(2007) 03 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

GURDASPUR CENTRAL COOPERATIVE BANK LTD — APPELLANT

Vs

PREM SINGH — RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Citation : 2008 2 CPJ 407

Hon'ble Judges : R.S.Mongia , C.P.Budhiraja , Jasbir Kapoor J.

Final Decision : Appeal allowed

Judgement

1. -THIS is an appeal by Gurdaspur Central Coop. Bank Ltd. against the order of the District Forum dated 5. 10. 2006 by which the complaint of the complainant Mr. Prem Singh was allowed in the following terms: "no doubt, the opposite party has relied upon the affidavit of the complainant Ex. R4 through which he undertook that if the persons for whom he stood surety do not make the payments, and then the amount to be received by him at the time of retirement may be adjusted against the said loans. The opposite parties have not served any notice upon the person for whom he stood surety in order to know whether they have refused to make the payment of the loan amount or not and in the absence of the same, it cannot be presumed that the persons for whom he stood surety have refused to make the payment of their loan. It was incumbent on the part of the opposite party to serve a notice upon the complainant that neither he nor the persons for whom he stood surety had paid the loan amount and hence, the amount received by him on account of Provident Fund is fully adjusted against the said loans, there is deficiency in service on the part of the opposite parties by utilizing the said amount of its own accord. Hence, there being merit in the complaint, the same is hereby allowed and opposite parties are directed to credit the amount of the complainant in the Staff Account No. 7104 of the complainant. It is, however, further stated that as and when the complainant furnishing surety in the sum of Rs. 5,00,000 undertaking therein that he will pay the loan amount taken by him from the opposite parties and also the loan amount in which he stood surety, then the complainant may be allowed to operate his account. "

2. BRIEF facts giving rise to this appeal may be noticed. Complainant was working as Assistant Manager with the appellant-Bank. He had retired as such from the Bank on 31. 3. 2006. He approached the Head Office of the bank for the release of the provident fund, which was due to him and a cheque of Rs. 4,54,305 dated 4. 5. 2006 drawn on State Bank of India, Amritsar was issued by the Commissioner, Provident Fund, Amritsar. It was further alleged in the complaint that the appellant-Bank sent the said cheque for clearance to Amritsar Central Coop. Bank, Amritsar on 13. 5. 2006 and after the clearance of the cheque prepared a DD of the said amount vide DD No. 939314 dated 19. 5. 2006 and the Central Coop. Bank, Gurdaspur (appellant) collected the said DD and took the same on 22. 5. 2006. When the amount as aforesaid was not credited to the account of the complainant, he filed the complaint before the District Forum. While resisting the complaint the stand of the appellant as opposite party before the District Forum, was that there were allegations against the complainant of defalcation, irregularities, etc. in sanctioning/recommending the loan, etc. to various persons including his own relations (sons). An inquiry for taking disciplinary action was initiated against him. After the issuance of the show-cause notice the complainant filed an affidavit with the appellant dated 29. 3. 2006. Paragraph Nos. 1 and 2 of the affidavit is in the following terms (Devnagri script) : "1. Eh Kay mere puttran Shri Rajiv Singh Ate Shri Paramjit Singh Walon The Gurdaspur Kendri Sehkari Bank Limi. Branch Narot Jaimal Singh Ton Cash Credit Traders Limtan Mablag 2. 15 lakh rupees ate 2. 60 lakh rupees Jinan de Ta-tareekh bakaya mere bande retirement dues ate hor bakaya vichon cut laye jan. Keonkay main ohna di guarantee diti hoi hai.

2. Eh Kay Shri Mangat Ram Walon Non-farm Sectors karze adheen Messers Mangat Ram Shuttering Store, pind Bamiyal liya see, us da aj tak banda bakaya jekar oh khud jan us de guarantor merian koshishan karan de bavzood karze di rakam bank nu wapis ada na kar sakan tan miti 31. 3. 2007 ton baad eh rakam main ada karan da jumewar howanga. Eh paise mere retirement dues ate hor bakaya wichon suspense account wich jaman kar laye jan, is sabandhi mainu koe aitraj nahin hovega. Uprant eh rakam karze vich kat lai jave. "

The aforesaid paragraph when translated into English would reas as under: "1. That up-to-date outstanding amount under Cash Credit Traders Limits of Rs. 2. 15 lacs and Rs. 2. 60 lacs against my sons Sh. Rajiv Singh and Sh. Paramjit Singh in favour of The Gurdaspur Central Cooperative Bank Ltd. , Branch Narot Jaimal Singh be deducted from my retiral dues and other amounts standing in my name as I have given guarantee for them.

2. That amount of the Non-Farm Sector Loan which was taken by Sh. Mangat Ram under M/s. Mangat Ram Shuttering Store, village Bamyal. the up-to-date outstanding amount if he himself or his guarantor does not repay the amount to the bank in spite of my efforts, then I will be responsible to pay the same after 31. 3. 2007. This amount be deposited in the suspense account from my retiral dues and other dues and I will have no objection. Thereafter, this amount be

adjusted towards loan. "

3. AFTER considering the affidavit and order was passed by the Punishing Authority on 29. 3. 2006 which, when translated into English, reads as under: "order vide this office letter No. 21189-94 dated 24. 3. 2004 show-cause notice was issued to Sh. Prem Singh, Assistant Manager and he was asked to appear before the Punishing Committee of the Bank on 29. 3. 2004. The meeting of the Punishing Committee of C. B. Gurdaspur which was held on 29. 3. 2006 at 10. 00 a. m. at C. B. Gurdaspur, Sh. Prem Singh (under suspension) has appeared. He after having come present has given his statement in writing. The committee after considering his statement, has decided to reinstate Sh. Prem Singh, Assistant Manager (under suspension) into service on the following conditions: (1) Outstanding amount of loan of Sh. Rajiv Singh and Sh. Paramjit Singh shall be deducted from the pay, retiral dues and other dues. (2) The amount equal to loan of Mr. Mangat Ram shall be kept in the suspense account after deducting from the pay, retiral dues, etc. of Sh. Prem Singh and after 31. 7. 2007 the amount, which will be standing towards debit in the account of Sh. Mangat Ram shall be deducted from the aforesaid suspense account. (3) In the above said three cases only simple interest shall be charged and compound interest shall not be charged. (4) Only 90% of the pay will be paid for the suspension period and the remaining amount will be freezed as a measure punishment. (5) The suspension period of Sh. Prem Singh is taken as duty period. (6) Recovery of the unsecured loans will be effected first and if needed the recovery of the secured loans will be effected by making a comprehensive case under Punjab Cooperative Societies Act, 1961 and the rules framed thereunder. (7) Apart from this, if any other balance amount, Audit/bank/registrar, Cooperative Societies is found due against Sh. Prem Singh will be recovered from Prem Singh under the rules. Sh. Prem Singh, Assistant Manager (under suspension) is reinstated in service on the conditions laid down above and he is directed to join his duty immediately at the Head Office at Gurdaspur. "

The complainant is stated to have filed departmental appeal against the aforesaid order dated 29. 3. 2006 before the Additional Registrar (D) exercising the powers of Registrar. The appeal is dated 27. 4. 2006. It may be observed here that in the appeal the challenge is only to paragraph No. 2 of the order dated 29. 3. 2006. The appeal is stated to be still pending disposal before the appellate authority.

4. THE complaint was filed before the District Forum with a prayer that Rs. 4,54,305 be credited into the saving bank account of the complainant. Rs. 1,00,000 were prayed as compensation. The District Forum allowed the complaint as aforesaid. Learned Counsel for the appellant submitted that a specific point was raised before the District Forum that the complainant was not a consumer. This point was duly noticed by the District Forum but not discussed. It was further submitted that the amount claimed by the complainant is to be appropriated as per the affidavit filed by the complainant dated 29. 3. 2006 and

as per the orders of the Disciplinary Authority dated 29. 3. 2006. Since this is a case really arising out of the service conditions/service matter and especially because of the undertaking given by way of affidavit of the respondent, the question of entertainment of the complainant did not arise as there is no question of deficiency on the part of the appellant. Learned Counsel for the appellant also cited a judgment of the National Commission reported as III (1993) CPJ 319 (NC), Central Bank of India v. Dil Bahadur Singh. On the other hand learned Counsel for the respondent submitted that a person when approaches a bank for some services from the bank as such advancement of loan falls within the definition of consumer. According to the Counsel for the respondent the complainant was wanting the services of the bank for crediting the amount of Rs. 4,54,305 which represented his provident fund and that having not been done, there was deficiency in service on the part of the appellant and, therefore, the complainant will be held to be a consumer. Further, it was submitted that under the Provident Fund Act, the fund at credit of a retired servant is like a compulsory deposit and not liable to adjustment. Reference was made to AIR 1952 SC 227, Union of India v. Hira Devi. Further it was also argued that the paragraph 2 of the affidavit does not envisage appropriation of amount which the appellant was to get as the provident fund. After hearing the learned Counsel for the parties, we are of the view that there is force in the argument of the learned Counsel for the appellant. This case really arises out of the service conditions of the respondent-complainant. Complainant had, during the course of disciplinary proceedings, given an affidavit that up-to-date outstanding amount under Cash Credit Limit of Rs. 2. 15 lacs and Rs. 2. 60 lacs against his sons, Sh. Rajiv Singh and Sh. Paramjit Singh, in favour of the appellant-bank could be deducted from his retiral dues and other amounts standing in his name as he had stood guarnator for them. It was only after such an affidavit was filed before the Disciplinary Authority that the order of his reinstatement came to be passed on 29. 3. 2006 in which the terms of the affidavit were incorporated. The bank was only to comply with the terms and conditions of the affidavit and the order of the Disciplinary Authority dated 29. 3. 2006. In these circumstances, the complainant could not be said to be a consumer or the bank could be said to be rendering any service to the complainant. In case of the judgment of the National Commission reported as III (1993) CPJ 319 (NC), wherein a bank employee after retiring claimed gratuity and provident fund from his employer; payment was withheld as the employee did not hand over vacant possession of allotted accommodation. Bank paid the gratuity on the assurance that the complainant shall vacate the house and kept the provident fund in the savings bank account. Instead of vacating the house, the employee staked his claim for operating the savings bank account. The bank refused to allow the operation of the savings bank account. It was held by the National Commission that in such circumstances, the bank could not be said to be rendering any service to the employee as it was due to the undertaking that conditional provident fund was released.

5. WE also do not agree with the learned District Forum when it said that the amount of the complainant could only be adjusted/appropriated if the persons who had taken cash credit limit had refused to own their commitment. Once the complainant had given an undertaking in the shape of affidavit, which was followed by a judicial order by the Disciplinary Authority, the bank could appropriate the amount towards the cash credit limit of those persons who had been mentioned by the complainant in the affidavit.

6. FOR the foregoing reasons, we do not agree with the approach of the District Forum. We allow this appeal, set aside the order of the District Forum and dismiss the complaint. No order as to costs. The orders were reserved on 13. 3. 2007. Be communicated to the parties. Appeal allowed.