(1997) 04 NCDRC CK 0070

In the National Consumer Disputes Redressal Commission

SECRETARY, MAYURAM CO-OPERATIVE URBAN BANK LTD. APPELLANT

Vs

JOHN NICHOLSON RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Citation : 1997 2 CPJ 607 : 1998 1 CPC 118 : 1998 1 CPR 95

Hon'ble Judges : E.J.Bellie , Pulavar V.S.Kandasamy , Angel Arulraj J.

Final Decision : Appeal allowed

Judgement

1. THE two officers of the Mayavaram Cooperative Union Bank Ltd., against whom an award has been passed are the appellants.

2. THE facts are : THE complainant is a member of the said Mayuram Co-operatice Union Bank Ltd. He obtained a loan of Rs. 25,000/- on 20.5.94 from the Opposite Party by executing a mortgage of his properties. He re ceived the entire amount excepting Re. 1/- which was left in his account. THE entire amount he repaid. After that he wanted another loan of Rs. 25,000/- to be given to him. It appears the Bank wanted him to discharge a loan of another person named K. Balasubramanian for whom he has stood as surety and then they would consider his claim for another mortgage. That the complainant complied with. THEn they further said that he must produce encumbrance certificate for certain period. THE original mortgage executed by him is a continuing mortgage and, therefore, a fresh mortgage was not necessary. THE Bank was not prepared to accept it and since no fresh mortgage was executed they refused payment. THE case of the complainant is that because of the attitude of the Opposite Party he suffered monetary loss and mental pain. On these grounds he filed the complaint. The Opposite Party contended that there was no deficiency in service on their part and they are not bound to pay any loan to the complainant and as such the complaint is liable to be dismissed.

The District Forum held that there was deficiency in service on the part of the Opposite Party inasmuch as the mortgage executed by the complainant is a continuing mortgage and, therefore, they ought to have granted another loan on that mortgage. But the complainant has not asked for ordering the Opposite Party to grant loan but he has only asked for compensation for not sanctioning the loan. The District Forum has awarded a sum of Rs. 5,000/- as compensation.

3. NOW in the appeal the learned Counsel appearing for the appellant/Opposite Party contends that in law there is no such thing as a continuing mortgage and when the complainant asked for a fresh loan he must execute a fresh mortgage but he was not prepared to do so and that is why the Bank could not sanction and give him further loan. In our view there is much force in this contention of the learned Counsel. Continuing mortgage is unknown to law. While that being the case there is no point in the complainant insisting that on the first mortgage executed by him itself the fresh loan should have been granted by the Opposite Parties. In law the plea of the complainant is not sustainable. In this position because the Opposite Parties have not granted a second loan, it cannot be held that they were guilty of deficiency in service. Hence the finding of the District Forum that there was deficiency in service on the part of the Opposite Party cannot be upheld as correct and hence it follows that the compensation awarded cannot be sustained. Further, another argument advanced by the learned Counsel for the appellant/Opposite Parties that the Bank is not bound to grant loan also appears to have merit. To grant loan they have to consider a number of factors and it will be in their discretion to grant loan or refuse. Another point also is that the Opposite Party bank has been registered under the Cooperative Societies Act, and the complainant being one of its members, this is a matter which shall be agitated before the Registrar under Section 90 of the Cooperative Societies Act. Thus considering, we allow the appeal; set aside the order of the District Forum and dismiss the complaint. However, there will be no order as to costs. Appeal allowed. ______________