(2008) 03 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

KIRAN SURI APPELLANT

Vs

STATE BANK OF PATIALA RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Citation : 2008 2 CPJ 551

Hon'ble Judges : K.C.Gupta , MajGenS.P.Kapoor , Devinderjit Dhatt J.

Final Decision : Appeal allowed

Judgement

1. -THIS appeal has been directed by the complainant against order dated 31. 7. 2007 passed by Consumer Disputes Redressal Forum-I, U. T. Chandigarh (hereinafter to be referred as District Consumer Forum), vide which her complaint was dismissed as meritless.

2. BRIEFLY stated the facts are that appellant (complainant) Smt. Kiran Kalra had deposited a sum of Rs. 70,000 in the year 2000 with the State Bank of Patiala, Dadu Majra, U. T. Chandigarh in the shape of FDR and interest accrued thereon was received by her on monthly basis. The re-payment of this FDR was to take place on 17. 4. 2002. It was again got renewed with maturity date as 17. 10. 2004 on which date respondent was to pay Rs. 81,588. The copy of the FDR is Annexure C-1. It was next averred that the appellant presented the FDR for encashment to the respondent on 18. 11. 2004 and requested that the said amount be credited into her saving bank account No. 5404 but the respondent refused to do so. Later on appellant wrote letter to the respondent dated 18. 11. 2004 to detail the reason for not honouring the commitment but respondent replied that since, she stood as guarantor in one loan case of Smt. Tejinder Kaur and the said account had become NPA and as such the amount had not been paid. A copy of the letter is Annexure C-2.

It was further averred that appellant vide letter dated 9. 12. 2004 asked the respondent to honour its commitment and pay the amount of FDR but of no avail. Ultimately respondent vide letter dated 17. 2. 2005 sent a banker''s cheque for a sum of Rs. 15,657 after retaining a sum of Rs. 67,155 out of the total amount of FDR of Rs. 81,588. However, appellant returned that banker''s cheque to the respondent by stating that the same was illegal and unjustified.

3. ALLEGING deficiency in service, the complaint was filed. The respondent contested the complaint and stated that loan amount was outstanding against Smt. Tejinder Kaur and appellant had stood as guarantor of Smt. Tejinder Kaur. Since, Tejinder Kaur had failed to repay the loan amount, so, the amount was deducted from the FDR of Smt. Kusum Kalra as she had stood guarantor for re-payment of loan which was taken by Smt. Tejinder Kaur. It was further stated that as per Contract Act the Bank had a general lien on the amount which was lying with the Bank. Therefore, it prayed that the complaint should be dismissed.

4. PARTIES adduced evidence by way of affidavits. After hearing Counsel for the parties, District Consumer Forum vide order dated 31. 7. 2007 dismissed the complaint being merit less. Dissatisfied with the said order, complainant has filed the present appeal.

5. NONE appeared on behalf of appellant as Counsel for appellant had sent an application for adjournment being away to New Delhi to attend some arbitration matter. Earlier also on 28. 11. 2007 there was an adjournment slip on behalf of the Counsel for the appellant on account of pre-occupation. Then on 5. 2. 2008 there was adjournment slip on behalf of Counsel for respondent.

6. WE have heard Counsel for appellant Shri Kuldeep Singh and carefully gone through the file. It is an admitted fact that appellant (complainant) had deposited a sum of Rs. 70,000 with the respondent Bank in the shape of FDR which was to finally mature on 17. 10. 2004 with maturity amount of Rs. 81,588. The copy of the FDR is Annexure C-1. The appellant had presented the said FDR for encashment on 18. 11. 2004 but respondent Bank had refused to honour the same and to credit the amount in her Saving Bank Account No. 5404. Later on vide Annexure C-2 respondent had given the reason that she had stood as guarantor to one Mrs. Tejinder Kaur against her loan amount and since her loan amount had become NPA and she had not paid the amount, so, the amount was deducted from her account. Ultimately respondent vide letter dated 17. 2. 2005 had sent Banker''s cheque for a sum of Rs. 15,657 towards the balance proceeds of the FDR after deducting a sum of Rs. 67,155 but the appellant returned the banker''s cheque by stating that the same was not acceptable. Thereafter, after serving legal notice, she had filed the complaint.

It is also not disputed that Smt. Tejinder Kaur had taken loan of Rs. 50,000 on 29. 9. 2000 from the respondent bank vide Annexure OP-1 but there is no evidence that appellant had stood as guarantor/surety of Tejinder Kaur against the said loan and had executed the guarantee deed or surety bond in favour of the bank. A perusal of the promissory note Ex. OP/2 reads as under; "on demand I Tejinder Kaur promise to pay to Smt. Kiran and Smt. Kusum or order at the State Bank of Patiala, Dadu Majra the sum of Rupees fifty thousand only for value received with interest at the rate of. . . . . The State Bank of

India Advance rate, rising and falling therewith with a minimum of 15% per annum with quarterly rests".

Signed by Tejinder Kaur on the revenue stamp it is further mentioned in Ex. OP/3 as under: "pay to State Bank of Patiala or order" signed by Kusum Kalra and Smt. Kiran.

7. THEREFORE, it shows that Smt. Tejinder Kaur had executed promissory note in favour Smt. Kusum Kalra and Smt. Kiran and Smt. Kusum Kalra and Smt. Kiran had further endorsed the promissory note in favour of State Bank of Patiala or order. It means that there was promissory note on behalf of Tejinder Kaur in favour of State Bank of Patiala or order. It is not the case that the promissory note had been executed by Smt. Kiran and Kusum Kalra in favour of Tejinder Kaur who had further endorsed it in favour of State Bank of Patiala. There is no evidence that Smt. Kusum Kalra and Smt. Kiran were to take any amount from Smt. Tejinder Kaur or they were to pay any amount to the State Bank of Patiala. In fact such an endorsement either from Tejinder Kaur in favour of Smt. Kusum Kalra and Smt. Kiran or further endorsement on behalf of Kiran and Kusum Kalra in favour of State Bank of Patiala is without consideration and such a promissory note without consideration is void. At best the promissory note could be considered a document executed by Tejinder Kaur in favour of State Bank of Patiala through Smt. Kiran and Kusum Kalra. Ex. OP/4 is copy of the ''d. P. Note delivery letter'' vide which Demand Promissory Note was delivered. However, under law by any stretch of imagination appellant could not be considered as guarantor for re-payment of loan of Tejinder Kaur. In fact appellant had no obligation to perform in favour of the bank. Instructions of the Bank to the contrary that if a promissory note is executed by the borrower in favour of the guarantor then guarantor endorses the same in favour of the Bank then it would be a valid document cannot be taken into account as it is not supported by any legal provision, hence, Bank was not justified to deduct the amount of Rs. 67,155 from the FDR of appellant and to send cheque of Rs. 15,657 only.

8. THEREFORE, we hold that the order of District Forum is illegal and consequently, the appeal is accepted with costs of Rs. 10,000 and the respondent is directed to credit the amount of FDR in the saving account of appellant bearing Account No. 5405. It shall also pay interest @ 9% p. a. from the date of maturity till payment. Copies of this order be communicated to the parties, free of charge. Appeal allowed.