(1991) 08 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

SOVINTERG (INDIA) PVT. LTD. APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 09-08-1991

Acts Referred:

Citation : 1992 1 CPJ 11 : 1992 2 CPR 630

Hon'ble Judges : R.N.Mittal , B.L.Anand , Avtar Pennathur J.

Final Decision : Appeal dismissed

Judgement

1. BRIEFLY, the facts are that the Import Licence dated 18.9.82 for Rs. 12,04,500/- for importing capital goods had been issued to the complainant by the Chief Controller of Imports & Exports (hereinafter referred as CCI & E) on the recommendations of the Director of Industries, New Delhi on the condition that the complainant would furnish a bond with Bank Guarantee for 25% of the value of actual import and that the bond would stand discharged after the Director of Industries, Delhi had certified that the Unit had made necessary arrangements for premises, power and water supply before the clearance of goods from the customs. The complainant requested State Bank of India, respondent No. 1 to issue Bank Guarantee of Rs. 3,02,000/- only in favour of Joint CCI & E. It is pleaded that respondent No. 1 issued a guarantee dated 7th April, 1983 by keeping a Margin Money of Rs. 75,000/- only.

2. THE complainant had a current account no. 223 with the Bank. THEy deposited a crossed- cheque dated 3rd June, 1983 for rupees one lac for collection and crediting the same into the above account. THE amount was collected by the Bank but it was not deposited in the account. For that reason a winding up petition (Petition No. 3 of 1984) was filed in Delhi High Court. It was stated in the petition that they were unable to pay their creditor M/s. H.V. Air Conditioning Systems (P) Ltd., a sum of Rs. 59,490/-. THE High Court passed a winding up order dated 7th August, 1984 against them. In view of that order, all the assests, imported machinery, records and books of the Company were taken into possession by the Official Liquidater. The Company imported the machinery

and got that cleared from the Customs in April, 1983. After the customs clearance, they requested the Joint CCI & E, respondent No. 2, to return the Guarantee Bond. However, it was not returned.

The Bank Guarantee given by respondent No. 1 was valid upto 30th April, 1986. It is averred that thereafter; it became the duty of respondent No. 1 to refund the Margin Money of Rs.75,000/- with interest to the complainant, which they failed to do till date.

3. THE Commissioner of Industries, respondent No. 3 was requested to provide necessary certificate of availability of water, power and premises, to the complainant in 1983 but he had been delaying and postponing the matter on one excuse or the other and ultimately refused to issue the same. It is pleaded that the complainant had established two different factories in Delhi in 1982-83 for which permanent factory licences and Registration No. F.D/5138, D.F.L. No. 4882 dated 28.1.82 and Registration No. 5095 D.F.L. No. 4839 dated 19.1.82, were issued by the Factory Licencing Department of Delhi Administration. THEse were subsequently renewed by him upto 31st December, 1983. Inspite of that respondent No. 3 failed to issue necessary certificate of availability of water, power and premises to the complainant. It is further alleged that all the above formalities of certificate from the Industries Department were superfluous and redundant for the purposes of release of margin money by the Bank because the period of guarantee had already expired on 30th April, 1986 and also the final 6 months claim period which was also one of the conditions of the guarantee had also expired on 30th October, 1986. Inspite of that respondent No. 1 was withholding the petitioner''s margin money of Rs. 75,000/- with interest @ 24% per annum w.e.f. 7th April, 1983 till the date of payment of the amount. It is also prayed that the respondents be directed to pay business losses suffered by them.

4. THE complaint has been contested by respondent Nos. 1 & 3. Respondent No. 2 has been proceeded against ex-parte. Respondent No. 1 in their written statement has inter-alia pleaded that the complaint is barred by time as according to the complaint, the amount became payable in 1986 and the present complaint was filed on 5th November, 1990. On merits, it is pleaded by them that the respondent issued Bank Guarantee in favour of CCI & E for and on behalf of the complainant to the extent of Rs. 3,02,000/-. THE Bank was supposed to keep margin money to the extent of Rs. 75,000/-. In the guarantee register maintained by the respondent, it was noted down by the officer concerned at that time against the relevant entry "lien is noted". In fact no such lien was noted in the current account maintained by the complainant with the respondent. It was the only account of the complainant with the respondent. It is further pleaded that whenever margin money was kept by the Bank, it was reflected in the account maintained by them in their books of account under the head of "margin or guarantee". Though it was noted by the concerned officer in the guarantee register that the lien was noted but on perusal of the current account of the complainant, it was not found that the entry was not there. THEre

was another method of keeping the margin money by the Bank. It was that the Fixed Deposit receipt was obtained from the person concerned and a lien was noted on the Fixed Deposit receipt. This form was known as T.D.R. in the Bank. It was next pleaded that the complainant had not alleged that they had deposited cash as margin money with the respondent or that they had got the lien noted on the F.D. receipt in T.D.R. form. The complainant, it is averred, had based its entire claim on a letter written by the respondent, which had been written on the basis of the noting made in the guarantee register. In fact no such amount was received by the respondent from the complainant on 7th April, 1983 or on any subsequent date and therefore, the question of refund of any amount did not arise. Respondent No. 3 in his written statement pleaded that the complaint against him was barred by limitation. It is stated that the complainant made a request for release of the margin money on 14.6.1983 whereas they filed the complaint in November, 1990. They could file the suit within one year from that date and thus it was barred by time.

5. IT is further pleaded by the said respondent that the claimant does not fall within the definition of the word ''complainant'' as defined in the Consumer Protection Act as they did not hire services of the respondent for consideration. On merits he pleaded that the complainant was not possessed of any factory premises and therefore, they were not entitled to the certificate and their request was rightly rejected. In the aforesaid circumstances it is stated that the respondent was not liable fo pay any damages to the complainant

6. THE first question that arises for determination is, whether the complaint against respondent Nos. 1 & 3 is within the limitation. First we shall take up the case against the State Bank of India. It is not disputed that the Bank furnished a guarantee for the complainant for a sum of Rs. 3,02,000/-. According to the terms of the guarantee date 7.4.83, it was to remain in force upto 30th April, 1986 (Page 24). It was further provided that unless a suit to enforce the claim under the guarantee was brought against the Bank within six months from the date of expiry of the guarantee, the Bank would stand discharged from its liability. Thus the liability of the Bank came to an end on 30th October, 1986. After 30th October, 1986, the complainant could file a suit for recovery of the amount. THE learned counsel did not bring to our notice any specific article, which is applicable to this case. THErefore, in our view the residuary Article 113 shall apply to it. THE limitation for recovery of an amount under the said Article is 3 years from the date, when the right to sue accrues. THE complainant thus could file complaint for recovery of the amount within 3 years from 30th October, 1986 when the Bank stood discharged from its liability under the guarantee. THE complaint has however, been filed on 5th November, 1990. THErefore, the complaint is not within limitation. Faced "with this situation, the learned counsel for the complainant sought to argue that there were various letters of the Bank in which they acknowledged their liability to pay the amount, and the limitation would start from the dates of the letters. In support of his contention, he has placed reliance on the letters dated 3.10.87 (Page 21), 3.11.87 (Page 13),

4.11.87 (Page 14), 26.11.87 (Page 264), 31.12.87 (Page 12) & 14.5.88 (Page 2).

In the letter dated 3.10.87 the Bank admitted that an amount of Rs. 75,000/- was held by them as margin money against the Bank guarantee dated 7.4.83 issued by them. From the contents of the letter, it is evident that it is admitted its liability to pay the amount. It thus amounts to an acknowledgement. Even if this letter is taken into consideration the complaint against respondent No. 1 is still barred by limitation. Letters dated 3.11.87 and 31.12.87 are from the Asstt. Chief Controller, Import & Exports to the Manager, State Bank of India and to the complainant respectively. These letters cannot be deemed to constitute acknowledgement by the Bank, as acknowledgement u/Sec. 18 of the Limitation Act should be by the party against whom a right is claimed or by any person through whom he derives his liability. Thus these two letters are of no help to the counsel for the complainant.

7. THE letter dated 4.11.87 has been written by the Manager, State Bank of India to the Complainant. It is stated therein that it had transpired from the books of the Bank that the margin money amounting to Rs. 75,000/- mentioned in their earlier letters was not correct and lien was noted for Rs. 75,000/- on 7.4.83, the actual amount of margin money received had not been verified. In the letter dated 26.11.87 (P-264), the Dy. General Manager, State Bank of India informed the complainant that unless the original guarantee was returned it would not be possible to release the margin money. On receipt of the guarantee, the margin money would be released by the South Extension Part-I Branch after verification from their books/registers. From those two letters, it cannot be inferred by any stretch of imagination that the Bank was admitting its liability regarding the margin money. In both the letters it was specifically stated that the amount could be refunded after proper verification. It is well settled that the document which is alleged to be acknowledgement must admit unambiguously and clearly the subsisting liability of the party making its. THE Bank in its letter dated 14.5.88, has written to the complainant that they are making efforts to find out the amount of margin money, if any, kept on the guarantee. From the above letters, it is clear that the Bank has not admitted the liability to pay the amount. On the other hand they are saying that the amount would be released after due verification. In our view such statements by the Bank do not amount to acknowledgement. Thus the claim of the complainant against the Bank is barred by limitation.

8. NOW we deal with the complaint against respondent No. 3. The complainant has claimed damages against the said respondent for the reason, that he failed to issue certificate of availability of water, power and premises with the complainant to them. It may in the first instance be seen, which Article of the Limitation Act shall be applicable to claim damages against him. Mr. Gupta, the learned counsel for the respondent No. 3 has submitted that Article 72 of the Limitation Act is applicable to the present case which provides a limitation of one year. We have duly considered the argument and find force therein. Article 72 is

in Part VII, which prescribes period of Limitation for ''suits relating to Tort'' and it reads as follows :- Article 72 Description of Suit Period of limitation Time from which period begins to run 72. For compensation for doing One year or for emitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this act extends When the act or Omission takes place, It is well settled that the Article applies to the cases, where a public officer causes injury to another by omitting to do an act, which he is required to do as such officer under law. In the present case the complainant has alleged that the Department of Industry was requested to provide a "certificate of availability of water, power and premises with complainant", in 1983 but they had been delaying and postponing the matter and ultimately refused to issue the certificate on various flimsy grounds. They also stated in the rejoinder that respondent No. 3 was established under the provisions of Industrial Law of the land. Taking into consideration the said allegations we are of the view that Article 72 is applicable to the present case.

9. NOW it is to be seen, whether the complaint under the said Article is within the limitation. As already mentioned it was filed on 5th November, 1990. The complainant''s counsel submits that the cause of action arose to the complainant on 8th November, 1989, when respondent No. 3 wrote the letter Annexure ''L'' (Page 11) to them. The complaint has been filed within one year from 8.11.89 and therefore it is within limitation.

10. WE have given our thoughtful consideration to the argument but regret our inability to accept the same. The claim of the complainant had been rejected by respondent No. 3 much before 8th November, 1989. They, however, made a written representation against the order of rejection. The present letter was written in reply to the representative dated 24th March, 1989, which is on record at Page 213. In the letter it was stated by the complainant that their letters dated 14.12.87 and 10.2.89 had been kept pending till date and ultimately rejected. The letter makes a reference to letter No. Z.O. (STH)/R/7/88/C.T./1472 dated 14.3.89 of respondent No. 3, against which representation has been made. It is, thus, evident that the claim of the complainant had been rejected by respondent No. 3 on 14th March, 1989. If the limitation is taken from 14th March 1989 the complaint is clearly barred by limitation. Consequently we are of the opinion that the complaint against respondent No. 3 is also barred by limitation. As we have held that the complaint is barred by limitation, therefore, it is not necessary to go into the merits of the case. Consequently we dismiss the complaint as barred by limitation. No order as to costs. Appeal dismissed.

