(1993) 02 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

MANAGER, BAITARANI GRAMYA BANK APPELLANT

Vs

JAYKRUSHNA SWAIN RESPONDENT

Date of Decision : 27-02-1993

Acts Referred:

Citation : 1993 3 CPJ 1327

Hon'ble Judges : S.C.Mohapatra , R.N.Panigrahi , J.Patnaik J.

Final Decision : Appeal allowed in part

Judgement

1. OPPOSITE Party Bank is the appellant against direction of the District Forum to release the gold ornaments pledged for taking loan from the bank.

2. COMPLAINANT filed a complaint stating that he incurred loan from Baitrani Gramya Bank at Dukura Branch furnishing gold ornaments belonging to his wife as security. When he came to learn that the gold ornaments pledged are going to be put to auction he deposited Rs. 5200/- on 24.9.1991 as part payment of the loan taking time for one week for re-payment of the balance. Opposite Party disclosed that even if entire amount is paid, the ornaments cannot be released. COMPLAINANT gave lawyers notice by registered post for release of the ornaments on payment of the balance amount with interest. Opposite Party, through lawyers replied that the ornaments would not be released unless loan incurred by Opposite Party from Kuamara and Manatri Branches of the bank are repaid. It is stated that complainant having disputed the outstanding dues in Kuamara and Manatri Branch, money suit has been filed by the Bank for realisation of the amount claimed to be due. Refusal to release the gold ornaments even after offer to pay back dues in that respect is a deficiency in Banking Service. Since complainant has suffered on account of deprivation of enjoyment of his property, he prayed to direct the opposite party to release the gold ornaments and for compensation of Rs. 500/-formental agony and harassment. Opposite Party has stated his case that there was no discussion with complainant relating to accommodation for a week to pay the balance amount. Pendency of suit for out-standing loan at Kuamara Branch is also disputed. He

stated that complainant had incurred two gold loans on 27.4.1983 and 13.7.1983 by pledging gold ornaments as security. When he did not repay the loan inspite of repeated demands, notice was published in news papers that the gold would be put to auction. Then only complainant paid partly on 24.9.1991. Head Office of the Bank intimated Opposite Party that the complainant has incurred a crop loan and vegetable loan from Manitri Branch and also incurred loan from Kuamara Branch which are also out-standing against him since 1983. Head Office directed not to release the loan of the complainant unless he produced no objection certificate from Manitri Branch and Kuamara Branch and from the Head Office. This was intimated to the complainant. It is stated that complainant is a habitual debtor from different financing institutions. Complainant has obtained debt relief to the tune of Rs. 10,000/- in the year 1991 from Manitri Branch, Kuamara Branch, Pesude, Beripada, State Bank of India, Pasude.

No documents or other materials were filed before the District Forum excepting the complaint and the statement, in reply. District Forum, hearing the parties, directed that in ends of justice Opposite Party is to release the gold ornaments in case the balance amount outstanding against the complainant is paid by the complainant. This appeal has been filed against the aforesaid direction.

3. MR. G.A.R. Dora, learned Counsel for the appellant and MR. D. Mohanty, learned Senior Advocate for the Respondent (complainant) were heard. Complainant is also present in person and made his submission on facts. It is not disputed that complainant has taken loans from Kuamara Branch, Manitri Branch of the Bank which are outstanding. It is also not disputed that part of the loan from Dukura Branch has been paid and offer has been made to pay the balance for release the gold ornaments pledged. This offer has been refused on the instruction of the Head Office.

4. GRAMYA Banks are established under statute to carry on welfare activies of financing and rendering other banking services to rural people so that they can be protected from harassment caused by individual money lenders. All officers of such banks including the appellant are to modulate their actions as regards banking services in that light. Though the same is not specifically undertaken by law or declaration. It is the necessary implication. Where any action or inaction falls short to satisfy the object as stated there would deficiency in banking services. Inference of negligence can be drawn depending upon the circumstances of each case. Services inferred in giving circumstances. It is true that Section 171 of the Contract Act authorised Opposite party not to release the pledged ornaments when complainant has other dues to be the bank. In this respect bank includes all its branches. Sections 171 is however, a general provision where right is vested in all creditors who are in custody of pledged articles. Exercise of this general right is within the scope of the discretion of the creditor who may not insist on such right. When such right is intended to be exercised by a rural bank which is an authority under Article 13 of the Constitution. Vested with welfare activities o f state it has to meet out equal

treatment to all debtors. Equal treatment and exercise of discretion reasonably is constitutional mandate to bank. This constitutional mandate comes within ''manner of performance which is required to be maintained by or under any law for the time being in force as envisaged in definition of ''deficiency'' in Section 2(g). Tolerating debtors for a long period and suddenly exercising a right to deprive complainant of the pledged articles at the time of need is not a welfare activity. No explanation has been given why action was not taken for realizing the amounts immediately, although loans were in the nature of crop loans and vegetables loans which are expected to be paid shortly after the crop is harvested. On the facts of this case when no explanation within knowledge of the officers as well as the Head Office is given, we are of the view that inaction of officers of the bank in not realising amount for a long time and suddenly becoming active to refuse to obstruct release of the ornaments at the time of need of the complainant when he is willing to pay back the balance dues with interest in respect of that loan is a deficiency in service which is outcome of negligence. However, complainant has himself contributed for his suffering by not discharging the loan debtor. Exercise of discretion is a duty of Opposite Party. Not to insist on right under Section 171, Contract Act is not violation of any law far less to speak to Section 171 of the Contract Act. If the redressal agency would have been the substitute of Civil Court to examine whether opposite party or bank can exercise right under Section 171 of the contract, Act, there was no scope to give any direction even if the insistence on a right appears to be unreasonable. Redressal agency however, is to consider only the question of rendering service. Service includes exercise of discretion. Failure to discharge duties to be performed by the officers which is not contract to law, is negligence. Redressal Agencies have power to give direction to pay compensation. We would have given direction for payment of compensation. We, however find that complainant is not free from blemishes. There is no explanation why loans taken in the year 1983 have remained unpaid till 1993. This is not becoming of a good debtor. Apprehension of the Bank that the amount may not be possible to be realised cannot be said to be wholly unjustified. However, in the peculiar circumstances of the case, a balance has to be struck between the negligence of the opposite party and mis-conduct of the complainant. We are inclined to direct that in case complainant gives undertaking to the Branch of the Bank where the loans are outstanding that the entire outstanding dues would be paid in monthly instalments, those Banks on getting the undertakings shall certify for release of the gold ornaments. Requirements of certificates as directed by the Head Office to opposite party shall be treated to have been complied with if the certificates contain the entire amounts loan due up-to-date in the branch with the agreed instalments for payment. Head Office shall also give a certificate on this basis of those certificates. Thereupon complainant shall be permitted release of the pledged ornaments by opposite party on payment of the entire amount due to be paid to the Dukura Branch. 10.We find that District Forums has exercised the power under Section 27 of the Act by a subsequent order. In view of which modification of the order under Section 27 of the Act is revised and is set-aside.

11.We give liberty to the complainant to move the District Forum afresh in case the direction given in the order is not complied with by the respondent/ opposite party, fixing the time limit of 3 (three) months for complying with the direction in this appeal. If the certificates are not granted and the pledged gold ornament is not released within 3 months, compensation at the rate of Rs. 100/- per day from the date of filing of the complaint till release of the gold ornament shall be paid by opposite party provided complainant has given the undertakings to the different branches within one month from to-day and has paid the entire dues to Dukura Branch by that time. 12.In result, appeal is allowed in part to the extent indicated above. Appeal allowed in part.

