(2006) 07 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

ICICI Bank Ltd. APPELLANT

Vs

SAVITRI PISIPATI RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Citation : 2006 2 CPC 707 : 2006 4 CPJ 58

Hon'ble Judges : K.S.Gupta , P.D.Shenoy J.

Final Decision : Revision Petitions allowed

Judgement

1. SMT. Savitri Pisipati and Shri Narayan Kurthy Pisipati had invested in debenture certificates issued by the Sterling Holiday Financial Service Limited, Chennai (hereinafter called as Sterling) bearing interest 19.5% per annum: As the redemption amount was not paid the complainant asked the opposite party to refund Rs. 80,000 with interest @ 19.5 % per annum from 25.8.1998 till date of realization and also pay compensation of Rs. 1,00,000 as costs to the complainant. The first opposite party Sterling filed a written version stating that there is no deficiency in service and have obtained necessary clearance from the Income Tax Department for selling the properties and for remitting the proceeds to the 1CICI Limited (the second opposite party) in order to enable to disburse the same to the debenture holders including the complainants. The complainant contended that the second opposite party is the guarantor and filed a suit before the High Court of Mumbai for appointment of a Receiver in respect of the immovable properties of Sterling for realization of the amount of debentures under the trust deed. According to the opposite party the High Court passed an order on 4.8.2000 and permission from the second opposite party was obtained on 27.11.2000 to sell the property, but the due amount has not been paid by the opposite party to the complainant as the sale could not materialise. The District Forum after hearing the parties directed the opposite parties to refund the amount with 19.5% interest per annum from 25.8.1998 till the date of realization to the first and second complainants along with Rs. 1,000 each as compensation for causing mental agony and Rs. 1,000 as costs.

2. AGGRIEVED by the order of the District Forum the second opposite party ICICI Limited (hereinafter called as ICICI) has filed an appeal No. 156 of 2003 before the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad. The State Commission dismissed the appeal by stating that this appeal is covered by the judgment in FA No. 697 of 2002 dated 25.2.2003. In the said order, the State Commission observed as follows: "Certain conditions are noted on the reverse of the certificate stating that the company has created first charge in respect of remuneration and all other monies under the debentures; interest, etc., in favour of the appellant and the appellant is entitled to seek additional security by way of mortgage and create charge on the other properties of the company in favour of the trustees. These conditions therefore establish that the appellant has assured repayment of the debentures together with interest and for that purpose they have taken sufficient security from the company and as such it is not now open to the fourth opposite party to disown the liability under the said debentures, when there is default on the part of the first opposite party in discharging the same."

In the appeal memo the ICICI Limited contended amongst other things as follows : 1. That since the High Court of Mumbai has passed the orders in the interest of justice to the debenture holders that the amounts due are to be paid to the complainant with interest @ 19.5% per annum till realization, the Hon''ble Forum should have dismissed the case, as the complainants are protected under the said decision of the High Court.

2. That the complainants are to be paid Rs. 1,000 each as compensation. In this regard it is submitted that there may be thousands of debenture holders and if everyone is paid Rs. 1,000 each it will be run to lakhs of rupees to be paid as compensation.

3. The opposite party No. 2 has been treated as the guarantor, by the Forum. It is a misconception, as the opposite party No. 2 is the debenture trustee and its duty is to protect the interest of the debenture holders. In fact to protect the interest of the debenture holders, the opposite party No. 2, the appellant herein filed the suit for recovery of monies by enforcing the security and it has also secured the consent to sell the properties. It may be stated that the properties will be sold shortly and the proceeds thereof will be distributed to the debenture holders as decided by the High Court.

Dissatisfied by the order of the State Commission, the ICICI has filed the revision petition before us. Submissions made by the learned Counsel for the revision petitioner :

3. MR. Krishnamani, Senior Counsel for the revision petitioner submitted that ICICI is not a guarantor but it is a trustee. In the written version filed by the Sterling - the first opposite party before the District Forum has submitted that it has appointed the second opposite party i.e. ICICI Mumbai as debenture trustee and the first opposite parties herein created a charge in favour of the second

opposite party over the immovable properties owned by the first opposite party situated at Coimbatore and receivable from its customers for a total sum of Rs. 1,48,80,000 as security for the debentures. Sterling has further submitted that the High Court of Bombay considering the facts put forth by both the parties, have passed an order on 4.8.2000 granting permission to the first opposite party to sell the properties which are under the charge of the second opposite party with the consent of second opposite party and to remit the sale proceeds with the second opposite party within six months.

4. THE first opposite party has got the permission from the second opposite party i.e. ICICl, only on 27.11.2000 to finalize the sale transaction that too after persistent request for approval of the price offered by the prospective buyers. The first opposite party humbly submits that they have to obtain the necessary clearance from the Income-Tax Department for selling the said properties and are taking necessary steps to obtain the same at the earliest and arrange to sell the properties and remit the proceeds to the second opposite party in order to disburse the same to the debenture holders including the complainants. From this it is clear that as the High Court has given permission to the company to sell the property to safeguard the interest of the depositors. The District Forum has held that the first opposite party - Sterling deficient in service in the concluding para of the order it has held that opposite parties 1 and 2 are jointly responsible to pay to the depositors. In the appeal memorandum to the State Commission the ICICl had submitted that they are only the trustees and they act on behalf of the share holders. Mr Krishnamani has quoted the first clause of the debenture certificate which reads as under: ''subject to the terms and conditions contained in the Trustee Agreement entered into between the company and the Industrial Credit and Investment Corporation of India Limited as Trustee for the holders of the Debentures (hereinafter referred to as ''the Trustees"). The Trustees will act as Trustees for the holders for the time being of the Debentures (hereinafter referred to as ''the Debenture holders'') in accordance with the provisions of the Trustee Agreement.''

5. HE further quoted the clause from the Financial Covenants and Conditions of debenture certificate which reads as under: Terms and Conditions : Interest: The company shall pay interest on the principal amount of the Debenture outstanding from to time, issued in terms of Scheme II, at the rate of 19.5% per annum (subject to deduction of income tax at source at the rates for the time being prescribed under The Income Tax Act. 1961 and rules made thereunder or any statutory modification or re-enactment thereof for the time being in force). The interest shall be payable on 1.9.1997, 2.3.1998 and 25.8.1998. Payments:

Payment of the principal amount of the debentures, all interest and other monies will be made to the registered holders and in case of joint holders to the one whose name stands first in the Register of Debenture holders. Such payments shall be made by cheque or warrant drawn by the Company on its bankers.

Security: The redemption of the principal amount of the Debentures, payment of premium on redemption, all interest remuneration of the Trustees all fees, costs, charges, expenses and other monies whatsoever stipulated in this agreement, shall be secured by-

(a) a first mortgage in favour of the trustees in a form satisfactory to the trustees of the Company''s immovable properties, situated at Coimbatore in the State of Tamil Nadu, both present and future more particularly described in Part A of the Fifth Schedule to the Trustee Agreement.

(b) a first mortgage in favour of the Trustees in a form satisfactory to the Trustees to the Company''s immovable properties, situated at Chennai in the State of Tamil Nadu, both present and future more particularly described in Part B of the fifth Schedule to the Trustee Agreement. HE has also quoted the clause 6.1 of the Events of Default and Remedies of the Trustee agreement signed between the Sterling and the ICICI.

In the event of default of principal interest by Sterling Holiday Financial Service Limited the trustees may in their discretion and shall upon request in writing of the holders of the debentures of an amount representing not less than three-fourths in value of the nominal amount of the debentures for the time being outstanding or by a Special Resolution duly passed at the meeting of the debenture holders in accordance with the provisions set out in the third schedule hereunder written by a notice in writing to the company declare the principal, all interest and all other monies to be due and payable forthwith and the security created in terms of Article II.

6. HE drew our attention to Clause 7.1 i of Article VII of the Trustees Rights, Powers and Discretions. Clause 7.1, n and o which reads as follows: (j) The trustees shall not be responsible for the monies paid by the applicants for the debentures. (n) The trustees shall not be liable for anything whatsoever except a breach of trust knowingly and intentionally committed by the trustees. (o) The trustees shall not be liable for any default, omission or delay in performing or exercising any of the powers or trusts herein expressed.

In conclusion he stated that despite efforts property could not be sold as there were several procedures like income-tax clearance, etc., had to be followed Therefore, according to him only Sterling is liable. Submissions of the learned Counsel for the Sterling Holiday Financial Service Limited :

The learned Counsel for the Sterling made a short submission stating that they have sold their properties and the demand draft will be given to ICICI Limited shortly to enable them to discharge the obligations towards the depositors. Findings :

7. IT is not in dispute that Sterling had collected money and had offered an interest of 19.5% per annum. IT is also not disputed that the Sterling have failed to pay the instalments as well as the redemption amount to the complainants. The liability of the Sterling is to pay debentures holders is also not in dispute.

The only issue for consideration whether the ICICI Limited which is a trustee is jointly liable along with the Sterling to refund the amount due to the debenture holders. The District Forum has held that while passing the order it has directed that ICICI is a guarantor and directed both the opposite parties i.e. Sterling as well as the ICICI to discharge their obligation towards the debenture holders. Despite this decision of the District Forum the Sterling in their written version have stated that ICICI is debenture trustee and the first opposite party namely the Sterling have created charge in their favour over the immovable properties owned by them. As they are the debenture trustees, their duty is to protect the interest of the debenture holders The extract of the trust deed quoted by the Senior Counsel for the ICICI Limited gives a clear picture, of the role of the trustee vis-a-vis the debenture holders. In fact the trustees role is to protect the interest of the debenture holders and they have discharged their role by filing a suit for recovery of the money before the High Court by enforcing security. The High Court has also given consent to the Sterling to sell their property and remit the sale proceeds to the debenture holders through IGlCI.

8. THIS view has also been confirmed by the learned Counsel for the Sterling. Accordingly, the revision petition is allowed and part of the orders of the lower Fora directing ICICI Limited to pay debenture amount with interest is set aside There shall be no order as to costs. Revision Petitions allowed.