
(2007) 05 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

ORIENTAL BANK OF COMMERCE

APPELLANT

Vs

RAMAN MITTAL

RESPONDENT

Date of Decision : 28-05-2007

Acts Referred:

Citation : 2007 2 CPR 486 : 2007 3 CPJ 331 : 2007 4 UC 341

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Final Decision : Revision Petition partly allowed

Judgement

1. THESE two revision petition Nos. R.P. 3173 of 2005 and R.P. 3174 of 2005 filed by Oriental Bank of Commerce (For short OBC) challenging the order passed by the State Consumer Disputes Redressal Commission, UT Chandigarh in Appeal Nos. 141 of 2005 and 140 of 2005, respectively.

2. IN both the cases, the question of facts of law are common dismissing the application for condonation of 76 days in filing the appeal. The brief facts giving an occasion to filing of these two petitions are that the complainants, Raman Mittal and Rajan Mittal along with their father Shri Brij Bhushan Mittal made four fixed deposits. Raman Mittal in R.P. No. 3173 of 2005 made two fixed deposits of Rs. 25,000 each with Global Trust Bank Ltd., Chandigarh for a period of five years carrying interest @ 9.25% p.a. repayable on 1.6.2007. Similarly Rajan Mittal in R.P. No. 3174 of 2000 made two fixed deposits of Rs. 10,000 repayable on 23.5.2007 and another of Rs. 41,000 repayable on 1.6.2007, along with his father for five years carrying interest @ 9.25% per annum.

The Global Trust Bank Ltd. was amalgamated with OBC, the present petitioner w.e.f. 14th August, 2004. Consequently, all the assets and liabilities of Global Trust Bank Ltd. stood to OBC in terms of Notification of Government of India dated 13.8.2004.

3. HOWEVER, as per complainant/respondent's version, the Bank arbitrarily changed the rate of interest of 9.25% to 5.5% to the detriment of the complainant retrospectively w.e.f. 14.8.2004 vide letter-dated 13.9.2004. Protest

letters were of no avail. Ultimately, the two above named complainants filed two complaints. The petitioner contested the complaint and submitted that it was competent to change the rate of interest as per the guidelines of Reserve Bank of India.

4. THE District Forum UT Chandigarh allowed the two complaints and directed the petitioner to continue to pay interest @ 9.25% till the maturity of the FDRs and further directed to pay in both the matters compensation of Rs. 500 for causing unnecessary mental agony and harassment to the two complainants. But the parties were directed to bear their own costs. Feeling aggrieved by the order of the District Forum, the OBC, the present petitioner filed appeal before the State Commission. The appeal was dismissed for the petitioner failed to deposit requisite amount in terms of 2nd Proviso of Section 15 of the Consumer Protection Act, 1986. In both the matters, the appellant had paid Rs. 250 i.e. 50% amount of the compensation amount of Rs. 500 but had not paid the allegedly due 50% of the interest which was said to have become due in terms of the order passed by the District Forum for the Bank the interest @ 5.5%. Thus, allegedly the interest was calculated less by 3.75%, the over and above of Rs. 5.5% to be calculated.

5. BUT before dismissal of the two appeals, the Counsel for the OBC moved a miscellaneous application on behalf of the petitioner Bank for condonation of delay of 76 days in depositing the amount by Pay Order dated 20.2.2005. It was further contended that the appellant was under mistaken view that the interest @ 9.25% p.a. was to be paid at the time of maturity of the said two FDRs and it was not required till the filing of the appeal.

6. THE State Commission did not accept the contention and held that there was no question of condoning the delay in filing the appeal for the provisions 2nd Proviso to Section 15 of the Consumer Protection Act, 1986 were mandatory. If the 50% of the amount allowed by the District Forum was not deposited along with the appeal, then the appeal was not maintainable, was the view of the State Commission. We have heard the parties' Counsel at length and gone through the record.

The 2nd Proviso to Section 15 of the Consumer Protection Act, 1986 which provides embargo on entertaining the appeal, 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 percent of that amount of twenty-five thousand rupees whichever is less."

7. THIS proviso relates to procedure in entertaining the appeal. The appeals may not be entertained for it would suffer from defects. But it could not be said that appeals though defective had not been filed in time. The above said proviso has to be read in the light of the celebrated observations of the Supreme Court that all rules of procedure are hand maids of justice. These are not cases where by

the time the order was passed the compliance had not made. Of course, there was delay. Besides, there could possibly be two views of payment of interest as to : "When the interest was payable?" and whether in terms of the order of the District Forum the amount was to be paid forthwith within a specified period?". If interest was not to be paid forthwith in terms of agreement, it might not be payable. If it was not payable forthwith the view taken by the State Commission may not be very much justified. The relevant para of the orders of the District Forum in both the matters is verbatim the same. It is as under : "On the basis of the reasons mentioned above, we direct that the OP shall continue to pay the rate of interest at the rate of Rs. 9.25% till the date of maturity of two FDRs. The OP is further directed to pay a 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. "

(Emphasis supplied)

8. FROM the recital of the facts of the case of the District Forum as well as from the State Commission, it does not appear at all that the interest was to be paid before the date of maturity and the date of maturity is yet to come for it was 23.5.2007 and 1.6.2007. Thus, the above interest was not clearly payable under the order of the District Forum. As such, firstly there was no non-compliance of the 2nd proviso of Section 15 of the Consumer Protection Act, 1986. Secondly, the circumstances indicated that before the actual order of the dismissal, the application for condonation of delay was moved. Since the appeal had already been filed even if there was non-compliance initially and the compliance was made before the dismissal of the complaint, the State Commission was supposed to consider the matter. We do not think that the technicality should be allowed to prevail to such an extent, that substantial justice should be made suffer in any manner. In the light of the well known saying that all rules of procedure are hand maids of justice, the appeal should not have been dismissed on this ground and 76 days delay, even if there was initial delay should have been condoned for before the date of the order of dismissal that deficiency had been removed. In the aforesaid circumstances, the plea that there was delay of 76 days could not be condoned, does not appeal at all. It was submitted that the complainant/respondent would suffer financial loss if the delay was condoned. We do not think that this argument should prevail particularly in the light of facts and circumstances mentioned hereinabove. One should not be oblivious to the fact that in case this scheme was not prepared, the complainants might not have got the amount of the fixed deposits, leave aside loss of interest, in view of the financial position of the Global Trust Bank as is evident from the narration in the notification of the scheme. In such circumstances, if there was any assumed delay, we condone the same for the aforesaid reasons. Now, coming to the merits of the matter, there is no dispute about the facts in between the parties that the fixed deposit was made with the Global Trust Bank, Chandigarh and all the assets and liabilities were transferred to OBC w.e.f. 14.8.2004. In order to

support its contention, the learned Counsel for the appellant had referred to Notification dated 14th August, 2004 issued by the Govt. of India, Ministry of Finance, Department of Economic Affairs (Banking Division). This Notification indicated that in order to protect the interest of the depositors so to do, in exercise of the powers conferred by Sub-section (4) of Section 45 of the Banking Regulation Act had prepared a Scheme for the amalgamation of the Global Trust Bank Ltd. with the OBC. Following definitions of "prescribed date", "transferor bank" and "transferee bank" being relevant and as defined in Section 2 of the Scheme, read as under : "2. In the scheme, unless the context otherwise requires : xxx xxx xxx (4). "Prescribed date " means the date which the Central Government may specify under sub-paragraph (2) of paragraph 1; xxx xxx xxx (6) "transferor bank" means the Global Trust Bank Ltd., a banking company having its Registered Office at Secunderabad, Andhra Pradesh" (7) "transferee bank" means the Oriental Bank of Commerce being a corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).

Chapter III Section 6(1)(b) and Sub-section (4) of the Scheme provided for payment to creditors and depositors which read as under : 6. "Discharge of liability of the transferor bank (1) in respect of : (a) xxx xxx xxx (b) "Every saving bank account or current account or any other deposit account including a fixed deposit, cash certificate, monthly deposit, deposit payable at call or short notice or any other deposits by whatever name called with the transferee bank, the transferee bank shall open with itself on the prescribed date a corresponding and similar account in the name of the respective holder(s) thereof crediting thereto full amount including interest to the extent payable under the Scheme; xxx xxx xxx (4) Notwithstanding anything to the contrary contained in any contract express or implied, interest from the prescribed date shall be paid in respect of the new account opened with the transferee bank and credited in accordance with the provisions of the Scheme only at such rates as the transferee bank normally allows to its own depositors for such accounts." (Emphasis supplied)

9. IT may be mentioned that OBC took the plea that in terms of Notification with regard to the amalgamation of Global Trust Bank Ltd. with OBC, the transferee shall open with its all the deposited amount and corresponding in the names of respective holders crediting full amount including interest to the extent payable under the Scheme.

10. SEEING in this light one could draw inference that while making entries in the account the interest @ 9.25% was to be calculated for the purpose of recording an entry upto that stage and not for the purpose of making payment. In the present case, the rate of interest was changed. Under the Notification of the Govt. of India vide letter dated 13.8.2004 issued by the Govt. of India which reads as under : "NOTIFICATION (E) - In pursuance of Sub-section (7) of Section 45 of Banking Regulation Act, 1949 (10 of 1949), the Central Government

hereby specifies the 14th Day of August, 2004 as the prescribed date in relation to the Scheme for the amalgamation of the Global Trust Bank Ltd. with the Oriental Bank of Commerce which has been sanctioned by the Central Government under the provisions of said Sub-section. Sd/- (Amitabh Verma) Jt. Secretary to the Govt. of India"

For the aforesaid reasons, we feel that order of the District Forum as well as the State Commission awarding interest over and above 5.5% might not be justified and the State Commission should not have dismissed the appeal on the ground of delay of 76 days. If there was any delay by reason of any assumption, it is condoned. The impugned orders of the District Forum as well as the State Commission are set aside.

11. IN view of the aforesaid provisions in the Scheme, the petitioner was supposed to open a similar account in the name of respective holders/complainants of the fixed deposit receipts and crediting thereto full amount including interest to the extent payable under the Scheme up to 14th August, 2004 i.e. prescribed date, and in any case not later than three months from the prescribed date. Since the interest could be reduced only with effect from the prescribed date by the transferee bank, the amount of interest is required to be credited in accordance with the provisions of Clause 6 (1) of the Scheme. Thereafter interest became payable at different rates as specified in Sub-clause (4) of Clause 6 i.e. only "at such rates as the transferee bank normally allows to its own depositors for such accounts." If the interest was being given @ 5.5% to the depositors of similar fixed deposits of transferee bank for such accounts, there could not be any distinction between rates of interest to be given to different sets of depositors - depositors of transferor bank and depositors of transferee, in terms of Sub-clause (4) Clause 6 of the Scheme. Consequently, as and when the rate of interest was modified by the Oriental Bank of Commerce which was being normally allowed to its depositors for such accounts, the complainants/respondents would be entitled to get interest at the same enhanced or reduced rate, as was being allowed to its own fixed depositors.

12. SINCE the date of maturity has either come or is about to come in few days with effect from 14th August, 2004, the interest shall be payable in respect of these four FDRs to the depositors of the transferor bank at the prevailing rate(s) of interests as the Oriental Bank of Commerce has allowed to its own depositors for such accounts. OBC is directed to calculate principal and interest accordingly and pay the same on maturity. For the aforesaid facts and circumstances, both the revisions are partly allowed in above terms and the parties are left to bear their own costs. Revision Petition partly allowed.