(1998) 06 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

Punjab National Bank APPELLANT

Vs

NISHA GUPTA RESPONDENT

Date of Decision : 26-06-1998

Acts Referred:

Citation : 1998 3 CPJ 415 : 1999 1 CLT 644 : 1999 1 CPR 562 : 1999 2 CPC 53

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Appeal disposed of

Judgement

1. BY order dated 9.12.1994, District Forum-II, New Delhi disposed of three Complaints No. 196/94, Ms. Misha Gupta, 197/94, Dr. Sukhlal Gupta, 108/94 Dr. Mrs. Nisha Rani Gupta. Arrayed as opposite parties in these three complaints were (i) M/s. All Seasons Foods Ltd. and (ii) Punjab National Bank. The District Forum allowed the three complaints and directed both the opposite parties to refund the application money paid by the complainants alongwith 15% interest per annum compounded annually from the date of deposit to the date of payment in addition to Rs. 2,000/- in each case as damages for harassment and costs. It was further directed that in case of default in complying with the said order, the complainant shall be entitled to further interest @ 24% per annum on the total amount becoming payable under the order. Opposite party No. 2, the PNB have preferred this apepal. In order to appreciate the contentions raised before us, brief facts may be stated as under:

2. IN 1990, respondent No. 1, came out with a public issue. M/s. Misha Gupta made two applications for the allotment of 100 + 30 FCDs and paid alongwith her application an amount of Rs. 7.000/- + 2,100/- a total of Rs. 9,100/-. Dr. Sukhlal Gupta also made two applications for 100 and 30 FCDs and paid Rs. 8,400/- and Rs. 2,100/- alongwith applications. Dr. Mrs. Nisha Rani Gupta applied for 100 FCDs and paid Rs. 7,000/-. The date of opening of the issue was 30th August, 1990 and date of closing of the issue was March 27, 1991. The applications alongwith cheque for the aforesaid amounts were deposited at Sansad Marg Branch of Punjab National Bank in time. The complainants failed to

receive either allotment advice or refund of the amount in spite of repeated correspondence. They approached District Forum for necessary relief. The opposite parties failed to appear and the District Forum disposed of the complaints as stated earlier. Aggrieved by the order, the PNB, opposite party No. 2, has preferred this appeal. In objection was taken by the respondents that the appeal was barred by limitation. By a detailed order dated 5.6.1996, we condoned the delay and have carefully heard both the parties on the merits of the case.

The first contention of Mr. Raina, learned Counsel for the appellant is that PNB had sent a registered letter dated 16.6.1994 to District Forum- II stating out its version. Admittedly the said letter was received in the District Forum and was part of the record. The same was, however, not taken into consideration on when the impugned order had been passed on 9.12.1994. In the aforesaid letter, PNB had informed the District Forum that the complainants'' applications had been duly forwarded to their collecting branch at Bombay for onward delivery to the Company/ Registrar to the issue and the PNB Sansad Marg Branch was not deficient in rendering service to the complainants. Since that very stand has been taken before us, all questions raised, both of fact and law, can be gone into in this first appeal. It is, therefore, not of much practical significance that the District Forum failed to consider the aforesaid reply sent during the pendency of the complaints. The case of the appellant Bank is that cheques drawn by the complainants were duly credited to the account of the Company. At the relevant time winding up petition was filed against the Company. The learned Company Judge, Bombay High Court by order dated 11.11.1992 in Company Petition No. 408/91 ordered the Company to be wounded up and Official Liquidator, attached to the High Court was appointed Liquidator of the Company. Under Section 456 of the Companies Act, all the assets belonging to the Company were deemed by fiction of law to be in the custody of the Court from the date of the winding up orders. In accordance with the instructions of the Company, the amount collected was put in Fixed Deposit. The Company could not complete the basic formalities like basis of allotment, etc. and it was ordered to be rounded up. The fixed deposits were renewed from time to time. Further contention is that the Bank having not utilised the amount for any other purposes and the amount vested in the Official Liquidator, the same could be paid only under orders of the High Court and there was no deficiency in service as far as the Bank was concerned. Copy of the order dated 11.11.1992 passed in company petition by the Bombay High Court has been placed on record together with relevant correspondence exchanged between the Official Liquidator and the Bank. Mr. Raina also pointed out that while some other Banks which had been specified for collecting the applications amount were expressly named in the order of the High Court, the name of PNB was conspicuous by its absence. Unless the complainants obtain an order from the High Court, PNB was unable to pay the amounts

3. WE have carefully considered the contentions of both parties. WE are clearly of the view that the responsibility of PNB, Sansad Marg, did not end by merely

forwarding the list of applications alongwith amount to their Central Collecting Branch at Bombay. Whereas the amount was paid in 1990, the Official Liquidator came to be appointed under order dated 11.11.1992. From the correspondence placed on record we find that even though the Official Liquidator had asked the PNB to pay the amount to individual subscribers alongwith 12% interest in accordance with the directions of the High Court. The amount had not been paid in accordance therewith. Though the name of PNB does not occur in the order of the High Court dated 11.11.1992, it cannot be disputed that the Official Liquidator wrote on 14.1.1996 calling upon PNB in particular to comply with the order of the High Court in this case. It is not disputed that the PNB was one of the Banks who were specified by the Company to collect the applications alongwith the application money. The letter aforesaid sent by the Official Liquidator to the PNB leaves no room for doubt that PNB also occurs as one of the Banks in proceedings pending before the High Court. From the reply sent by the Bank, the only dispute appears to be that they were not liable to pay interest @ 12% on the amount lying in deposit under FDR in accordance with the instructions of the Company given at the relevant time. In other words, the only dispute is regarding the rate of interest. Admittedly the money has been lying with the Bank throughout in the account of All Seasons Foods Ltd. The complainants have been deprived of the use of the money since its payment in 1990. In the facts and circumstances of the case, we are of the view that there should have been no objection to the PNB paying nterest which is payable to a long term FDR of say five years. We, therefore, dispose of the appeal with a direction to the PNB to pay the amount sent by the complainants alongwith interest which was payable on FDR for a period of five years at the rate (sic.) in force during the relevant period alongwith Rs. 1,500/- as costs to each of the complainants, respondents herein within six weeks of the receipt of a copy of this order. All terms to the contrary, given by the District Forum are set aside. The appeal is disposed of in these terms. A copy of the order be furnished to the parties. Appeal disposed of.

