(2014) 01 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

Central Bank Of India Kaprigudda Branch — APPELLANT

Vs

K. Ramdas Shetty — RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Citation : 2014 0 NCDRC 5 : 2014 1 CPJ 333

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : JASWINDER SINGH , ARTI BANSAL , Kunal Punj

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 12.6.2008 passed by Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, ''the State Commission '') in Appeal No. 2326 of 2007 - Central Bank of India Vs. K. Ramdas Shetty by which, while dismissing appeal, order of District Forum allowing complaint was upheld.

2. BRIEF facts of the case are that complainant/respondent deposited Rs.50,000/ - in FDR No. 012280 in 2003 with OP/petitioner. Complainant availed loan facility on this FDR. When FDR came up for renewal, complainant asked OP to return the amount with interest, but OP arbitrarily renewed FDR and complainant ''s request to return the FDR after deducting the loan amount of Rs.9,000/ - was not acceded. It was further alleged that complainant is retired employee of OP. During the period of employment, complainant passed certain cheques of customers with due diligence and care but subsequently customer claimed that cheques were forged and they filed suit against the OP for which, complainant has been named as a witness. It was further alleged that OP neither held any department enquiry, nor held the complainant guilty of negligence; even then, refused to return amount of FDR. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP resisted complaint and submitted that Rs.50,000/ - from the retirement benefits of complainant were kept in FDR as a security towards the embezzlement case filed by Dr. P.K. Usman in the civil court. It was further submitted that complainant processed 29 cheques between June 1992 to June, 1993 and in respect of those cheques suit

was filed for recovery of Rs.42,880/ - and this amount has been kept as security with the consent of the complainant and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed OP to refund Rs.50,000/ - along with 8.25% p.a. interest after deducting loan amount of Rs.9,000/ - and further allowed Rs.750/ - as litigation expenses. Appeal filed by the petitioner was dismissed by learned State Commission against which, this revision petition has been filed. Heard learned Counsel for the parties and perused record.

3. LEARNED Counsel for the petitioner submitted that on the request of respondent himself, amount of Rs.50,000/ - has been kept in deposit as security to meet out the civil suit and further submitted that civil suit filed by Dr. P.K. Usman has been decreed against the petitioner and payment of more than Rs. 50,000/ - has already been made to Dr. P.K. Usman. There was no deficiency on the part of petitioner; even then, learned District Forum has committed error in allowing complaint and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that petitioner was not entitled to retain amount of FDR without holding an enquiry and finding guilty to the respondent and orders passed by learned District Forum and learned State Commission are in accordance with law; hence, revision petition be dismissed.

4. PERUSAL of record clearly reveals that complainant by letter dated 30.8.1993 intimated to the Regional Manager of OP that his retiremental benefits may not be withheld and last but one para of the letter runs as under: ''''Inspite of all the above facts, if the Management so desires I am prepared to deposit Rs.50,000/ - with the Branch for a reasonable time and my Terminal benefits please be released immediately. I hope you will agree with me that holding the entire Terminal benefit is quite unfair and unjust and the member has to live and he cannot go to street begging after retiring from this great institution ''''.

By another letter of the same date, complainant deposited Rs.50,000/ - in FDR in pursuance to the aforesaid letter dated 30.8.1993 in which it was subsequently stated that he is keeping the FDR of Rs.50,000/ - with the bank till the case of Dr. P.K. Usman is settled with the bank. Thus, it becomes clear that amount of Rs.50,000/ - was not kept in FDR in the year 2003, as alleged in the complaint, but this amount was kept in FDR right from 1993 as security for any liability on the bank on account of civil suit filed by Dr. P.K. Usman. By perusal of decree dated 20.12.2007 passed by Civil Judge, Sr. Div. Mangalore in Original Suit No. 136/94 - Dr. P.K. Usman Vs. Central Bank of India, it becomes clear that Central Bank of India/petitioner was directed to refund Rs.49,680/ - to the plaintiff - Dr. P.K. Usman along with cost of suit amounting to Rs.7,104/ -. Learned Counsel for the petitioner further submitted that this amount has already been paid by the petitioner to Dr. P.K. Usman. In the light of admission of the complainant, petitioner was entitled to keep Rs.50,000/ - in FDR as security for any liability to be incurred by the bank in the suit filed by Dr. P.K. Usman. This amount has not been kept in FDR as a routine customer of the bank but has been kept by the complainant to get retiremental benefits without any impeadment. Complainant cannot blow hot and cold at the same time. He could not have got his retiremental benefits released till inquiry or till conclusion of civil suit. He himself consented for putting Rs.50,000/ - in FDR till the outcome of the civil suit and FDR was renewed year to year till disposal of civil suit. Complainant does not fall within the purview of consumer and we do not find any deficiency in service on the part of petitioner in declining to refund amount of aforesaid FDR tendered as security towards the liability. In the light of above discussion, it becomes clear that complaint was liable to be dismissed and learned District Forum committed error in allowing complaint and learned State Commission committed error in dismissing appeal and revision petition is to be allowed.

5. CONSEQUENTLY , revision petition filed by the petitioner is allowed and impugned order dated 12.6.2008 passed by learned State Commission) in Appeal No. 2326 of 2007 - Central Bank of India Vs. K. Ramdas Shetty and order of District Forum dated 15.10.2007 passed in Complaint No. 462 of 2006 is set aside and complaint stands dismissed with no order as to costs.

