**(2015) 09 NCDRC CK 0029**

**In the National Consumer Disputes Redressal Commission**

**Case No :** 3992 of 2014

STATE BANK OF BIKANER & JAIPUR & ANR — APPELLANT

Vs

MOHAN LAL WADHWANI — RESPONDENT

**Date of Decision :** 10-09-2015

**Acts Referred:**

**Citation :** (2015) 09 NCDRC CK 0029

**Hon'ble Judges :** Ajit Bharihoke, Rekha Gupta

**Advocate :** Randeep Kumar

**Final Decision :** Petition allowed

## Judgement

Rekha Gupta, Member

[1] Revision petition no. 3992 of 2014 has been filed against the judgment dated 17.09.2014 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (''the State Commission'') in Appeal no. 1225 of 2013.

[2] The brief facts of the case as per the respondent/ complainant are that the respondent has filed a complaint dated 15.11.2011 before the District Consumer Disputes Redressal Forum, Jaipur 3rd, Jaipur (''the District Forum'') against the petitioner/ opposite party Bank. The respondent/ complainant had availed of a personal loan vide account no. 61011066975. The respondent paid 52 instalments to the bank on time but due to the circumstances created due to non-payment of salary for few months, the respondent could not pay eight instalments. In this connection, the respondent visited Indira Bazar Branch of the Bank on 27.09.2011. The petitioner informed the respondent to pay eight instalments immediately to avail of a scheme whereby the respondent would be entitled for waiver on additional interest and fine as well as also issue the no due certificate. On the advice of the petitioner, the respondent presented an application dated 27.09.2011 to the Branch Manager petitioner no. 2 in terms of the given scheme for payment of eight instalments and waiver of interest and fine. Along with the application for waiver the respondent paid eight instalments

amounting to Rs.32,840/- but the petitioner Bank did not waive off the interest and fine in terms of the scheme. When the respondent asked for the return of the advance cheques and no dues certificate given to the petitioner no. 2, the petitioner assured to return the same but neither the cheques were returned nor the no dues certificate was issued. The respondent while withdrawing Rs.18,000/- from its SB Account at SBBJ Vidyadhar Nagar came to know that the petitioner Bank had withdrawn Rs.4005/- from his account illegally and arbitrarily. Therefore, the petitioner Bank by assuring waiver of interest and fine, obtained eight instalments but the benefit under the scheme was not extended and an amount of Rs.4005/- was illegally withdrawn by the petitioner. Despite service of legal notice the respondent was not given the desired relief.

[3] Based on the aforesaid averments, the respondent termed the act of the petitioner Bank as serious deficiency in service and unfair trade practice and claimed Rs.4005/- which was deducted from the account of the respondent and also claimed Rs.25,000/- as compensation for its unlawful acts, Rs.25,000/- for mental harassment and Rs.5,500/- for litigation and advocate fees. By way of amended claim the respondent claimed NOC with respect to the loan account, upholding and freezing of the account, to remove negative remarks made against the respondent in its civil reports and to reject the claim of Rs.7948.99 raised by the petitioner.

[4] According to the reply filed by the petitioner the complaint filed by the respondent was not maintainable before this Forum as it falls within the jurisdiction of civil courts. The respondent did not deposit more than eight instalments in time and therefore, penal interest was imposed as per rules. The petitioner did not assure the respondent about the waiver of interest/ fine. The application for waiver made by the petitioner was sent to the Zonal office and its opinion was duly informed to the respondent by letter dated 03.10.2011. The application filed by the respondent was rejected by the competent officer after due consideration in accordance with the rules. The petitioner has not committed any deficiency in service or unfair trade practice. An amount of Rs.7948.99 was due from the respondent which amount the petitioner was entitled to obtain. The respondent had still not deposited the complete balance amount, hence, no due certificate could not be issued.

[5] On the basis of the aforementioned averments the petitioner had prayed for rejection of the complaint for being false and baseless and beyond the jurisdiction of the forum.

[6] Vide order dated 30.10.2013 the District Consumer Disputes Redressal Forum, Jaipur 3rd, Jaipur (''the District Forum'') while allowing the complaint observed as under: "The complainant has primarily stated that the opposite bank on the assurance of waiving/ interest got the eight instalments deposited by the complainant but the benefit of the scheme was not extended to it. In this relation the opposite Bank has relied upon letter dated 03.10.2011 wherein it is stated that the application filed by the complainant for waiver was presented before the

 

competent officer who rejected the same. But the opposite bank has not presented any adequate response or clarification as to why the request was rejected. In the aforesaid letter it has further been stated than an amount of Rs.7948.99 is due from the complainant. In view of the aforesaid dispute the deposit of eight instalments the assurance was not fulfilled and the application for waiver was rejected. From this fact it is adequately proved that the application for waiver filed by the complainant was rejected without any adequate reasons and as per whims and fancies of the opposite bank and thus the complainant was deprived of the benefit of Vishesh Rin Mukti Yojna. This act of the opposite Bank falls within the scope of the deficiency of service. It is relevant to mention at this stage that the opposite Bank deducted an instalment of Rs.4005/- from the saving bank account of the complainant at SBBJ Branch, Vidyadhar Nagar on 28.09.2011 while the specified 60 instalments have been deposited by the complainant. Besides, in terms of the document presented by the complainant this fact is also proved that the opposite party had put the aforementioned account of the complainant on hold in terms of civil consumer credit information report. As a result of the same the complainant has been subjected to serious inconvenience and mental harassment.

After the aforesaid consideration we have reached the conclusion that the opposite bank despite assurance of waiver of interest/ fine on the deposit of eight instalments in terms of Vishesh Rin Mukti Yojana did not fill its assurance and rejected the request of the applicant for waiver without stating any reasons. Thereafter, an amount of Rs.4005/- was deducted from the SB Account of the complainant at Vidyadhar Nagar. This entire act proves serious deficiency of service and unfair trade practice by the opposite party. Therefore, the complaint filed by the complainant is liable to be accepted in terms of the relevant rules.

The complaint of the complainant is accepted as follows:

The opposite party is directed to redeposit Rs.4005/- deducted illegally by the opposite party in relation of the personal loan. It is further declared that no amount is due to the opposite bank from the complainant is respect of the aforesaid loan and hence the opposite party is directed to issue no dues certificate without delay to the complainant. The claim of Rs.7948.99 by the opposite party from the complainant is also rejected.

The opposite party is further directed to uphold the account and to free the same. The opposite party is also directed to remove negative remark from the civil report of the complainant.

The opposite party is directed to pay Rs.11,000/- towards deficiency of service and unfair trade practice resulting into mental harassment and cost of litigation".

[7] Aggrieved by the order of the District Forum, the petitioner Bank filed an appeal before the State Commission. The State Commission vide its impugned order dated 17.09.2014 dismissed the appeal by observing thus: "The complainant has shown that the loan waiver scheme was available with opposite

 

bank and the opposite party has also accepted that they had a loan waiver scheme and it was within the discretion of the bank to waive loans. But according to us when the opposite party accepted eight instalments then it is assumed that the instalments have been accepted with the intent to waive loan and therefore he cannot deny the benefit of the scheme to the complainant. Such an act is unfair trade practice. Thus the order of the District Forum to waive remaining loan is correct. The order to return the excess amount deducted from the complainant and to set aside the dues is also corrected. The grant of discretionary relief is correct that (a) no dues certificate be issued and the name of the complainant has been reflected in the civil list due to the dues shown in the account by the bank. Therefore, by providing no dues information to the relevant officer his name will be removed from the civil list. Thus, this relief is also correct. No other issue is involved in the present case.

Hence, the appeal filed by the appellant is dismissed and the order dated 30.10.2013 as passed by the District Forum Jaipur 3rd, Jaipur in complaint no. 500 of 2013 is affirmed. The appellant is directed to implement the order of the District Forum within 30 days failing which the complainant shall be entitled to claim the amount deposited and other benefits".

[8] Hence, the present revision petition.

[9] We have heard the learned counsel for the petitioner and the respondent in person and have carefully gone through the records of the case. Learned counsel for the petitioner has contended that the respondent availed of a personal loan of Rs.1,75,000/- from the petitioner in October 2006. As per the terms of the loan agreement dated 21.09.2006 the respondent had to repay the loan in 60 equal monthly instalments of Rs.4005/- each with the last instalments payable in September 2011. The respondent had also issued standing instructions to the Bank to debit the instalments as directed from the account of the respondent. The respondent was also subject to penal rate of interest in case of default. The respondent did not pay the instalments in time and due to such defaults and irregular payments of instalments additional interest was levied in terms of loan agreement which added to the amount payable by the respondent. As on 27.09.2011 the amount of Rs.43,919.48 was payable against which respondent although paid Rs.32,040/- towards eight instalments and requested the bank to waive off the interest which was declined by the bank. Later on, the last equated instalment of Rs.4005/- of September 2011 was deducted from the account of the respondent in terms of the standing instructions. After deducting which a sum of Rs.7948.99 was still due to the bank.

[10] The respondent has never disputed the entries in the statement of account nor the rate of interest charged as clearly reflected in the statement of account. The lower Fora have also not observed any discrepancy in the interest charged or the amount due in the statement of account and hence, the impugned orders were completely erroneous and contrary to the law and liable to be dismissed.

[11] The respondent admitted that he had defaulted in payment as he did not get salary. He has also stated that he had paid 52 instalments regularly but was not able to deposit the remaining eight instalments. He had visited the bank on 27.09.2011 and according to the respondent he was offered the benefit of "Vishesh Rin Mukti Yojna", and the petitioner had committed deficiency in service by debiting Rs.4005/- to his account and their denial ofwaiver of interest as per the scheme tantamounts to unfair trade practice. Hence, the orders of the lower Fora were absolutely correct and on a right appreciation of the facts of the case.

[12] It is an admitted fact that the complainant had taken a personal loan of Rs.1,75,000/- at a specified rate of interest. This amount was to be repaid in 60 equated monthly instalment of Rs.4005/- commencing from October 2006 and a penal rate of interest of one per cent was applied on the amount deposited and for the period defaulted. If the respondent failed to repay the amount even after having been served notice giving him 30 days'' time to do so he was liable to pay penal interest. It is also an admitted fact that at the time of availing of the loan, the respondent had given a standing instruction authorising the petitioner bank to debit an amount of Rs.4005/- per month from his saving bank account no. 61007421983 for the credit of loan account no. 61011066975 till liquidation of account.

[13] We have also gone through the statement of account which shows that on 27.09.2011 an amount of Rs.43,919.48 was due. On 27.09.2011 an amount of Rs.32,040/- were deposited. Thereafter, another amount of Rs.4005/- was deducted from this account leaving a remaining balance of Rs.7948.99. The respondent had sent an application for waiver of additional interest and fine arrears. In the said letter he had requested the petitioner to accept the remaining eight instalments and waive off the additional interest and fine arrears and also requested to issue the no objection certificate. There was no mention in the application that he had made the request under any scheme of the petitioner Bank. The Bank vide their letter dated 03.10.2011 rejected the request. In this letter also there was no reference to any waiver under any scheme of the petitioner Bank.

[14] We have also gone through the waiver scheme on ''Vishesh Rin Muti Yojna''. The object of the scheme is to pursue avenues for speedy settlement of chronic cases of NPA, AUC and dropped accounts through the committee approach. As per paragraph 2 it covers All Chronic NPA accounts but with a rider. Accounts classified as NPA on or after 01.04.2009 would not be covered by this scheme. It is an admitted fact that the respondents account was declared NPA only on 24.09.2011 and as such he was not covered under this scheme, hence, any extension of scheme per se would still not make him eligible under the scheme.

[15] In view of the above, we find no deficiency of service in the action of the Bank in debiting his account by Rs.4005/- and making a demand for Rs.7948.99. Hence, the revision petition is allowed and the orders of the Fora below are set aside and the complaint is dismissed.