(1993) 08 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

MULAKH RAJ — APPELLANT

Vs

Central Bank of India — RESPONDENT

Date of Decision : 03-08-1993

Acts Referred:

Citation : 1993 3 CPJ 1683 : 1993 3 CPR 394 : 1994 1 CPC 214

Hon'ble Judges : S.S.Dewan , R.L.Gupta , Gurkanwal Kaur J.

Final Decision : Complaint dismissed with costs

Judgement

1. THIS is a complaint u/Sec. 17 read with Section 12 of the Consumer Protection Act, 1986 (for short ''the Act'').

2. IT has been averred in the complaint that on 19.5,1992, Malkiat Singh, a resident of village Sardarpura, Tehsil Jagraon had executed an agreement whereby Mulakh Raj complainant was employed at a monthly salary of Rs. 1,200/- to look after his land measuring 30 Killas, situated in village Sardarpura, District Ludhiana for the year 1992-93 and he paid Rs. 40,000/- to him in cash for purchasing fertilizer and using insecticide for his crop. IT is alleged that the complainant retained Rs. 10,000/- with him and deposited the balance amount of Rs. 30,000/- with Central Bank of India, Phagwara Branch for 46 days @ 12.5% interest. The case of the complainant is that on maturity of the FDR on 10.8.1992, he asked the respondent-Bank to give him the amount of Rs. 30,000/- along with interest, but the latter refused to do so. His case is that due to the refusal of the respondent-Bank to pay him amount of the FDR, he could not feed the crop with the necessary fertilizer and insecticide as a result of which the crop was damaged. IT is alleged that due to the recalcitrant attitude of the respondent-Bank, he had to pay Rs.1,40,000/- as damages to Malkiat Singh. Aggrieved thereby, the complainant preferred this complaint. On notice being issued, the respondent-Bank resolutely defended the complaint and took up a primal plea that the complainant had suppressed the material fact that the firm Rehan Engineering Corporation, Phagwara was maintaining a cash credit account with the Bank against the sanctioned cash credit hypothecation limit of Rs.

75,000/- together with interest from 1.4.1992 and a sum of Rs. 1,17,834/- was due to the Bank from that firm and its partner, Mulakh Raj, complainant who was one of the partners of the firm and that he, alongwith other partners, was jointly liable to pay the Bank''s dues. It is alleged that the complainant vide his letter dated 6.6.1992 (Annexure RI) offered to pay a sum of Rs.75,000/- against the amount of Rs.1,17,834/- and promised to pay Rs. 30,000/- by 25.6.1992 and that in pursuance of that offer of compromise made by him, he deposited Rs. 30,000/- vide his letter dated 23.6.1992 (Annexure R2) but this offer of the complainant was not accepted by the Bank and then he vide his letter dated 28.7.1992 (Annexure R3), increased his offer from Rs. 75,000/- to Rs. 90,000/- and on receipt of that letter, the Bank wrote back to him that if he agreed to pay rupees one lakh, his offer might be conidered favourably and that instead of replying to the letter of the Bank, the complainant filed this complaint on wrong and fabricated facts. It is further alleged that even after filing the complaint, the complainant repeated his offer vide his letter dated 4.11.1992 (Annexure R4) to pay Rs. 90,000/- in full and final settlement of the loan standing in the account of the firm. It is averred that this complaint was filed to put pressure on the Bank to come to settlement on his terms. On merits, it is stated that the agreement (Annexure C-5) was a fabricated document. The other allegations made by the complainant were, however, stoutly denied. Regarding the FDR, it is alleged that the respondent-Bank had lien on the amount of the FDR, because the complainant being a partner of the firm, was liable to pay to the Bank its dues amounting to Rs. 1,17,834/- along with interest from 1.4.1992. It is further alleged that a perusal of the copies of certificates of encashment of STDR (Annexures C3 & C4) for Rs. 40,655/- and Rs. 85,376/- respectively show that the same were encashed prematurely by the complainant on 26.8.1992 and these certificates indicate that the complainant had the amount of Rs. 1,26,031/- in his account on that day and that when the bank refused to pay Rs.30,000/- to the complainant on 10.8.1992, he had the necessary amount with him for feeding the crop with the fertilizer etc.

We have heard Shri Rajan Gupta, Advocate for the complainant and Shri Raj Kumar, Advocate for the respondent and perused the record with requisite care.

3. IN support of his case, the complainant rested himself content by putting in the documents Annexures C1 to C5. No other evidence was adduced and no reason as to why he had refrained from appearing in the case was indicated. IN rebuttal, the respondent-Bank relied on the documents (Annexures R1 to R6). IN the present case what is surprising is that the complainant had alleged that Malkiat Singh had executed an agreement whereby he (complainant) was employed at a monthly salary of Rs.1,200/- to look after his crop and he paid him Rs.40,000/- in cash for purchasing fertilizer and using insecticide for his crop. Obviously in whose presence the said agreement was executed, were the best witnesses to depose directly with regard to the execution of that agreement. IN view of what has been indicated above, it is not possible to arrive at any categoric finding that the alleged agreement was executed by Malkiat Singh. It is

an old addage that the complainant''s case has to stand on its own legs. It would be somewhat obvious in the present case that there is not a title of evidence on behalf of the complainant to establish the factum of execution of the alleged agreement by Malkiat Singh. On the other hand, the firm stand of Sh. Raj Kumar, learned Counsel for the respondent-bank is that the complainant by his suspicious conduct, has rendered himself ineligible for relief within the consumer jurisdiction. It is his case that there was a deliberate attempt on the part of the complainant to suppress the material fact in the complaint filed by him before the Commission. In particular it is pointed out that the firm Rehan Engineering Corporation, Phagwara was maintaining the cash credit account with the Bank against the sanctioned cash credit hypothecation limit of Rs.75,000/- together with interest from 1.4.1992 and a sum of Rs. 1,17,834/- was due to the Bank from that firm and its partner Mulakh Raj, complainant and that he and his other partners were jointly liable to pay the Bank dues. It is contended that these material facts are conspicuous by their absence in the complaint. It is pointed out that the complainant vide his letter dated 6.6.1992 (Annexure R1) offered to pay a sum of Rs.75,000/- against the amount of Rs.l,17,834/- and promised to pay Rs. 30,000/- by 25.6.1992 and in pursuance to that offer, he deposited Rs. 30,000/- vide his letter dated 23.5.1992 (Annexure R2) but since this offer of the complainant was not accepted by the bank, the complainant vide his letter dated 28.7.1992 (Annexure R3) increased his offer to Rs. 90,000/- but the bank informed him that if he agreed to pay Rs. 1 lakh, his offer might be considered favourably and that instead of replying to that letter of the bank, the complainant filed the present complaint and fabricated the agreement. We are inclined to hold that there is considerable merit in the aforesaid stance of the learned Counsel for the respondent-bank. The assertion of the respondent-bank has remained uncontradicted and unchallenged. The complainant has deliberately suppressed the aforesaid material facts in his complaint and thus disentitles himself to relief in this jurisdiction.

4. IT is manifest from the record that the complainant being a partner of the firm, Rehan Engineering Corporation, Phagwara, stood surety for the payment of Rs. 1,17,834/- and he had deposited the amount of Rs. 30,000/- with the bank on be half of the principal borrower on 23.6.1992 as is evident from his letter Annexure R2. When the borrower could not repay the amount in exercise of general lien on maturity of Fixed Deposit Receipt and as it was given as security, the respondent-bank appropriated the said amount towards the loan account. IT stands established from the complainant''s own documents Annexures R1 to R4 produced by the respondent-bank that the complainant herein guaranteed the payment of the debt due by the principal borrower and as security pave his Fixed Deposit Receipt, which had, no doubt, matured on 10.8.1992. For these reasons we find that the complainant cannot question the appropriation of amount of Rs. 30,000/- by the respondent-bank and it cannot be said to be any deficiency in service as it is a matter of agreement between the borrowers and the bank. In the result, the complaint is dismissed with costs which we assess at a modest

sum of Rs. 1,000/-. Complaint dismissed with costs.

