

(1996) 09 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

DIAMOND STONEWARE And CERAMICS PVT. LTD.

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 04-09-1996

Acts Referred:

Citation : 1996 3 CPJ 210

Hon'ble Judges : D.R.Vithal Rao , Susheela Cheluvaraju J.

Final Decision : Complaint dismissed

Judgement

1. IN this complaint under Section 17 read with Section 12 of the Consumer Protection Act, 1986 the complainant has sought compensation in a sum of Rs. 10,00,000/- from the opposite parties Central Bank of India.

2. THE complainant is a Private Limited Company engaged in manufacturing of all sizes of pipes and fittings in stone-ware and ceramics. The complainant in the year 1981-82 availed a loan in a sum of Rs. 1,00,000/- from the opposite party. In the year 1983 a further loan of Rs. 3,00,000/- was sanctioned. It is the grievance of the complainant that the earlier loan amount of Rs. 1,00,000/- was deducted in the loan of Rs. 3,00,000/- advanced in the year 1983.

The complainant had issued cheques for making payment of the amounts due to C.T.O. But the Bank did not honour the same.

3. THE opposite party in the year 1987 advanced a further loan of Rs. 2,00,000/-. In the year 1988 the complainant-Industry was declared as a sick industry/Unit. In the year 1988-89 the opposite party sanctioned a loan of Rs. 5,20,000/- to the complainant to enable it to rehabilitate itself. THE opposite party-Bank adjusted the earlier amount due in a sum of Rs. 1,90,000/- in this amount of Rs. 5,20,000/-. THE complainant-Industry suffered due to this act of the opposite party in deducting the earlier dues in the loan advanced to rehabilitate the complainant sick industry. THE complainant averred that the opposite party-Bank thus committed deficiency in service in consequence of which the complainant-industry suffered loss towards production in a sum of Rs.

3,00,000/-; towards payment of interest to K.S.F.C. in a sum of Rs. 5,80,000/- and towards non-return of addl. security in a sum of Rs. 1,00,000/-. The complainant further averred that the opposite party instead of making payment as claimed by the complainant, filed a Civil Suit in O.S. 81/1992 on the file of the Principal Civil Judge, Hubli for recovery of the amounts due. The said suit is still pending.

4. THE complainant, on the basis of these averments, sought compensation in a sum of Rs. 10,00,000/- from the opposite party-Bank. The opposite party-Bank filed its version and averred that it had advanced the loans to the complainant-industry as averred by the complainant but it deducted the earlier dues by the complainant from the fresh loan amount advanced as per Banking Rules and Regulations and so it had not committed any deficiency in service in recovering the amount due by the complainant-industry. The opposite party further averred that it had already filed a suit against the complainant in O.S. 81/1992 which is pending on the file of the Principal Civil Judge at Hubli and so the matter in dispute between the parties is sub-judice and the complaint is untenable.

5. THE opposite party on the basis of these averments sought the complaint to be dismissed.

6. DURING enquiry the complainant filed affidavit in evidence. We heard the learned Counsel for the parties and perused the material on record.

The complainant has fairly admitted in the complaint at para 9 that the opposite partyBank has already filed a suit in OS. 81/1992, which is pending on the file of the Principal Civil Judge at Hubli.

7. HAVING regard to this fact, we are constrained to hold that the matter in dispute between the parties is sub-judice before the competent Civil Court. The National Commission in M/s. Special Machines, Karnal v. Punjab National Bank & Ors. reported in I (1991) CPJ 78 (NC), observed thus : "Held this Commission has also held in earlier cases, as a matter of policy and principle that where the subject matter of a complaint is sub-judice before the ordinary Civil Court a concurrent adjudication in respect of the same will not be conducted by this Commission under the Act. The objection is not really on the ground of lack of jurisdiction but is one based on considerations of propriety and prudence keeping in view the necessity for avoidance of conflicting decisions and multiplicity of proceedings."

8. THIS complaint came to be filed on 20th March, 1993. By that time the said civil suit was already pending before the Civil Court from 1992 onwards. Having regard to these facts, this complaint is untenable because the subject matter in dispute between the parties is sub-judice before the competent Civil Court. In the result, therefore, this complaint fails and it is dismissed.

9. THE parties are directed to pay and bear their own costs. Complaint dismissed.