(1997) 04 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

DEV DUTT DHIMAN APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Citation : 1997 1 CPC 612 : 1997 2 CPJ 101

Hon'ble Judges : A.L.Bahri , R.L.Gupta J.

Final Decision : Complaint allowed with costs

Judgement

1. DEV Dutt Dhiman and M.R. Dhiman, Non Resident Indians claimed Rs. 7,64,651/- as compensation against the opposite party. State Bank of India for deficiency in rendering service in not making payment of Special Term Deposit Receipt (STDR) on its maturity on March 22,1994. The principal amount of maturity was paid on 21.2.1995. The complainants claimed interest @ 18% p.a. with quarterly rests on the total amount claimed as referred to above. STOR No. 4072 dated March 27, 1991 for 50310 with 13% p.a. interest was issued on March 22,1991. On maturity, the amount payable was 73927.51 as on March 22,1994. The same was in the names of the two complainants. In December, 1993 i.e. about three months prior to its maturity, one of the complainants, DEV Dutt Dhiman, visited Sangrur in connection with the purchase of a plot. He called upon the opposite party in December, 1993 and informed them about the encashment of the STDR on its maturity and to transfer the amount to Sangrur for crediting in his account with Punjab National Bank. The opposite party assured the needful to be done. A letter of request was addressed to the opposite party containing endorsement thereon to Manager, Punjab National Bank, Sangrur alongwith duly signed discharged STDR. On the day of the maturity of the Receipt i.e. March 22, 1994, Inderjit Dhiman, attorney of one of the complainants personally carried the STDR and presented the same to the opposite party through Punjab National Bank, Phillaur for payment. The opposite party declined to make the payment. Asserting that it did not have the specimen signatures of DEV Dutt Dhiman. Thus, such attested signatures were obtained at great expenses and presented to the opposite party on March 29, 1994. The

opposite party did not make the payment and insisted that separate signatures be furnished to them on a new Account Opening Form. Such blank Account Opening Forms were handed over to the officers of the Punjab National Bank and Inderjit Dhiman. The fact remains that payment was not made on that day. Again after incurring heavy expenses, such a form was furnished to the opposite party on April 22,1994 when they were informed that the original receipt had been renewed retrospectively for three years. This was done by the opposite party without any authorization or consent of the complainants and was contrary to the instructions for encashment of STDR as already referred to above. This was all done to harass the complainants and to delay the payment of STDR. When the new STDR signed across the revenue stamp was again presented to the opposite party on June 10,1994, the payment was not released. A plea was taken that depositor''s separate discharge other than on revenue stamp on the back of STDR was required. Thereafter, correspondence went on, between the opposite party and the complainants through Punjab National Bank that the opposite party finally made the payment of the principal amount as calculated as per exchange rates on 21.2.1995. The opposite party did not pay interest for the period in-between.

2. ON notice of the complaint, the opposite party contested the same inter alia asserting that the complainant had taken up the matter before the Banking ombudsman under a Scheme framed under Section 35A of the Banking Regulation Act, 1949. The award was made directing the opposite party to pay a sum of Rs. 45000/- towards interest on delayed payment of STDR. The complaint was thus not maintainable and was filed for extraneous reasons. ON merits/ broad facts as briefly stated above were not disputed. However, it was insisted that for valid reasons, payment was not made as referred to in the memos. The liability to pay interest was disputed. After renewal of the receipt was in accordance with the instructions of Reserve Bank of India and the payment of such receipt before the minimum period prescribed did not entitle payment of interest. It was asserted that on account of rising in the rates of Pounds Sterling, an excess amount of Rs. 1,00,000/- was paid on February 21, 1995. Both the parties produced affidavits and documents in support of their case. We have heard learned Counsels for the parties. The first question for consideration is about the fact of the complainant approaching the Banking ombudsman and award made by it. The contention of learned Counsel for the opposite party is that after the complainant had approached the authority under the Banking Regular Act, the present complaint is not maintainable. This contention has no merit. The relief envisaged under the Consumer Protection Act is not a substitute for other remedies available to the complainants. It is an additional remedy and the choice is with the complainants to seek this remedy or the other i.e. civil suit. As far as the decision of complaints by the Banking ombudsman is concerned, it has not been pointed out that such a decision can be got implemented if the parties refused to comply. In other words, there is not legal sanction for such a decision. It is only recommendatory in nature and thus cannot be a bar for

approaching the authorities under the Consumer Protection Act for the relief.

The question on merits for consideration is as to whether the opposite party was deficient in rendering service in not making the payment of the STDR on its maturity. Although the finding recorded by the Banking ombudsman is not binding but it may be observed that the opposite party was Held to be deficient in rendering service in not making the payment on the day the Receipt became mature. Such a question is to be determined on the evidence produced in the present case. Since broad facts are not in dispute, they can be recapitulated. The visit of one of the complainants in December i.e. three months prior to maturity day, is not specifically denied in the written statement. Thus the fact that the STDR was to be encashed on the due date was very well in the knowledge of the opposite party much prior to the date of maturity. Even on the day of maturity, the amount of STDR was not released on the plea that a new STDR had been issued though in the absence of any instructions from the complainant. In one of the letters written by the bank in response to legal notice, reference was made to the instructions of the Reserve Bank of India in this respect that STDR can be renewed if within 14 days of the maturity the same is not encashed or there are no such instructions in this respect. Such instructions cannot be attracted to the case in hand when before the maturity date, the complainants had already approached the opposite party with the request for encashment of the STDR. The stand of the opposite party that in the case of premature withdrawal of STDR, the bank could not be made liable to pay interest, cannot be accepted in the present case. No doubt, as new STDR had been issued, necessary formalities for release of the amount were got completed before the payment was made as referred to above, but the stand taken up by the opposite party that discharge of STDR on its back by signatures on the revenue stamp was not enough and separately also signatures of the depositors were required to be there, is not supported by any statute, rules or instructions on the subject. When the depositor''s sign on the revenue stamp indicating receipt of the amount of the STDR, legally it was a valid discharge. Non-payment of STDR on the date of its maturity on the ground of non-availability of specimen signatures in the bank per se amounts to deficiency in rendering service on the part of the opposite party. It was the duty of the bank to keep such documents in safe custody. If Account Opening Form was misplaced or was not traceable from the records of the bank, the complainants could not be made to suffer on that account. Furthermore insistence for separate discharge by putting signatures other than on the revenue stamp and non-payment of the amount of the renewed STDR also amounts to deficiency in rendering service. As a matter of fact new STDR was not required to be prepared by way of renewal as the matter of withdrawal of the amount on maturity of the existing STDR had already been brought to the notice of the bank much prior to its maturity. Furthermore as observed above, even on the day of maturity of the STDR, necessary documents for release of the money had been furnished to the bank. The opposite party was not justified in the facts as stated above in renewing the STDR and to deprive the complainants of the interest accruing on the amount illegally detained in this manner. The complainants are, therefore, entitled to be compensated as they were deprived of their amount on the date of maturity illegally by the bank.

3. GRANT of 15% p.a. interest against the opposite party, which is a nationalised bank would be appropriate compensation to complainants who suffered damages and were subjected to harassment as they were deprived of their own money on the due date. Considering the rate of conversion at Rs. 46.51 per as applicable on March 22,1994, on the amount of due on STDR of 73925.51, it would come to Rs. 3438275.45. On this amount, the complainants would be entitled to interest @ 15% p.a.. On February 20, 1995, a sum of Rs. 3639353/- was paid, which amount would be adjusted. The order is passed accordingly. The complainants would get costs of Rs. 5000/- as litigation expenses of this complaint. The aforesaid amount is ordered to be paid within a period of one month of receipt of copy of this order. The complainants submitted calculations for consideration but interest was calculated for the aforesaid period with quarterly rests (compounded), which cannot be accepted. Thus, detailed reference to such calculations are not being made in the order. Necessary calculations as directed above would be made by the parties i.e. opposite party while making the payment or in execution of the order. Complaint allowed with costs.