(1997) 10 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

LAKSHMI SRINIVAS FINANCE And INVESTMENT — APPELLANT

Vs

J.S.Raman — RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Citation : 1998 1 CPJ 150

Hon'ble Judges : E.J.Bellie , Pulavar V.S.Kandasamy , Angel Arulraj J.

Final Decision : Appeal allowed

Judgement

1. THE opposite party Lakshmi Srinivas Finance and Investment against which an award has been passed by the District Forum is the appellant. THE complainant/ respondent here in made a fixed deposit of a sum of Rs. 50,000/- with the opposite party for a period of 4 years from 28.9.1989 to 27.9 1993. On maturity the opposite party was to pay a sum of Rs. 1,00,000/- to the complainant. According to the complainant after the maturity the complainant demanded for payment, but the opposite party was postponing payment on some protect or other. On 2.12.1993 the complainant issued a legal notice to the opposite party. But the opposite party replied raising false contentions. THE" opposite party withholding the payment to the complainant is deficiency in service. THE complainant who is doing business in manure supply expected to pay his out standings on receipt of the fixed deposit amount from the opposite party, but because of the opposite party''s attitude the complainant could not make the said payments and on account of this he had to pay interest on out standings. THE opposite party''s failure to pay the amount has made him to suffer mental agony and pain. On these allegations the complaint has been filed for direction to the opposite parties for payment of Rs. 1,00,000/- being the matured amount of the fixed deposit with interest thereon at 24% p.a. from 28.9.1993 till payment and also a sum of Rs. 15,000/- by way of damages.

2. THE opposite party contested the complaint, contending that the complainant is a debtor of the opposite party having already received from them a loan of Rs. 44,000/- on 10.11.1991 and also being a co-obligant in respect of another loan

of Rs. 75.000/- received by one A.C. Ajja Gowder from the opposite party. Both the loan amounts with interest thereon remain unpaid till date. This being the case the complainant is not entitled to claim his deposit amount. THE opposite party has lien over the deposit and the opposite party is entitled to adjust the same towards the said amounts due from the complainant. For these reasons the claim of the complainant and the counter claim of the opposite party could be decided only by a Civil Court and not by the Consumer Forum. THErefore the complaint is liable to be dismissed with compensatory costs. The District Forum on consideration of the pleadings and the evidence came to the conclusion that the pleadings and the evidence led in the case shows that if at all a sum of Rs. 44,000/- had been received by the complainant it was only from M/s. Lakshmi Srinivas Savings and Chits Syndicate Pvt. Ltd., and not from the opposite party which is Lakshmi Srinivas Finance and Investment and similarly a sum of Rs. 75,000/- had been received by Ajja Gowder only from the said other company with the complainant as a co-obligant and that being the case there is no question of payment of any amount by the complainant to the opposite party and as such there can be no counter claim by the opposite party. Thus holding the District Forum took the view that there is no acceptable reason for the opposite party withholding payment of the amount of Rs. 1,00,000/- due under the Fixed Deposit made by the complainant. The District Forum also has found that with regard to the alleged loan of Rs. 44,000/- received by the complainant from M/s. Lakshmi Srinivas Savings and Chit Funds Syndicate Pvt. Ltd., there is a suit filed in which an order attaching the fixed deposit amount in question has been made. In the result, the District Forum ordered the opposite parties to pay a sum of Rs. 1,00,000/- with interest thereon @ 24% p.a. from 28.9.1993 till payment to the complainant and also a sum of Rs. 3,000/- as compensation to the complainant. Then the District Forum has ordered that the said direction for payment will not in any way affect the order of attachment.

Now in the appeal after hearing both sides and perusing the pleadings and the records we are of the view that the said order of the District Forum cannot be sustained as correct. As regards the contention of the opposite party that the complainant had already received a loan of Rs. 44,000/- from him the complainant has stated in the complaint that he had not received any such payment. But the complainant has categorically admitted in the complaint that one Ajja Gowder received a loan from the opposite party and in that the complainant is a co-obligant, but however he would contend that even if that amount had not been paid by Ajja Gowder the opposite party will not have a right of lien over the fixed deposit amount of the complainant and further the loan received by Ajja Gowder had already barred by limitation. It is not dispute that the loan amount borrowed by Ajja Gowder is Rs. 75,000/-. But the District Forum rather strangely had come to the conclusion that the amount borrowed by Ajja Gowder was from a different company namely Lakshmi Srinivas Investments and Chit Funds Syndicate Pvt. Ltd., and not the opposite party Company which is against the very case of the complainant himself for as seen supra the complainant admits in the complaint that Ajja Gowder borrowed money from the opposite party Company. It is not in dispute that Ajja Gowder had not paid any amount towards said loan amount of Rs. 75,000/- and it is common case that this loan amount was received by Ajja Gowder long ago much prior to the fixed deposit made by the complainant. This being the case Ajja Gowder for principal and interest must be owing to the opposite party more than Rs. 1,00,000/-. The complainant being the co-obligant in it he also owes that amount to the opposite party. There is no question of having any lien. Certainly the opposite party can always adjust the amount payable by him to the complainant towards the amount payable by the complainant to the opposite party. May be the amount borrowed by Ajja Gowder is barred by limitation. That only means that a suit cannot be filed against him, but still the amount would be due to the opposite party. Towards that amount the opposite party can always adjust the amount due by him to the complainant. The facts would also show that it was the opposite party who had filed a suit for recovery of a sum of Rs. 44,000/as amount borrowed by the complainant from him with interest thereon and in that suit an order of attachment of the fixed deposit amount had been passed. In these circumstances certainly it cannot be said that there was deficiency in service on the part of the opposite party in refusing payment of the fixed deposit amount.

3. IN this view of the matter, the appeal is allowed; the order of the District Forum is set aside and the complaint is dismissed. However, there will be no order as to costs. Appeal allowed.