(2003) 04 NCDRC CK 0082

In the National Consumer Disputes Redressal Commission

SALIGRAM RAMESH CHANDRA APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 03-04-2003

Acts Referred:

Citation : 2003 2 CPC 63 : 2003 2 CPR 31 : 2003 3 CPJ 18 : 2004 1 CLT 505

Hon'ble Judges : K.S.Gupta , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the order dated 3.6.2002 of Consumer Disputes Redressal Commission, Rajasthan at Jaipur whereby the complaint filed by appellant was dismissed with the observation that respondent/opposite party-Bank would pay to the appellant the sums lying in the suspense account with or without interest as per Rules.

2. FACTS giving rise to this appeal, in brief, are these. Appellant is a partnership firm engaged in the business of converting gram into gram dal and during the year 1969 it entered into a contract with Food Corporation of India (FCI) to convert gram into gram dal for it at agreed rate(s). Branch Office at Jhunjhunu of the respondent-Bank stood as one of the two guarantors for the appellant and issued Performance Bank Guarantee for Rs. 5 lakhs in favour of FCI. Since appellant did not perform its part of the contract within the specified time, the FCI forfeited the security deposit of Rs. 75,000/- and also rescinded the contract on 20.1.1970 and respondent-Bank was intimated accordingly. It is further alleged that on 30.4.1971, FCI filed a civil suit before District Judge Jhunjhunu against the appellant, respondent, State Bank of Bikaner and Jaipur, the other guarantor and others for recovery of Rs. 3,81,070.35 which was decreed on 29.8.1989 against the appellant and State Bank of Bikaner and Jaipur. Suit was, however, dismissed against the respondent. State Bank of Bikaner and Jaipur filed Appeal No. 157 of 1989 in the High Court against the said judgment and decree dated 29.8.1989. Appellant was having in credit in its Cash Credit Account - Rs. 9,046/- w.e.f. 10.6.1970 and Rs. 9,780/- w.e.f. 20.7.1971 with the

respondent-Bank. Case of the appellant is that these amounts have grown to Rs. 14,55,900/- including interest @ 18% per annum which the respondent did not pay despite service of legal notice. Alleging deficiency in service on the part of respondent in not making payment of said amount, the appellant filed the complaint against the respondent. Respondent contested the complaint by filing written version. It was alleged that appellant had Cash Credit Account No. 81 and Current Account No. 196 with the Bank; Account No. 81 was closed on 1.6.1971 by transferring the balance of Rs. 5,922.12 therein to the Current Account No. 196; two amounts referred to in the complaint related to the collection of bills of exchange drawn on FCI by the appellant firm. It was further alleged that since FCI had invoked the performance Bank guarantee by filing civil suit against the appellant and two guarantors, the respondent-Bank stopped the operation of the said account and transferred the amount lying therein to suspense account. After the decision in civil suit, the appellant by the letter dated 20.6.1990 addressed to State Bank of Bikaner and Jaipur along with authority letter dated 10.7.1990 executed by appellant in favour of State Bank of Bikaner and Jaipur, had required State Bank of Bikaner and Jaipur to collect amount of Rs. 19,870/- with interest from the respondent but as the litigation was still pending, the respondent did not transfer the said amount to State Bank of Bikaner and Jaipur. It was also alleged that complaint is barred by time.

As is manifest from the order under appeal (at pp. 1-5), the State Commission returned the finding that limitation for the purpose of filing complaint started running when the respondent Bank despite the letters sent by appellant on 10.7.1990 and 20.10.1990 declined to transfer the amount lying in the suspense account to State Bank of Bikaner and Jaipur and the complaint filed on 23.8.1996 was, thus, barred by limitation. Submission advanced by Mr. S.S. Jangra for appellant was that limitation would start running w.e.f. 30.5.1996 on which date in the reply sent by the respondent to appellant''s notice dated 19.4.1996, it declined to return the amount in question. Submission is, however, without any merit. It is not in dispute that after the civil suit filed by FCI against the appellant and others was disposed of on 29.8.1989, the appellant by their letter dated 10.7.1990 which was followed by letter dated 20.10.1990 sent through State Bank of Bikaner and Jaipur, branch office at Surajgarh, had required the respondent to transfer the said amount of Rs. 19,870/- to said branch of State Bank of Bikaner and Jaipur but the respondent declined to do so. That being the position, starting point of limitation can only be the end of year 1990. Once limitation started running since then, the appellant could not make it to re-run from the date of receipt of reply of notice dated 30.5.1996. Obviously, complaint filed on 23.8.1996 was hopelessly barred by limitation and the State Commission had, thus, rightly non-suited the appellant in terms of order under appeal. Appeal, thus, deserves to be dismissed being without any substance. Accordingly, the appeal is dismissed being without any merit. No order as to costs. Appeal dismissed.

