time, such depositors used to pay a sum of Rs. 50/-, to the Agent. (b) The Bank had issued Pass Books to each of the depositors mentioning the account numbers, etc. and the said Agent, after receipt of the money from the depositors, used to make entries in the Pass Book.

(c) The complainant-depositors as per the Scheme, used to deposit the moneys and as stated earlier, they did so till July, 1997. Each depositor was also given separate account number by the Bank. The depositors had shown us the Pass-Book containing the entries made by the Agent in token of receipt of the deposits from them. It is to be stated that the said document was also made available before the District Forum. There is one fact which is required to be stated that the Bank had agreed to refund the amount of deposits on the maturity dates of the accounts of each of the depositors and the amount to be refunded was Rs. 15,000/- which included the amount of deposit plus interest payable by the Bank.

(iii) It so happened that after the maturity of deposits, when the depositors wanted to withdraw the moneys, the Bank refused to refund the amount of deposits. The depositors, it is noticed, approached the Bank officials and explained the position in particular highlighting that they have fulfilled their obligations of depositing the moneys as per the Scheme.

(iv) The Bank, it is noticed, declined to relieve the payment to the depositors. With the contention that the entire amount collected by their Agent was not deposited with them as was required under the Scheme. The Bank further pleaded that there was a fraud committed by the said Agent by misappropriating the amount for himself. It was contended that since the entire amount was not received by the Bank, it was not liable to pay the same.

(v) Before the District Forum, when the complainants approached with the grievance of deficiency in service based on the facts as stated above, the Bank also pleaded their case where we have already adverted to hereinabove. The District Forum by its impugned judgments, rejected the stand taken by and on behalf of the Bank. The Forum held that the depositors were the consumers as defined under the Consumer Protection Act, 1986, they being the Account-holders with the Bank. The District Forum also noted, by accepting the case of the depositors that they had made the depositors as per the Scheme of the Bank by paying the same to their said authorised agent. (vi) It is the said finding that the Bank has challenged in this group of appeals.

3. THE learned Advocate for the Bank submitted that their Agent Shri Jagannath B. Sawant had committed fraud and that being so, for the fraudulent act of agent, the Bank cannot be held accountable and responsible as the said Agent Shri Sawant was not their regular employee as such and, therefore, there is no

question of relationship of master and servant and since the Agent has acted fraudulently and exceeded his authority and had not acted in accordance with the authority given to him, his misdeeds would not render the Bank liable. On careful consideration of the submissions made by and on behalf of the Bank as aforesaid, we are of the view that none of them will be tenable on facts as also on law.

4. FIRSTLY, there is ample evidence or rather undisputed position that one Shri Jagannath B. Sawant was the Agent at the material time engaged by the Bank to collect the deposits. The depositors have produced the Pass Book issued by the Bank and entries made there under are in the handwriting of the Agent - Mr. Sawant. It is to be stated that the said Agent was engaged by the Bank. It is further borne out from the record that right from the year 1991, the said Scheme of the Bank was in operation and according to the complainants, the said Agent used to come to their residential places and used to receive and collect the deposits from them and then he i.e. the said Agent used to deposit the amount with the Bank. They have also stated that the Agent used to make entries in the Pass Book. The said case of the depositors has been substantiated by the entries in the Pass Book made by the said Agent Shri Sawant. On the background of these facts, the contention of the Bank about fraud perpetrated by their Agent, we wish to say that the same will not be of any assistance to the Bank to shirk their responsibility and accountability in payment of the deposits of the depositors. As noticed earlier, the said Agent was engaged by them and if he had, according to the Bank, exceeded the authority or otherwise, then the depositors who have acted in good faith and since they were doing since long, they cannot be held to be negligent or the same would not disentitle them to claim the refund of the legitimate amount under the Scheme. On the other hand, if perpetrator of fraud is the Agent who, as per ratio of the Supreme Court is its servant, then the same would lend support to the case of the depositors that the Bank was deficient in service, since depositors were denied they legitimate dues, for no fault of theirs.

5. THE contention of the learned Advocate for the Bank that the said Agent was not their servant is not more res integra in view of the recent judgment of the Supreme Court in the case of Indian Bank Association v. Workmen of Syndicate Bank & Ors., II (2001) SLT 280=AIR 2001 SC 749. It is to be stated that the said judgment has been relied upon even by the learned Advocate for the Bank. It is noticed from the said judgment that the issue involved in the said judgment was whether the Agent engaged by the Bank, as is the case in hand, was an employee of the Bank. Such agents claimed that they were workers and there existed relationship of master and servant between them and the Bank who engaged them and reference to that effect was made to the Industrial Court under the Industrial Disputes Act, 1947. When the matter was taken up before the Supreme Court, the Supreme Court by relying upon the provisions of Section 10(1)(b) of the Banking Regulation Act, 1949 (??) posited that the service rendered by the Bank in that case as in the instant case, where the services

which were renderable under the provisions of the Banking Regulation Act, 1949. THEre is an elaborate discussion on the interpretation of the provisions of the Banking Regulation Act, 1949 and Industrial Disputes Act, 1947. In the said judgment, the Apex Court has clearly held that such Agents are the servants of the Bank and there exists relationship of master and servant in the context of provisions of Section 10 of the Banking Regulation Act, 1949.

6. TAKING into consideration the fact that the said Agent was the servant of the Bank then anything done by him as is the case in the matters herein, will be binding upon the Bank as his Master. Therefore, taking into consideration all these facts, we have to reject the contention raised by and on behalf of the appellants as they are not tenable in view of the judgment of the Supreme Court referred to hereinabove.

In the circumstances, we do not find any merit in the matter.

7. HOWEVER, there is one point which has been urged by and on behalf of the Bank - by its Counsel which requires consideration. The interest awarded by the District Forum is @ 10% p.a. from the date of maturity i.e., from 1.8.1999. It is to be stated, however, that the said rate of interest appears to be on higher side. Under the Scheme, approximately the interest which was payable came around 3% p.a. In our view, interest @ 6% p.a. will be just and fair in the matter herein. This is so because right from August, 1999, the complainants who are the consumer-depositors have been denied the fruits of getting the entire deposit money expected on maturity date and award of interest, therefore, @ 6% p.a. would provide solace to the depositors. 16. We, therefore, modity the order accordingly. ORDER (1) The order of the District Forum ordering the Bank to refund Rs. 15,000/- to each of the depositors/complainants is confirmed. (2) The cost awarded @ Rs. 400/- to each complainant is also retained. (3) As far as rate of interest is concerned, the same is reduced from 10% to 6% p.a. (4) As far as these appeals are concerned, each party shall bear its own cost. (5) Six weeks'' time is granted to the appellant for the compliance of the order as modified herein. Appeal disposed of.

