**(2005) 11 NCDRC CK 0045**

**In the National Consumer Disputes Redressal Commission**

ORIENTAL BANK OF COMMERCE — APPELLANT

Vs

RAJAN MITTAL — RESPONDENT

**Date of Decision :** 09-11-2005

**Acts Referred:**

**Citation :** 2006 1 CLT 492 : 2006 1 CPJ 159

**Hon'ble Judges :** K.C.Gupta , Devinderjit Dhatt J.

**Final Decision :** Appeal dismissed

# Judgement

1. THIS appeal has been directed by the respondent against order dated 9.6.2005, passed by District Consumer Disputes Redressal Forum-II, U.T. Chandigarh, vide which the complaint of Sh. Rajan Mittal was accepted and it was ordered that the appellant (respondent in the complaint) would continue to pay interest @ 9.25% till the date of maturity of two FDRs. It was further directed to pay compensation of Rs. 500 for causing unnecessary mental agony/ harassment to Rajan Mittal, complainant. However, parties were left to bear their own costs.

2. BRIEFLY stated the facts are that the complainant along with his father Sh. Brij Bhushan Mittal made two fixed deposits of Rs. 10,000 and Rs. 41,000 each with Global Trust Bank Ltd., Chandigarh, for a period of five years carrying interest @ 9.25% p.a. repayable on 23.5.2007 and 1.6.2007 respectively. Copies of fixed deposit receipts are Annexures C-1 and C-2. The Government of India amalgamated Global Trust Bank Ltd. with Oriental Bank of commerce i.e., appellant with effect from 14.8.2004. Consequently, all the assets and liabilities of Global Trust Bank Ltd. stood transferred to Oriental Bank of Commerce. However, the appellant arbitrarily changed the rate of interest of 9.25% to 5.5% to the detriment of the complainant (respondent in the present appeal) retrospectively w.e.f. 14.8.2004 vide letter dated 13.9.2004, Annexure C-3. Respondent (complainant) protested and wrote letter against arbitrary decision of the appellant to change the rate of interest but of no avail. With these allegations, complaint was filed.

Appellant contested the complaint and asserted that it was competent to change rate of interest as per directions of Reserve Bank of India.

3. PARTIES adduced their evidence by way of affidavits. After hearing Counsel for the parties, District Consumer Disputes Redressal Forum-II, U.T. Chandigarh, accepted the complaint as stated in the initial part of the judgment.

4. AGGRIEVED by the said order, Oriental Bank of Commerce has filed the present appeal. We have heard Counsel for the appellant Mr. G.S. Anand, Counsel for respondent Mr. B.B. Mittal and carefully gone through the file. Para No. 5 of the order dated 9.6.2005 reads as under: "On the basis of the reasons mentioned above, we direct that the O.P. shall continue to pay the rate of interest at the rate of 9.25% till the date of maturity of two FDRs. The O.P. is further directed to pay compensation of Rs. 500 for causing unnecessary mental agony/harassment to the complainant. We leave the parties to bear their own litigation expenses, thus, allow the complaint with above mentioned directions but with no costs."

Section 15 (Second Proviso) of the Consumer Protection Act, 1986, reads as under: "Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent of that amount or twenty-five thousand rupees, whichever is less."

5. THE appellant has paid Rs. 250 i.e., 50% of the compensation amount of Rs. 500 at the time of filing of the appeal but had not paid 50% of the amount of interest as vide letter dated 13.9.2004, Annexure C-3, the appellant had reduced arbitrarily the interest rate from 9.25% to 5.5% p.a. However, the District Forum had allowed interest @ 9.25% till the date of maturity of the two FDRs. THE present appeal was filed on 2.8.2005. It was required from the appellant that it should have calculated interest @ 3.75% p.a. over and above 5.5% allowed by it, so as to make it 9.25% up to the date of filing of the appeal and should have also deposited 50% of it by way of cheque or in cash or draft, at the time of filing of the appeal.

6. COUNSEL for respondent contended that the appellant had not complied with the mandatory provision of law laid down under second proviso of Section 15 of the Consumer Protection Act, 1986, according to which appellant was required to deposit 50% of the amount awarded while filing the appeal. He further contended that for want of deposit of requisite amount, the appeal is liable to be dismissed. For this contention, he has placed reliance upon an authority, Haryana State Co-operative Housing Federation Limited v. O.P.S. Tanwar & Another, IV (2005) CPJ 165, in which it was observed that the appellant was required to deposit the amount in the prescribed manner i.e., 50% of the amount directed by the Forum was to be deposited and if not deposited at the time of filing of the appeal, then appeal was not maintainable. It has further been observed in para No. 4 of the said judgment that the interest has to be calculated in the light of

 

relief awarded to the complainant and was required to deposit 50% of the same also. So, interest @ 3.75% p.a. was to be calculated on the amount of two FDRs amounting to Rs. 51,000 for the period 14.8.2004 till the filing of the appeal on 2.8.2005 i.e., of about one year i.e., Rs. 1912.25 and 50% of the said amount should have also been deposited. Having failed to deposit 50% of the interest amount which had become due, the appeal is not maintainable in terms of Section 15 (second proviso) of Consumer Protection Act, 1986. Counsel for appellant contended that he had moved miscellaneous application on behalf of the appellant for condoning the delay of 76 days and vide pay order dated 20.2.2005 he had deposited 50% of the amount of difference of interest and since, there was delay of 76 days in depositing the amount reckoning from the date of filing the appeal on 2.8.2005 so, delay should be condoned and the deposit of 50% of the interest should be held within time as appellant was under mistaken view that interest @ 9.25% p.a. was to be paid at the time of maturity of the said two FDRs and not to be calculated till the filing of the appeal. In our opinion, the contention of learned Counsel is not tenable. The appeal was filed within time. There was no question of condoning the delay in filing the appeal. Provisions of Section 15 (Second Proviso) are mandatory. If 50% of the amount allowed by the District Forum is not deposited along with the appeal, then the appeal is not entertainable. The word used is "shall" which means mandatory. In such circumstances, we hold that application for condonation of delay is misconceived and does not lie and the same is dismissed. We further hold that appeal is also not maintainable in view of the short deposit of 50% of the amount. Consequently, appeal is dismissed as not maintainable, with no order as to costs. Copies of the order be communicated to the parties, free of charge. Appeal dismissed.

 