

(1997) 10 NCDRC CK 0062

In the National Consumer Disputes Redressal Commission

Ramdayal

APPELLANT

Vs

MANAGER, JILA SAHAKARI BHUMI VIKAS BANK

RESPONDENT

Date of Decision : 15-10-1997

Acts Referred:

Citation : 1998 1 CPC 703 : 1998 1 CPJ 220

Hon'ble Judges : Saroj Rajwade , N.K.Vaidyas J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against order dated 31.1.1995 of District Consumer Disputes Redressal Forum (hereafter for short "District Forum") Satna in Case No. 5/91.

2. THE facts of the case in brief are that appellant is a cultivator and he wanted to buy a tractor trolley cultivator and levellor for his field. He therefore got loan sanctioned from respondent and mortgaged his land to buy above agriculture implements and bought SWARAJ 735 tractor from M/s. Hari Traders, Morena (opposite party No. 1). For this purpose he deposited Rs. 31,000/- for tractor and Rs. 11,000/- as margin money on 25.7.1991 in respondent Bank. Respondent also directed appellant to deposit Rs. 3,636/- as difference money with M/s. Hari Traders, Morena and pick up his tractor. Appellant has averred that he deposited Rs. 10,000/- as difference money for tractor and trolley on 30.8.1991 and got his tractor but M/s. Hari Traders neither gave him bill nor explained as to how the money was charged from him. He did not get the trolley either, nor refund of money deposited. Since he could not get trolley and other implements, his work on his field suffered loss badly and he could not deposit the instalments of the loan in the Bank. Respondent Bank thereafter seized his tractor and started auction of the seized property to recover loan money. On his approaching District Authorities, the auction was stopped but the tractor continues in Police Station and appellant alleged that several parts of the tractor have been removed in police station. He therefore filed a complaint in District Forum and prayed for refund of Rs. 5,056/- paid as difference money + 2% interest on it and direction

to return his tractor to his custody. District Forum after hearing both parties and going through record and affidavits rejected the complaint. Appellant has filed this appeal on following grounds. (a) During the pendency of his case in District Forum, opposite party No. 3 in the District Forum signed a compromise document with the appellant by which they paid him Rs. 5.000/- in cash and Rs. 45.000/- by Bank draft for not giving agriculture implements in time. Appellant filed the compromise document in the District Forum on 25.10.1994. This document creates a reasonable doubt in the mind that appellant was not given the goods and was harassed. Otherwise, opposite parties No. 1 and 3 would not have entered into a compromise. Even then District Forum did not attach importance to it though appellant had given up his claim only against opposite parties No. 1 and 3. (b) District Forum has not given due importance to his plea that respondent-Bank had demonstrated deficiency in service by not going deep into the documents filed by opposite parties No. 1 and 3 about handing over trolley, cultivator, levellor to appellant. The action of seizing and trying to auction the tractor for nonpayment of instalment was wrong. In the end appellant prayed for return of tractor with all parts alleged to have been removed after seizure and waiving the interest on instalment.

We have heard both the parties and have perused the voluminous documents containing affidavits and counter affidavits filed by both the parties. It is clear from the perusal of documents that the most significant document is the compromise document between appellant and opposite parties No. 1 and 3 of District Forum. In this compromise opposite parties No. 1 and 3 paid Rs. 5.000/- in cash and Rs. 45,000/- by Bank draft for the non-delivery of trolley and cultivator and other things and in return appellant gave up his claim against them. This document was filed before the District Forum and finds a mention in the order-sheet of District Forum. It is also significant that respondent Bank had asked appellant to deposit money and obtain implements from opposite party No. 1. Opposite party No. 3 has given quotation for trolley, levellor and cultivator. There is a lot of force in the averments of the appellant that he did not get these implements and, therefore, could not do the work in his field and hence was unable to pay the instalment in time. Respondent-Bank's action to seize the tractor instead of enquiring closely into the alleged failure of opposite party No. 1 to supply implements in time and giving dubious document, constitutes deficiency in service because as a Land Development Bank it was the duty of the Bank to safeguard interest of cultivator whose land was to be developed with the help of Bank. Since the document of purchase of trolley, levellor etc. have been proved to be false some blame ! must be attached to Bank also. We hold accordingly. We therefore feel that appellant deserves to be compensated for this deficiency in service | which caused him loss, as he was unable to do the work in his field.

3. WE shall now consider about the next prayer of the appellant viz. waiving of interest. Perusal of documents reveal that respondent Bank was ready to return the tractor provided the appellant signed the contract and paid the balance

money. It is also not disputed that instalments of loan have to be paid in time or unless has to be paid for late payment. WE do not wish to encourage any cultivator to get a feeling that loans have not to be repaid in time and therefore do not wish to pass any order about waiver. However, we do wish to observe that respondent-Bank should consider this case sympathetically in view of the circumstances of this case and give him such relief as the rules permit. 6. In the context of discussion in preceding paragraphs the appeal succeeds and is allowed. Order dated 31.1.1995 of the District Forum is set-aside. Appellant shall pay the dues outstanding against him. Thereafter in order to compensate the applicant for deficiency in service as observed by us in para 4 we direct the respondent to release the tractor after doing repairs to it to the entire satisfaction of appellant. No order as to costs. Appeal allowed.
