(2003) 02 NCDRC CK 0084

In the National Consumer Disputes Redressal Commission

MEMON CO-OP. BANK LTD. APPELLANT

Vs

ANWAR D.AHMEDABADI RESPONDENT

Date of Decision : 28-02-2003

Acts Referred:

Citation : 2003 1 CPJ 285 : 2003 1 CPR 279

Hon'ble Judges : K.S.Gupta , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Appeals allowed

Judgement

1. SINCE Complaint Case Nos. 270 of 1997 and 286 of 1997 were disposed of by the same order dated 22.8.2000 by Consumer Disputes Redressal Commission, Maharashtra State, we propose to decide F.A. Nos. 392 and 393 of 2002 arising out of that order by this common order.

2. FACTS leading to filing of Complaint Case No. 270 of 1997 by Anwar D. Ahmedabadi, respondent in Appeal No. 392 of 2002, in brief, are these. Appellant No. 2 is a branch of appellant No. 1-Bank. Respondent was having S/B A/c No. 3611 with appellant No. 2. On 28.3.1994, respondent is alleged to have issued a cheque in favour of appellant No. 2 for Rs. 3 lakhs to be invested in fixed deposit. Appellant No. 2 received a notice under Section 102, Cr.P.C. on 29.3.1994 from CBI requiring it to stop operation of the accounts/locker etc. as detailed therein standing in the names of Mohd. Dawood Ahmedabadi and his relatives. Respondent is the brother of Mohd. Dawood Ahmedabadi. Acting on this notice, the appellant No. 2 returned the said cheque alongwith covering letter dated 29.3.1994 to said Mohd. Dawood Ahmedabadi, Constituted Attorney of respondent who sent the cheque, referring to said notice from CBI. Subsequently, on receiving instruction from CBI, the appellant No. 2 sent a letter on 22.7.1995 which was received the same day by the respondent, intimating him that he may operate the said S/B Account. Respondent served a legal notice dated 15.7.1997 to which reply was sent on 22.7.1997 by appellant No. 2. Thereafter, complaint was filed by the respondent, against both the appellants on 25.9.1997 alleging deficiency in service in not making fixed deposit for Rs. 3

lakhs. In terms of the order under appeal, the appellant No. 2/opposite party No. 2 was directed to pay interest @ 12% per annum on the amount of Rs. 3 lakhs from 1.4.1994 to 14.5.1996, Rs. 25,000/- by way of compensation, and Rs. 3,000/- towards costs of proceedings to the respondent. Complaint Case No. 286 of 1997 was filed by Smt. Sufia M. Ahmedabadi on the allegations identical to that made in Complaint Case 270 of 1997 excepting that S/B Account was 3745, respondent was intimated regarding operation of this account on receipt of communication from CBI by appellant No. 2 by the letter dated 15.5.1996 and complaint was filed on 13.10.1997. To be only noted that this respondent was allowed relief similar to that granted to the respondent in F.A. 392 of 2002 by aforesaid order dated 22.8.2002 by the State Commission.

Appellants contested both the complaints by filing separate written versions. It was not disputed that respondent in both the appeals were having Saving Bank Accounts with appellant No. 2 as alleged. However, it was stated that 2 cheques both dated 28.3.1994 were received in the Bank on 29.3.1994 and not on 28.3.1994. Appellant No. 2 received notice under Section 102, Cr.P.C. dated 29.3.1994 from CBI for stoppage of operation of the accounts/locker, etc. in the name of Mohd. Dawood Ahmedabadi and his relatives. Anwar D. Ahmedabadi (respondent in F.A. 392 of 2002) is the brother while Smt. Sufia D. Ahmedabadi (respondent in F.A. 393 of 2002) is the wife of Mohd. Dawood Ahmedabadi. In view of said notice, both the cheques were returned to the respondents on 29.3.1994 itself. It was emphatically denied that there had been any deficiency in service on the part of appellant No. 2 as alleged. Complaints were alleged to have been filed after the period of limitation prescribed under Section 24(A) of the Consumer Protection Act, 1986 (for short the Act).

3. WE have heard Mr. Shoib I. Memon for appellants and Mr. Anand Patwardhan for respondents in both the appeals. Submission advanced by the learned Counsel appearing for appellants was mainly two-fold : (i) complaints filed by the respondents were barred by limitation; and (ii) amount of 2 cheques issued by the respondents in the sum of Rs. 3 lakhs each was not converted into fixed deposits in view of notice under Section 102, Cr.P.C. dated 29.3.1994 received from CBI. On the point of limitation, it is not in dispute that Complaint Case No. 270 of 1997 was filed by Anwar D. Ahmedabadi, respondent on 25.9.1997 while Complaint Case No. 286 of 1997 by Smt. Sufia M. Ahmedabadi, respondent on 13.10.1997. In terms of letter sent by appellant No. 2 to Anwar D. Ahmedabadi, respondent dated 22.7.1995 (at P-32) which was received by the addressee the same day, the bank intimated the respondent that it was in receipt of a letter from CBI informing that operation of S/B account No. 3611 may be allowed. Such an intimation was also sent by appellant No. 2 to Smt. Sufia, respondent by the letter dated 15.5.1996 (at P-26). Cause of action to file complaints against the appellants had accrued to the respondents on 29.3.1994 when appellant No. 2-Bank did not covert the amount of 2 cheques for Rs. 3 lakhs each in view of notice under Section 102, Cr.P.C. received from CBI on 29.3.1994. Taking that date as starting point of limitation, the complaints filed beyond the period of two

years on 25.9.1997 and 13.10.1997 were barred by time. Even if date of 22.7.1995, on which appellant No. 2 intimated Anwar D. Ahmedabadi, respondent that he had been permitted to operate the said S/B Account by CBI, is taken for computation of limitation, the complaint filed by Anwar D. Ahmedabadi was time-barred. To be noted that in the order under appeal, the State Commission has taken the date of 15.5.1996 on which intimation to the said effect was sent by appellant No. 2 to Smt. Sufia M. Ahmedabadi, respondent as starting point for limitation in both the complaints. Obviously, in Complaint Case No. 270 of 1997, this date could not have been taken as the complainant/ respondent thereon was served with intimation to the above effect on 22.7.1995. In our view, in Complaint Case No. 286 of 1997 also date of 15.5.1996 could not have been taken for computation of limitation for filing complaint as the cause of action had accrued on 29.3.1994.

4. THIS brings us to the second limb of submission referred to above. It may be mentioned that according to respondents, 2 cheques for Rs. 3 lakhs each for being invested in fixed deposits, were given in appellant No. 2-Bank on 28.3.1994. However, the appellants allege that the cheques were delivered on 29.3.1994. Along with memorandums of appeal, the appellants have filed photostat copies of the cheques in question. Those bear the stamp of appellant No. 2-Bank dated 29.3.1994. During the course of arguments, the Counsel of respondents handed over copy of covering letter in regard to one of the cheques signed by Mohd. Dawood Ahmedabadi, constituted attorney of Anwar D. Ahmedabadi, respondent. It bears the date of 29.3.1994 along with endorsement on left side regarding receipt of cheque presumably by an officer of appellant No. 2-Bank dated 29.3.1994. Presumably, indentical covering letter was sent alongwith the other cheque. Bank stamps appearing on both the cheques in question as also covering letters conclusively point out that the cheques were delivered to appellant No. 2-Bank on 29.3.1994 instead of 28.3.1994. As may be seen from the impugned order, in reaching the conclusion that appellant No. 2-Bank was deficient in service by not converting the amounts of 2 cheques into fixed deposits, the State Commission has referred to the order passed by ACMM dated 23.9.1994 (at P-25). THIS order was passed on an application filed by one Iqbal Rasool Thasarwala, which application was dismissed as withdrawn in view of the statement made by his Counsel. In this order, observation was made that CBI could not issue prohibitory order to the banker of the applicant. In the decision in State Bank of Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685, it was held by the Supreme Court that bank account of an accused or any of his relatives is ''property'' within the meaning of Section 102, Cr.P.C. and a police officer in course of investigation can seize or prohibit the operation of the bank account if such assets have direct links with the commission of offence which the police officer is investigating into. Obviously, observations made in the said order run counter to the ratio in Tapas D. Neogy''s case (supra), and the respondents, thus, cannot take advantage of such an observation. Further, said order dated 23.9.1994 ought not to have been referred to in the order under appeal as it

pertained to a person other than the respondents and the application had resulted into dismissal as withdrawn. In view of aforesaid notice under Section 102, Cr.P.C. dated 29.3.1994, the appellant No. 2 was well within its rights not to convert the amounts of 2 cheques into fixed deposits and return them to the respondents. We are unable to agree with the State Commission that there was deficiency in service on the part of appellants in not converting the amounts of 2 cheques into fixed deposits. Order under appeal, thus, deserves to be set aside. For the foregoing discussion, both the appeals are accepted and the order dated 22.8.2000 is set aside and complaints dismissed. Appeals allowed.