(1991) 11 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

SANJIV TEXTILES PVT. LTD. — APPELLANT

Vs

State Bank of India — RESPONDENT

Date of Decision : 15-11-1991

Acts Referred:

Citation : 1992 1 CPJ 402 : 1992 1 CPR 591

Hon'ble Judges : S.A.Shah , Leelaben Trivedi , R.K.Shah J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant is having his account with State Bank of India, the opposite party. According to the opposite party he was granted cash credit facility. THE complainant required a bank guarantee in Supreme Court appeal and on payment of commission and advance margin money the Bank has given a guarantee dated 24.1.84. THE said guarantee was for the period of 3 years and there is a provision that the same can be renewed till the final disposal of the appeal before the Supreme Court of India.

2. IT appears that the guarantee period expired on 23.1.87 and according to the complainant, he approached the opposite party No. 2, Bank for extending/or renewing the guarantee for a further period of 3 years. The margin amount of Rs. 60,000/- was already with the Bank in the form of Fixed Deposit and some interest had also accrued thereon. So there was no need for the complainant to pay further margin money. It appears that considering the financial position of the complainant the Bank did not agree to extend/renew the bank guarantee for a further period of 3 years and in fact there is no bank guarantee either with the High Court or in the file of the Bank which was extended from 23.1.87 to 22.1.90. However, Mr. Bhatt, learned advocate appearing on behalf of the complainant has relied upon one report and the Bank register to show that the guarantee was renewed to which we will refer subsequently.

The Bank by letter dated February 9,1987 informed the complainant that the Bank will renew the guarantee only if 100% cash margin against such guarantee is deposited with the Bank and according to the Bank the guarantee has not been renewed or extended after 23.1.87.

3. THE F.D.R. being matured on 19.4.87, the complainant appears to have renewed the same including the interest i.e. a second F.D.R. for the amount of Rs. 63,000/- was issued by the Bank in the name of the complainant for a period of 3 years. Mr. Desai, learned Counsel appearing on behalf of the opposite party states that the complainant renewed this F.D.R. in the hope that the Bank might consider his request and renew the guarantee. But according to Mr. Desai the Bank had never agreed to renew the guarantee unless the complainant deposits 100% margin money. In these circumstances the F.D.R. for Rs. 63,000/- remained in the custody of the Bank and there is no evidence to show that a renewed bank guarantee has been actually issued by the Bank as desired by the complainant The F.D.R. became mature for payment on 20.4.90 on expiry of the term of 3 years for which it was renewed and it appears that the Bank unilaterally realised that amount of the fixed deposit and credited the said amount in the cash credit account of the complainant.

4. THE complainant has, therefore, raised the contention that the Bank had no power or authority to adjust this amount of Rs. 63,000/- in his general cash credit account because according to the learned advocate of the complainant Mr. Bhatt''s submission the said amount was impress with special characteristic of deposit which cannot be unilaterally adjusted by the Bank in another account of the complainant. Mr. Desai appearing on behalf of the Bank refuted this submission of Mr. Bhatt and stated that the Bank has a general lien as well as a lien over the security under provisions of Section 171 of the Contract Act and the Bank in exercise of that general lien and the powers under the provisions of Section 171 of the Contract Act withdrew this amount from the fixed deposit account and credited the same in the cash credit account of the complainant The dispute that arises in this case is whether the action of the Bank in realising the amount of fixed deposit and crediting that amount of Rs. 63,000/- in the cash credit account of the complainant is legal and binding to the complainant or not. I have heard the learned advocates of both the parties at length. Mr. Bhatt has heavily relied upon the decision of Delhi High Court in the case of Vijay Kumar v. M/s. Jullunder Body Builders, Delhi and Others reported in AIR 1981 Delhi Page 126. This judgment reiterates the principle that the general right of lien under Section 171 of the Contract Act is subject to a contract to the contrary i.e. if by a particular contract an amount is deposited with the Bank for a particular purpose attached with such fixed deposits the Bank cannot exercise its general right of lien. The same principle has been reiterated in two mere judgments quoted by Mr. Bhatt. One is of Delhi High Court and another is from Madras High Court. In case before the Delhi High Court there was a fixed deposit given to the Bank as a security for the guarantee given by the Bank for the liability of the customer. There was an endorsement of the Bank Manager on the reverse of the letter given by the customer in connection with the guarantee on the usual printed form indicated that the fixed deposit receipts were given in connection with the bank guarantee only, the letter therefore had to be read with the endorsement

and so read to constitute a contract contrary to the general lien of the Bank. Therefore the question arises is whether there is any evidence to show that a contract to the contrary had been entered into between parties when the complainant gave second fixed deposit to the Bank though we do not dispute the contention of Mr. Bhatt that the second fixed deposit was given by the complainant in anticipation and hope that the Bank will change its decision to deposit 100% amount for the bank guarantee. But there is no specific evidence or written instructions given by the complainant to the Bank to the effect that the said amount has been deposited with the fixed deposit as margin money and the same shall be treated as margin money only. A contract to the contrary have to be proved to defeat the general right of lein given to the Bank under Section 171 of the Contract Act

5. MR. Bhatt thereafter relied upon one report (Anex. S) made by the Deputy General Manager which reproduced the various facilities given to the complainant. In the column of bank guarantee the limit is shown as Rs. 3.50 lacs and in the column of outstandings as on 30.6.88 Rs. 2.33 lacs is shown. Basing the argument on these figures, MR. Bhatt says that the Bank shall have the amount of Rs. 2.33 Lakhs which was outstanding on 30.6.88.

6. MR. Desai submits that after the adjustment the Bank has also field a civil suit in the City Civil Court against the complainant, copy of which has been produced at Annexure-I with the written statement. The suit is registered as Civil Suit No. 3244 of 1990 and in para 3 of the suit the Bank has explained that "the facility for giving bank guarantees on behalf of defendant No. 1 upto a limit of Rs. 3.50 lacs. Defendants No. 2 and 3 also gave their personal guarantee to pay the plaintiffs dues from defendant No. 1 in respect of the aforesaid facilities." In para 4(A) it is written as under: "Defendants executed the following documents for cash credit facilities of Rs. 21,00,000/- and the facility for giving letter of credit, guarantee and Indemnities for Rs. 3,50,000/-."

The argument is that it refers to the general facilities and not this particular guarantee.

At the request of the complainant''s advocate the Bank has produced the xerox copy of guarantee register, F.D.R. register, letters written to High Court and xerox copy of F.D.Rs. We have also perused the register produced by the Bank and the register of bank guarantee clearly shows that the same was to expire on 23.1.87. It also appears that the Bank has written letter to the Registrar of High Court to return the guarantee and, therefore, the noting has been made regarding the letter and reminders and ultimately the original guarantee having not been returned by the Registrar the Bank has cancelled that entry on 28.11.88. There is no evidence to show that the guarantee has been renewed or extended after 23.1.87

7. IN any view of the matter that the Bank having filed the suit in the City Civil Court of Ahmedabad against the complainant for recovery of the outstanding

amount and if the complainant thinks that the Bank has wrongly adjusted Rs. 63,000/- which was, according to him impressed with the characteristic of F.D.R. and which cannot be realised and adjusted by the Bank, the complainant can take that dispute in the civil suit and file a counter claim which may be permissible. Our jurisdiction to such disputes are limited. We do not find, therefore, any deficiency in service. In the aforesaid circumstances we do not want to decide whether the Bank has adjusted Rs. 63,000/- rightly or wrongly because according to our opinion this type of question can be decided by the Civil Court after taking elaborate oral evidence and not in this summary proceedings. ORDER We, therefore, dismiss this complaint without entering into the merits regarding the adjustment of Rs. 63,000/-. In the circumstances there will be no order as to costs. Complaint dismissed.

