
(1993) 03 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

KAPPAGAL NABISAB

APPELLANT

Vs

BRANCH MANAGER, STATE BANK OF MYSORE

RESPONDENT

Date of Decision : 20-03-1993

Acts Referred:

Citation : 1993 1 CPR 693 : 1993 2 CPJ 983

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

Final Decision : Appeal dismissed

Judgement

1. THIS appeal, by the complainant, is directed against the order dated 30th July, 1992, passed by the District Forum, Bellary, in complaint No. DFB.C-41/91-92, dismissing the complaint. The facts, briefly stated, are as follows : 1. The complainant had suffered a decree in O.S. No. 76/1975 on the file of the Civil Judge, Bellary. The Decree-holder, that is, opposite party, filed an execution petition in No. 130/1977 for the recovery of the decretal amount. It came to be dismissed. Again the Decree-holder, filed execution petition in No. 342/1981. On its dismissal, again filed E.P. in No. 243/1989, which was filed for recovery of a large sum of Rs. 90,000/- with a malafide intension in injure the interest of the complainant, even-though the complainant was not due to the Decree-holder in any sum thereunder. The complainant, thereby sustained loss and injury and this was the deficiency in service, rendered by the opposite party-Bank-the Decree-holder.

2. THE complainant, on the basis of these averments, sought the following relief : (a) A sum of Rs. 90,000/- towards deficiency of service and for wrongful and wilful act committed; (b) Rs. 545/- the debit entries made by the respondent; (c) Rs. 3,000/- the amount spent by the complainant in execution petition 243/89; (d) for costs; (e) future interest at 18% per annum on the award sum; (f) for any relief the Honorable Forum may be deems to fit."

The opposite party filed its version and disputed the allegations contained in the complaint and further averred that the "complaint" cannot be classified as a "complaint" under the provisions of the Act and the "complainant" is not a

"consumer" as per the provisions of the Act. The opposite party, on the basis of these averments, sought the Complaint to be dismissed.

During enquiry, the complainant examined himself as P.W. 1 and got Exs. P-1 to P-6, marked in evidence. The Branch Manager of the opposite party-Bank, was examined as R.W. 1. The District Forum, appreciating the material placed on record by the parties hold that the complainant cannot be classified as a "consumer" under the provisions of the Act. In that view, dismissed the complaint

3. WE have called for the records and received. WE have also heard the learned Counsel for the parties. It is not disputed that the complainant did suffer a money decree and the Decree-holder-opposite party made successive execution petitions for the recovery of the money due from the complainant under the said decree. As it is evident from the averments contained in the complaint, the only grievance of the complainant is that even though he was not due in any sum to the Decree-holder-Bank, the opposite party-Bank, did file successive execution petitions for the recovery of money, thereby caused loss and injury to the complainant and it is the deficiency in service rendered by the opposite party-Bank.

4. IT is very difficult to accept the plea of the complainant, how a dispute relating to the execution, discharge or the satisfaction of the decree could be gone into in this complaint. The complainant can agitate this question by making as appropriate application under the provisions of Section 47 of the C.P.C. and not by a complaint under the provisions of the Consumer Protection Act. Therefore, it is clear that as per facts and the circumstances averred in the complaint by the complainant, the complainant cannot be classified as a "consumer" under the C.P. Act and the Complaint cannot be classified as a "Complaint" under the Act. Having regard to these facts and in the circumstances, we do not find any justifiable ground to interfere in the findings recorded by the District Forum. ORDER In the result, therefore, this appeal fails and it is dismissed. The parties are directed to bear and pay their own costs. Appeal dismissed.