(2011) 01 NCDRC CK 0077

In the National Consumer Disputes Redressal Commission

Karnataka State Industrial Coop.Bank APPELLANT

Vs

Virupakshayya Chanveerayya RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Citation : 2011 0 NCDRC 3 : 2011 1 CPJ 99 : 2011 1 CPR 204

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision petition allow

Judgement

1. THIS revision petition has been filed by the Karnataka State Industrial Cooperative Bank and another (hereinafter referred to as the Petitioners) against the order of the State Consumer Disputes Redressal Commission, Karnataka (hereinafter referred to as the State Commission) in favour of one Virupakshayya Channveerayya Maidurgimutt (hereinafter referred to as the Respondent) who was the original complainant before the District Forum.

2. THE facts of the case are that the Respondent, a businessman, in order to extend his trade approached the Petitioner/bank for a loan of Rs.4 lakhs subject to a collateral security in addition to compliance of necessary requirements. In this connection, Respondent had to deposit the title deed of immovable property as security for the purpose of loan to be discharged in accordance with the terms and conditions of the sanction order dated 30.12.2000. As per clause 10 of the sanction order, the Respondent was to execute equitable mortgage deed at the Sub-Registrars office. On 17.01.2001, Respondent executed a Memorandum of equitable mortgage by way of deposit of the title deed in respect of immovable Property No.CTS 1794 C 1. Respondent also stated that no third party interests exist in the said property and that it is free from encumbrances. On the basis of these documents, the Petitioner released a major part of the loan amount of Rs.4 lakhs by transferring it to the saving bank account of the Respondent. During this period, the Petitioner exercising due diligence referred the title deed and documents to the City Survey Department for verification. A report was received from that Department stating that the actual owner of the mortgaged property

was one Ravishankar Isloor. Further inquiries revealed that the Petitioner had only permanent tenancy rights with no absolute right/interest over the property to either mortgage or alienate it. The Petitioner, therefore, issued notices to the Respondent calling upon him to furnish fresh security free from encumbrances. The Respondent failed to do so and according to the Petitioner/bank, with an intent to commit further fraud, Respondent issued three cheques for a total amount of Rs.2.85 lakhs after receiving the above notice. The Petitioner, therefore, in exercise of powers under Section 171 of the Indian Contract Act under the general lien of bankers stopped the payment of the cheques on presentation. The Petitioner also recalled the loan and filed for recovery of Rs.1,40,000/- which included interest on the loan of Rs.1,22,550/- already availed of by the Petitioner.

The Respondent has denied the above allegations made by the Petitioners and aggrieved by the action of the Petitioner, filed a complaint before the District Forum alleging deficiency in service on the part of the Petitioners and requested that Petitioners should pay him Rs.2 lakhs as compensation including Rs.50,000/ for mental agony.

3. THE District Forum while accepting the contention that it was a fact that the property did not belong to the Respondent but to one Ravishankar Isloor, accepted the complaint on the following grounds: It is not as though that the opponent was not aware of the fact that one Ravishankar Isloor was the owner of the property in respect of the property offered as security and the interest of the complainant is only moolgeni right. So, when from these documents the interest of the complainant could be ascertained before sanctioning the loan now it cannot be said that the property offered as security is not sufficient to secure the loan. So, if the opponent after sanctioning the loan chooses to recall the loan stating that Ravishankar Isloor has raised the objection before the City Survey Department and consequently the complainant suffers loss. In our opinion it amount to deficiency in service. It appears from the material on record the complainant has invested considerable amount of money in the expansion of his business. Further, he has also incurred expenses towards executing the equitable mortgage deed and purchased shared of OP Bank and sanctioning, which are necessary for his project. The fact that complainant has incurred expenses towards the registration of the equitable mortgage deed and other expenses, is not disputed. If the opponent has to stop payment of the money in the S.B. A/c of the complainant which was sanctioned to the complainant as a loan, it really causes hardship and loss to the complainant in his business. In our opinion there is a clear deficiency in service on the part of the opponent for which the complainant is entitled to some compensation.

4. THE District Forum directed the Petitioners to pay Rs.50,000/- to the Respondent or in the alternative make an adjustment of the said amount out of the amount recoverable from the Respondent. It also directed the Petitioner/bank to pay Rs.500/- as costs. THE order was to be complied with within a period of

one month from the date of receipt of the order failing which the Petitioner/bank would have to pay interest @ 20% per annum on Rs.50,000/- from the date of the order. Aggrieved by this order, the Petitioners filed an appeal before the State Commission which upheld the order of the District Forum and dismissed the appeal. Hence, the present revision petition. The learned counsel for both parties made oral submissions. Counsel for Petitioner drew attention to Sections 10 and 11 of the sanction order of the Petitioner/bank which required the loanee to execute an equitable mortgage deed registration free of encumbrances at the Sub-Registrars office with the release of the loan. He further pointed out that even the learned fora below had agreed that the owner of the property which was mortgaged was not the Respondent but belonged to one Ravishankar Isloor and that the Respondent only had tenancy rights. Therefore, he mortgaged the property of someone else while taking the loan in clear violation of the terms and conditions for obtaining such loans.

5. COUNSEL for Respondent denied the above contention and stated that the Respondent was the actual owner of the property and had made investments in his business because of the loan assured to him. Recalling the loan by the Petitioner/bank had, therefore, caused him both financial loss as well as loss to his reputation and the learned fora below had fully appreciated these facts and had ruled in his favour. Under the circumstances the present revision petition has no merits and deserved to be dismissed. We have heard COUNSEL for both parties and considered the evidence on record.

6. IT is in evidence that as per the banking rules, the Petitioner had agreed to sanction the loan, subject to a collateral security in addition to compliance of necessary requirements and the Respondent was required to deposit title deed of immovable property as security for the purposes of loan. As per Section 10 of the sanction order, the Respondent was to execute the equitable mortgage deed in this connection at the Sub-Registrars office. The Respondent accordingly executed a memorandum of equitable mortgage by way of deposit of title deed in respect of the immovable property whereas this property which did not belong to him and further confirmed in writing to the Petitioners that the property is self-acquired and that no third party interests exist in the property which is free from encumbrances. This was clearly a wrong statement contrary to the factual position. In his submissions before us when learned counsel for Respondent again reiterated this submission, he was specifically asked by us whether he could show us even at this stage the necessary documents as proof that Respondent was the owner of the property, Counsel for Respondent admitted that he did not have the document/proof. Thus, there is adequate evidence that the Respondent obtained a loan by misrepresenting facts and committed fraud. Under the circumstances the Petitioner/bank was right in stopping the honouring of cheques and recalling the loan. The learned fora below erred in giving necessary relief to Respondent on the grounds that the loan was sanctioned after the documents were verified and, therefore, the true status of the property would have been within the knowledge of the Petitioners. We, therefore, set

aside the orders of the District Forum and the State Commission and allow the revision petition with no order as to costs. The 50% amount deposited by the Petitioner/bank with the State Commission as per this Commissions order dated 19.12.2005 may be refunded back to the Petitioner/bank with accrued interest thereon.

